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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1739

RIN 0572–AC09

Community Connect Broadband Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service, an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Program, hereinafter referred to as Rural Development and/or the Agency, amends its regulations for the Community-Oriented Connectivity Broadband Grant Program (Community Connect Grant Program). Since the inception of the Community Connect Grant Program, the Agency has faced the challenge of identifying eligible rural communities. The Agency has reviewed its method of identifying eligible communities and has determined that modifications to the program regulations are required in order to expand the resource material used to identify eligible communities. The use of additional resources should increase the number of communities eligible for grant funding. Additionally, the Agency has changed the test for economic hardship. The current regulations compare an applicant community's per capita personal income to the national per capita personal income. Because of the varying costs of living among the states, it was determined that a better measure of economic distress would be a comparison of the applicant community's median household income to that of its state. This change is also expected to increase the number of eligible grant applicants. Lastly, this rule amends the current regulations by specifying operating expenses which the Agency has approved for grant funding. These changes have been determined to be non controversial and are being enacted as a direct final rule.

This rule is not applicable to Community Connect grant applications filed for funding during fiscal year 2007.

DATES: *Effective Date:* This rule is effective September 17, 2007, without further action, unless the Agency receives adverse comments within September 4, 2007. If adverse comments are received, the Agency will publish a timely **Federal Register** document withdrawing this rule. *Comment Due Date:* Comments must be received on or before September 4, 2007.

ADDRESSES: Submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Utilities Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RUS–07–Telecom–0008 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Acting Deputy Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room 5159, 1400 Independence Avenue, Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS–07–Telecom–0008.

Other Information: Additional information about Rural Development and its programs is available at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Kenneth Kuchno, Director, Broadband Division, USDA Rural Development Utilities Program, STOP 1599, 1400 Independence Avenue, SW., Washington, DC 20250–1599, Telephone (202) 690–4673, Facsimile (202) 690–4389. E-mail address: *kenneth.kuchno@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number assigned to the Community Connect Grant Program is 10.863. The Catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325; telephone (202) 512–1800.

Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with Sec 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 553(a)(2), this final rule related to grants is exempt from the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), including the requirement to provide prior notice and an

opportunity for public comment. Because this final rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Environmental Impact Statement

This final rule has been examined under Agency environmental regulations at 7 CFR part 1794. The Administrator has determined that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0127 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background

Overview

The USDA Rural Development Utilities Programs (the Agency) improve the quality of life in rural America by providing investment capital, in the form of loans and grants, for the deployment of rural telecommunications infrastructure. Financial assistance is provided to rural utilities; municipalities; commercial corporations; limited liability companies; public utility districts; Indian tribes; and cooperative, nonprofit, limited-dividend, or mutual associations. In order to achieve the goal of increasing economic opportunity in rural America, the Agency finances infrastructure that enables access to a seamless, nation-wide telecommunications network. With access to the same advanced telecommunications networks of its urban counterparts, especially broadband networks designed to accommodate distance learning, telework and telemedicine, rural America will see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. Of particular concern to the Agency are communities where broadband service is not available and where population densities are such that the cost of deployment to them is high and build-out of infrastructure is unlikely. The Agency is committed to ensuring rural communities will have access to affordable, reliable, advanced communications services, comparable to those available throughout the rest of the United States, to provide a healthy, safe and prosperous place to live and work.

The Community Connect Grant Program was started as a Pilot Program with the Fiscal Year 2002 budget and has been funded ever since through the appropriations process. After administering the program as a pilot program for two years, the Agency proposed rules for the program, and on July 28, 2004, the current rules were published, and the program was formally implemented. Since then more than 670 requests for grant funds totaling over $410 million were requested through Fiscal Year 2006. Of those requests, 129 were granted for $57 million to bring broadband service to 129 communities in 26 states and Puerto Rico.

While the Agency is proud of the results achieved in the Community Connect Grant Program thus far, it believes that the overall effectiveness of the program can be improved by modifying the existing rules. Through these changes, the Agency is increasing eligibility criteria to include communities that clearly meet the intent of the program. Specifically, this rule will: (1) Add the Rand McNally Atlas as a community locator; (2) change the income measure for eligibility from a national comparison to a state comparison; and (3) clarify the items that are eligible to be considered as operating expenses.

Discussion of Changes

1. Adding the Rand McNally Atlas as a community locator. Currently the regulation states that a project must serve an incorporated or unincorporated town, village, or borough recognized in the latest decennial census of the Bureau of the Census to be eligible for funding. While this program has been successful in reaching much of rural America, the Agency recognizes that areas not identified in the 2000 census are excluded from funding. It is advisable to add another resource, updated more frequently than the decennial census and including communities not found in the census, to identify rural communities. The Agency therefore adds the Rand McNally Atlas as a resource to identify rural communities. It is anticipated that the addition of the Rand McNally Atlas as a community locator will increase the number of communities eligible for funding.

2. Change the income measure from a national comparison to a state comparison. Rural communities that would otherwise be eligible for grant funding have been previously excluded because their per capita personal income is relatively high in comparison to the national average. However, using the communities median household income compared to their state's median household income, these communities would qualify as economically challenged. Given the variable cost of living among the states, the comparison of state statistics is a better indicator of economic distress. The intent of this program is to allow all rural communities without broadband service facing economic hardship to fairly compete for funding. By comparing a community's median household income to their state's median household income, all rural economically challenged communities may compete fairly for funding.

3. Clarify the items that are eligible to be considered as operating expenses. Currently the regulation states that operating expenses incurred in providing broadband transmission service to critical facilities is an eligible purpose and that the salaries and administrative costs associated with these expenses may be limited by the Agency. Through the course of this program, applicants have not clearly understood what operating expenses are eligible. Many applicants have requested funds for ineligible operating expenses and had to be eliminated from the grant competition. To assist the applicant with better understanding what operating expenses are considered eligible, the Agency is specifically defining the eligible operating expenses.

Other corresponding changes were made throughout the regulation to reflect the addition of the Rand McNally Atlas and the change to state income measures.

List of Subjects in 7 CFR 1739

Broadband, Grant programs—Communications, Rural Areas, Telecommunications, and Telephone.

■ For reasons set forth in the preamble, the Rural Utilities Service amends Chapter XVII of title 7 of the Code of

Federal Regulations by revising part 1739 as follows:

PART 1739—BROADBAND GRANT PROGRAM

Subpart A—Community Connect Grant Program

Sec.
1739.1 Purpose.
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Subpart B—[Reserved]

Authority: Title III, Pub. L. 108–199, 118 Stat. 3.

Subpart A—Community Connect Grant Program

§ 1739.1 Purpose.

(a) The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. The purpose of the Community Connect Grant Program is to provide financial assistance in the form of grants to eligible applicants that will provide, on a ''community-oriented connectivity'' basis, broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services. The Agency will give priority to rural areas that it believes have the greatest need for broadband transmission services, based on the criteria contained herein.

(b) Grant authority will be used for the deployment of broadband transmission service to extremely rural, lower-income communities on a ''community-oriented connectivity'' basis. The ''community-oriented connectivity'' concept will stimulate practical, everyday uses and applications of broadband by cultivating the deployment of new broadband transmission services that improve economic development and provide enhanced educational and health care opportunities in rural areas. Such an approach will also give rural communities the opportunity to benefit from the advanced technologies that are necessary to achieve these goals.

§ 1739.2 Funding availability and application dates and submission.

(a) The Agency will publish, annually in the **Federal Register**, a Notice of Funds Availability (hereinafter ''NOFA'') that will set forth the total amount of funding available; the maximum and minimum funding for each grant; the application submission dates; and the appropriate addresses and agency contact information. The NOFA will also outline and explain the procedures for submission of applications, including electronic submissions. The Agency may publish more than one NOFA should additional funding become available.

(b) Notwithstanding paragraph (a) of this section, the Agency may, in response to a surplus of qualified eligible applications which could not be funded from the previous fiscal year, decline to publish a NOFA for the following fiscal year and fund said applications without further public notice.

§ 1739.3 Definitions.

As used in this subpart:

Agency shall mean the Rural Utilities Service, which administers the United States Department of Agriculture (USDA) Rural Development Utilities Programs.

Bandwidth means the capacity of the radio frequency band or physical facility needed to carry the Broadband Transmission Service.

Basic Broadband Transmission Service means the broadband transmission service level provided by the applicant at the lowest rate or service package level for residential or business customers, as appropriate, provided that such service meets the requirements of this part.

Broadband Transmission Service means providing an information-rate equivalent to at least 200 kilobits/second in the consumer's connection to the network, both from the provider to the consumer (downstream) and from the consumer to the provider (upstream).

Community means any incorporated or unincorporated town, village, or borough recognized in the latest decennial census as published by the Bureau of the Census or in the most recent edition of a Rand McNally Atlas that is located in a Rural Area.

Community Center means a public building, or a section of a public building with at least ten (10) Computer Access Points, that is used for the purposes of providing free access to and/or instruction in the use of broadband Internet service, and is of the appropriate size to accommodate this purpose. The community center must be open and accessible to area residents before, during, and after normal working hours and on Saturday or Sunday.

Computer Access Point means a new computer terminal with access to Basic Broadband Transmission Service.

Critical Community Facilities means the Community Center and every public school or education center, public library, public medical clinic, public hospital, community college, public university, or law enforcement, fire and ambulance stations in the proposed Service Area.

Eligible Applicant shall have the meaning as set forth in § 1739.10.

Eligible Grant Purposes shall have the meaning as set forth in § 1739.12.

End-User Equipment means computer hardware and software, audio or video equipment, computer network components, telecommunications terminal equipment, inside wiring, interactive video equipment, or other facilities required for the provision and use of Broadband Transmission Service.

Matching Contribution means the applicant's qualified contribution to the Project, as outlined in § 1739.14 of this part.

Project means the applicant's proposed Basic Broadband Transmission Service financed by the grant and Matching Contribution for the proposed Service Area.

Rural Area means any area, as verified by the latest decennial census of the Bureau of the Census or the latest edition of the Rand McNally Atlas, which is not located within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

Service Area means a single Community, and may include the unincorporated areas located outside and contiguous to the Community's boundaries, in which the applicant proposes to provide Broadband Transmission Service.

Spectrum means a defined band of frequencies that will accommodate the Broadband Transmission Service.

Telecommunications Terminal Equipment means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to facilities that receive or transmit over-the-air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is

used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

§§ 1739.4–1739.9 [Reserved].

§ 1739.10 Eligible applicant.

To be eligible for a grant, the applicant must:

(a) Be legally organized as an incorporated organization, an Indian tribe or tribal organization, as defined in *25 U.S.C. 450b(b) and (c),* a state or local unit of government, or other legal entity, including cooperatives or private corporations or limited liability companies organized on a for-profit or not-for-profit basis.

(b) Have the legal capacity and authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable federal statutes and regulations.

§ 1739.11 Eligible project.

To be eligible for a grant, the Project must:

(a) Serve a Rural Area where Broadband Transmission Service does not currently exist, to be verified by the Agency prior to the award of the grant;

(b) Serve one Community recognized in the latest U.S. Census or the latest edition of the Rand McNally Atlas;

(c) Deploy Basic Broadband Transmission Service, free of all charges for at least 2 years, to all Critical Community Facilities located within the proposed Service Area;

(d) Offer Basic Broadband Transmission Service to residential and business customers within the proposed Service Area; and

(e) Provide a Community Center with at least ten (10) Computer Access Points within the proposed Service Area, and make Broadband Transmission Service available therein, free of all charges to users for at least 2 years.

§ 1739.12 Eligible grant purposes.

Grant funds may be used to finance:

(a) The construction, acquisition, or leasing of facilities, including spectrum, to deploy Broadband Transmission Service to all participating Critical Community Facilities and all required facilities needed to offer such service to residential and business customers located within the proposed Service Area;

(b) The improvement, expansion, construction, or acquisition of a Community Center that furnishes free access to broadband Internet service, provided that the Community Center is open and accessible to area residents before, during, and after normal working hours and on Saturday or Sunday. Grant funds provided for such costs shall not exceed the greater of five percent (5%) of the grant amount requested or $100,000;

(c) End-User Equipment needed to carry out the Project;

(d) (1) Operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction. In order to qualify as eligible costs for grant coverage or as matching fund contributions, operating expenses for providing broadband transmission service to Critical Community Facilities must:

(i) Be incurred for the purpose of providing broadband service to the Critical Community Facilities and be for costs incurred during the first two years of operation; and

(ii) Be for the following purposes subject to the specified maximum amounts:

(A) Salary for operations manager, not to exceed $30,000 per year.

(B) Salary for technical support staff, not to exceed $30,000 per year.

(C) Salary for community center staff, not to exceed $25,000 per year.

(D) Bandwidth expenses, not to exceed $25,000 per year.

(E) Training courses on the use of the Internet, not to exceed $15,000 per year.

(2) The operating costs to be funded by the grant or used as matching contributions cannot exceed in the aggregate $250,000. No other operating expenses are eligible for grant funding or to be considered as matching funds; and

(e) The purchase of land, buildings, or building construction needed to carry out the Project.

§ 1739.13 Ineligible grant purposes.

(a) Grant funds may not be used to finance the duplication of any existing Broadband Transmission Service provided by another entity.

(b) Facilities financed with grant funds cannot be utilized, in any way, to provide local exchange telecommunications service to any person or entity already receiving such service.

§ 1739.14 Matching contributions.

(a) The grant applicant must contribute a Matching Contribution which is at least fifteen percent (15%) of the grant amount requested and shall be in the form of:

(1) Cash for eligible grant purposes.

(2) In-kind contributions for purposes that could have been financed with grant funds under this part. In-kind contributions must be new or non-depreciated assets with established monetary values. Manufacturers' or service providers' discounts shall not be considered as a Matching Contribution.

(3) The rental value of space provided within an existing building to be used as the Community Center, provided that the space is free of charge to the applicant, for the first 2 years of operation.

(b) Costs incurred by the applicant, or by others on behalf of the applicant, for facilities, installed equipment, or other services rendered prior to submission of a completed application shall not be considered as an Eligible Grant Purpose or Matching Contribution.

(c) Rental values of space provided must be substantiated by rental agreements documenting the cost of space of a similar size in a similar location.

(d) Any financial assistance from federal sources shall not be considered as a Matching Contribution unless there is a federal statutory exception specifically authorizing the federal financial assistance to be considered as such.

§ 1739.15 Completed application.

A completed application must include the following documentation, studies, reports and information in form satisfactory to the Agency. Applications should be prepared in conformance with the provisions of this part and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the Agency's Application Guide for this program, found at *http://www.usda.gov/rus/telecom/* containing instructions and all necessary forms, as well as other important information, in preparing their application. Paper copies of the application guide can be requested by contacting the Director, Broadband Division at the following address: Stop 1599, South Agriculture Building, Room 2868, Washington, DC 20250. Completed applications must include the following:

(a) *An Application for Federal Assistance.* A completed Standard Form 424.

(b) *An executive summary of the Project.* The applicant must provide the Agency with a general project overview that addresses the following categories:

(1) A description of why the Project is needed;

(2) A description of the applicant;

(3) An explanation of the total Project cost;

(4) A general overview of the broadband telecommunications system

to be developed, including the types of equipment, technologies, and facilities to be used;

(5) Documentation describing the procedures used to determine the unavailability of existing Broadband Transmission Service; and

(6) A description of the participating Critical Community Facilities.

(c) *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed in § 1739.17.

(d) *System design.* The applicant must submit a system design that contains the following, satisfactory to the Agency:

(1) A narrative discussing the proposed Community Center, all costs of the Project, all existing and proposed facilities that are a part of the Project, the services to be provided by the Project, and the proposed Service Area;

(2) Engineering design studies providing an economical and practical engineering design of the Project, including a detailed description of the facilities to be funded, technical specifications, data rates, and costs; and

(3) A map of the proposed Service Area reflecting the proposed location of the Community Center and all participating Critical Community Facilities.

(e) *Scope of work.* The scope of work must include, at a minimum:

(1) The specific activities and services to be performed under the Project;

(2) Who will carry out the activities and services;

(3) The time-frames for accomplishing the Project objectives and activities; and

(4) A budget for all capital and administrative expenditures reflecting the line item costs for Eligible Grant Purposes, the Matching Contribution, and other sources of funds necessary to complete the Project.

(f) *Community-Oriented Connectivity Plan.* The applicant must provide a Community-Oriented Connectivity Plan consisting of the following:

(1) A listing of all participating Critical Community Facilities to be connected. For those Critical Community Facilities in the Service Area which will not be included in the Project, an explanation of why they are not being included should be provided. The applicant must also provide documentation that it has consulted with agents of all Critical Community Facilities in the Service Area, and must provide statements as to their willingness to participate, or not to participate, in the proposed Project;

(2) A description of the services available to local residents through the use of the Community Center;

(3) A listing of the proposed Telecommunications Terminal Equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the Project designed to further the deployment and use of Broadband Transmission Service, that the applicant intends to build or fund using the Agency's grant funds and the Matching Contribution; and

(4) If other telecommunications carriers (including interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) are participating in the delivery of services, a description of the consultations and the anticipated role of such providers in the proposed Project.

(g) *Financial information and sustainability.* The applicant must provide a narrative description demonstrating the sustainability of the Project during the first two years and after completion and the sufficiency of resources and expertise necessary to undertake and complete the Project. The following financial information is required:

(1) Certified financial statements, if available; otherwise, the most current income statement and balance sheet for existing operations; and

(2) Pro-forma financial information for 5 years, evidencing the sustainability of the Project.

(h) *A statement of experience.* Information on the owners' and principal employees' relevant work experience that would ensure the success of the Project. The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

(i) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with the Agency and to perform the activities proposed under the grant application.

(j) *Funding commitment from other sources.* If the Project requires additional funding from other sources in addition to the Agency's grant, the applicant must provide evidence that funding agreements have been obtained to ensure completion of the Project.

(k) *Compliance with other federal statutes.* The applicant must provide evidence of compliance with other federal statutes and regulations, including, but not limited to the following:

(1) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(2) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(3) 7 CFR part 3017—Governmentwide Debarment and Suspension (Non-procurement).

(4) 7 CFR part 3018—New Restrictions on Lobbying.

(5) 7 CFR part 3021—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(6) Certification regarding Architectural Barriers.

(7) Certification regarding Flood Hazard Precautions.

(8) An environmental report, in accordance with 7 CFR 1794.

(9) Certification that grant funds will not be used to duplicate lines, facilities, or systems providing Broadband Transmission Service.

(10) Federal Obligation Certification on Delinquent Debt.

§ 1739.16 Review of grant applications.

(a) All applications for grants must be delivered to the Agency at the address and by the date specified in the NOFA (see § 1739.2) to be eligible for funding. The Agency will review each application for conformance with the provisions of this part. The Agency may contact the applicant for additional information or clarification.

(b) Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

(c) Applications conforming with this part will then be evaluated competitively by a panel of the Agency's employees selected by the Administrator of the Agency, and will be awarded points as described in the scoring criteria in § 1739.17. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

(d) Regardless of the score an application receives, if the Agency determines that the Project is technically or financially infeasible, the Agency will notify the applicant, in writing, and the application will be returned with no further action.

§ 1739.17 Scoring of applications.

(a) All eligible applications will receive points for the following scoring criteria:

(1) The rurality of the Project (up to 40 points);

(2) The economic need of the Project's Service Area (up to 30 points); and

(3) The ''community-oriented connectivity'' benefits derived from the proposed service (up to 30 points).

(b) Scoring criteria:

(1) *The rurality of the project*—up to 40 points.

(i) This criterion will be used to evaluate the rurality of the Community served by the Project, in accordance with the following method of scoring. If a Community is identified in the latest decennial Census, the applicant must use the Census information. If a Community is not identified in the Census but is identified in the latest edition of the Rand McNally Atlas, the applicant will use the Rand McNally Atlas information. Rurality shall be determined by the following criteria:

(A) The 2000 population data contained in the U.S. Bureau of the Census at *http://factfinder.census.gov:* or

(B) The population data contained in the latest edition of the Rand McNally Atlas. If no population data is contained in the Rand McNally Atlas for a community that is recognized in the Atlas, then that community is not eligible for a grant.

(ii) The following categories are used in the evaluation of rurality:

(A) Level 1 means any Community having a population of less than 500 inhabitants.

(B) Level 2 means any Community having a population of at least 500 and not in excess of 1,000 inhabitants.

(C) Level 3 means any Community having a population over 1,000 and not in excess of 2,000 inhabitants.

(D) Level 4 means any Community having a population over 2,000 and not in excess of 3,000 inhabitants.

(E) Level 5 means any Community having a population over 3,000 and not in excess of 4,000 inhabitants.

(F) Level 6 means any Community having a population over 4,000 and not in excess of 5,000 inhabitants.

(G) Level 7 means any Community having a population over 5,000 and not in excess of 10,000 inhabitants.

(H) Level 8 means any Community having a population over 10,000 and not in excess of 20,000 inhabitants.

(iii) Each application will receive points based on the location of the facilities financed using the definitions in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(A) For a Service Area that includes a Level 1 Community, it will receive 40 points.

(B) For a Service Area that includes a Level 2 Community, it will receive 35 points.

(C) For a Service Area that includes a Level 3 Community, it will receive 30 points.

(D) For a Service Area that includes a Level 4 Community, it will receive 25 points.

(E) For a Service Area that includes a Level 5 Community, it will receive 20 points.

(F) For a Service Area that includes a Level 6 Community, it will receive 15 points.

(G) For a Service Area that includes a Level 7 Community, it will receive 10 points.

(H) For a Service Area that includes a Level 8 Community, it will receive 5 points.

(2) *The economic need of the Project Service Area*—up to 30 points. This criterion will be used to evaluate the economic need of the Service Area. Applicants must utilize the median household income (MHI) for the Community serviced and the state in which the Community is located, as determined by the U.S. Bureau of the Census at *http://factfinder.census.gov.* If the community was qualified using the Rand McNally Atlas, the applicant must use the MHI, contained in the decennial census, of the county in which the Community resides as the Community MHI. Applicants will be awarded points as outlined below for service provided in the Community where the MHI is less than 75 percent of the state MHI:

(i) MHI is 75 percent or greater of state MHI; 0 points;

(ii) MHI is less than 75 percent and greater than or equal to 70 percent of state MHI; 5 points;

(iii) MHI is less than 70 percent and greater than or equal to 65 percent of state MHI; 10 points;

(iv) MHI is less than 65 percent and greater than or equal to 60 percent of the state MHI; 15 points;

(v) MHI is less than 60 percent and greater than or equal to 55 percent of the state MHI; 20 points;

(vi) MHI is less than 55 percent and greater than or equal to 50 percent of the state MHI; 25 points;

(vii) MHI is less than 50 percent of the state MHI; 30 points;

(3) *The ''community-oriented connectivity'' benefits derived from the proposed service*—up to 30 points.

(i) This criterion will be used to score applications based on the documentation in support of the need for services, benefits derived from the services proposed by the Project, and local community involvement in planning and implementation of the Project. Applicants may receive up to 30 points for documenting the need for services and benefits derived from service as explained in this section.

(ii) The Agency will consider:

(A) The extent of the applicant's documentation explaining the economic, education, health care, and public safety issues facing the community and the applicant's proposed plan to address these challenges on a community-wide basis;

(B) The extent of the Project's planning, development, and support by local residents, institutions, and community facilities will be considered. This includes evidence of community-wide involvement, as exemplified in community meetings, public forums, and surveys. In addition, applicants should provide evidence of local residents' participation in the Project planning and development;

(C) The extent to which the Community Center will be used for instructional purposes including Internet usage, Web-based curricula, and Web page development; and

(D) Web-based community resources enabled or provided by the applicant, such as community bulletin boards, directories, and public web-hosting.

§ 1739.18 Grant documents.

The terms and conditions of grants shall be set forth in grant documents prepared by the Agency. The documents shall require the applicant to own all equipment and facilities financed by the grant. Among other matters, the Agency may prescribe conditions to the advance of funds that address concerns regarding the Project feasibility and sustainability. The Agency may also prescribe terms and conditions applicable to the construction and operation of the Project and the delivery of Broadband Transmission Service to Rural Areas, as well as other terms and conditions applicable to the individual Project.

§ 1739.19 Reporting and oversight requirements.

(a) A project performance activity report will be required of all recipients on an annual basis until the Project is complete and the funds are expended by the applicant. Recipients are to submit an original and one copy of all project performance reports, including, but not limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) A description of any problems, delays, or adverse conditions which

have occurred, or are anticipated, and which may affect the attainment of overall Project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular Project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

(b) A final project performance report must be provided by the recipient. It must provide an evaluation of the success of the Project in meeting the objectives of the program. The final report may serve as the last annual report.

(c) The Agency will monitor recipients, as it determines necessary, to assure that Projects are completed in accordance with the approved scope of work and that the grant is expended for Eligible Grant Purposes.

(d) Recipients shall diligently monitor performance to ensure that time schedules are being met, projected work within designated time periods is being accomplished, and other performance objectives are being achieved.

§ 1739.20 Audit requirements.

A grant recipient shall provide the Agency with an audit for each year, beginning with the year in which a portion of the financial assistance is expended, in accordance with the following:

(a) If the recipient is a for-profit entity, an existing Telecommunications or Electric Borrower with the Agency, or any other entity not covered by the following paragraph, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773, ''Policy on Audits of the Agency's Borrowers.''

(b) If the recipient is a State or local government, or non-profit organization, the recipient shall provide an audit in accordance with 7 CFR part 3052, ''Audits of States, Local Governments, and Non-Profit Organizations.''

§ 1739.21 OMB Control Number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0572–0127.

Subpart B—[Reserved]

Dated: July 19, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E7–15106 Filed 8–2–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE272; Special Conditions No. 23–212–SC]

Special Conditions: Centex Aerospace Inc., Cirrus Design Corporation Model SR22; Installation of a Full Authority Digital Engine Control (FADEC) Engine and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Centex Aerospace Inc. modified Cirrus Design Corporation Model SR22. This airplane as modified by Centex Aerospace Inc. will have a novel or unusual design feature(s) associated with the installation of a full authority digital engine control (FADEC) engine. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 26, 2007. Comments must be received on or before September 4, 2007.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE272, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE272. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4135, fax: 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 15, 2004, Centex Aerospace, Inc. applied for a supplemental type certificate for the Cirrus Model SR22 to install a full authority digital engine control in the Cirrus Model SR22. CenTex Aerospace, Inc. plans to install a Teledyne Continental Motors model IOF–550–N engine in the Cirrus Design Corporation Model SR–22 airplane. This type certified engine, approved under FAA Type Certificate E3SO; Revision 7, dated

February 4, 2002, incorporates Full Authority Digital Electronic Controls (FADEC) fuel and ignition control system. Even though the engine control system is certificated as part of the engine and does not interface or share data with any of the airplane systems, the installation of an engine with an electronic control system requires evaluation due to critical environmental effects and possible effects on or by other airplane systems. For example, indirect effects of lightning, radio interference with other airplane electronic systems, shared engine and airplane data and power sources.

The Cirrus Model SR22 is currently approved under Type Certificate No. A00009CH. The Cirrus Model SR22 is a 3,400 pound single-engine, four-place, fixed-gear airplane powered by a 310 hp reciprocating engine. It has a conventional tractor configuration and uses composites for the structure. Some unique features of the SR–22 include sidestick controls and a ballistic recovery system, and a single combination throttle/propeller control lever.

Type Certification Basis

Under the provisions of § 21.101, Centex Aerospace, Inc. must show that the Cirrus Model SR22, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A00009CH, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A00009CH are as follows:

Model SR22: Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–53, except as follows:

23.301 through Amendment 47

23.855, 23.1326, 23.1359, not applicable

Federal Aviation Regulation 36, dated December 1, 1969, as amended by current amendment as of the date of type Certification.

Equivalent Safety Items:

Equivalent Levels of Safety finding (ACE–96–5) made per the provisions of 14 CFR part 23, § 23.221; Refer to FAA ELOS letter dated June 10, 1998 for models SR20, SR22.

Equivalent Levels of Safety finding (ACE–00–09) made per the provisions of 14 CFR part 23, §§ 23.1143(g) and 23.1147(b); Refer to FAA ELOS letter dated September 11, 2000 for model SR22.

Special Conditions:

23–ACE–88 for ballistic parachute.

23–134–SC for protection of systems for High Intensity Radiated Fields (HIRF).

23–163–SC for inflatable restraint system.

In addition, if the regulations incorporated by reference do not provide adequate standards regarding the change, the applicant must comply with certain regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23, § 23.1309) do not contain adequate or appropriate safety standards for the Model SR22 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Centex Aerospace Inc. modified Cirrus Model SR22 will incorporate the following novel or unusual design features:

An engine that includes an electronic control system with Full Authority Digital Engine control (FADEC) capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Centex Aerospace, Inc. modified Cirrus Design Corporation Model SR22 will perform critical functions, provisions for protection from the effects of HIRF should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the Aviation Rulemaking Advisory Committee (ARAC) Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, the Joint Aviation Authorities (JAA), and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a FADEC is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (e.g., automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are issued for the Centex Aerospace, Inc. modified Cirrus Design Corporation Model SR22 to provide HIRF protection.

Applicability

As discussed above, these special conditions are applicable to the Centex Aerospace, Inc. modified Cirrus Design Corporation Model SR22. Should Centex Aerospace, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A00009CH, to incorporate the same novel or unusual

design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Centex Aerospace, Inc. modified Cirrus Design Corporation Model SR22.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

Issued in Kansas City, Missouri on July 26, 2007.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–14935 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25927; Directorate Identifier 2006–CE–52–AD; Amendment 39–15142; AD 2007–16–03]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LP SA226 and SA227 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede AD 98–19–15 R1 and AD 2000–03–17, which apply to M7 Aerospace LP SA226 and SA227 series airplanes equipped with certain pitch trim actuators. AD 98–19–15 R1 currently requires you to incorporate changes into the Limitations Section of the FAA-approved airplane flight manual (AFM) if certain part number (P/N) pitch trim actuators are installed. AD 2000–03–17 requires repetitive inspections and repetitive replacements of the pitch trim actuator. The repetitive inspection and repetitive replacement times vary depending on the combination of airplane model and pitch trim actuator P/N installed. Since we issued AD 98–19–15 R1 and AD 2000–03–17, we have determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. Consequently, this AD retains all of the actions of the previously referenced ADs, places life limits on certain P/N pitch trim actuators, and requires the replacement of certain P/N pitch trim actuators with one of an improved design. Once installed, the improved design pitch trim actuator will terminate the AFM limitations in this AD and reduce the repetitive inspection and repetitive replacement requirements. We are issuing this AD to detect excessive freeplay or rod slippage in the pitch trim actuator, which, if not detected and corrected, could result in pitch trim actuator failure. We are also issuing this AD to lessen the severity of pitch upset if a pitch trim actuator mechanical failure occurs. These conditions could lead to possible loss of control.

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

As of April 10, 2000 (65 FR 8037, February 17, 2000), the Director of the Federal Register approved the incorporation by reference of the following Fairchild Aircraft service information listed in this AD:

- Fairchild Aircraft SA226 Series Service letter (SL) 226–SL–005, Revised: August 3, 1999;
- Fairchild Aircraft SA227 Series SL 227–SL–011, Revised August 3, 1999;
- Fairchild Aircraft SA227 Series SL CC7–SL–028, Issued: August 12, 1999;
- Fairchild Aircraft SA226 Series SL 226–SL–014, Revised: February 1, 1999;
- Fairchild Aircraft SA227 Series SL 227–SL–031, Revised: February 1, 1999; and
- Fairchild Aircraft SA227 Series SL CC7–SL–021, Revised: February 1, 1999.

ADDRESSES: For service information identified in this AD, contact M7 Aerospace LP, 10823 N.E. Entrance, San Antonio, Texas 78216.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–25927; Directorate Identifier 2006–CE–52–AD.

FOR FURTHER INFORMATION CONTACT: Werner Koch, Aerospace Engineer, 2601 Meacham Blvd, Fort Worth, Texas 76137–4298; telephone: (817) 222–5133; fax: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

On April 20, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to M7 Aerospace LP SA226 and SA227 series airplanes equipped with certain pitch trim actuators. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 30, 2007 (72 FR 21171). The NPRM proposed to supersede AD 98–19–15 R1 and AD 2000–03–17 with a new AD that would retain all of the actions of the previously referenced ADs but limit the part numbers of the pitch trim actuators that can be used for replacement. The NPRM also proposed placing a life limit on Barber-Coleman pitch trim actuators P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, and P/N 27–19008–005. The NPRM proposed to require you to use the service information described previously to perform these actions.

Comments

We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

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

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

Costs of Compliance

We estimate that this AD affects 307 airplanes in the U.S. registry.

This AD requires pitch trim actuators to have a combination of inspections, overhaul, and/or replacement. We have presented the fleet cost as the lowest cost based on all airplanes needing the inspection and the highest cost based on all airplanes needing the overhaul. The actual fleet cost will be somewhere between the lowest and highest fleet cost presented. We have no way of determining the number of airplanes needing replacement. (See below for airplane replacement cost.)

We estimate the following costs to do the inspection or overhaul:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
For inspection: 4 work-hours × $80 per hour = $320	None	$320	$98,240
For overhaul: 4 work-hours × $80 per hour = $320	$9,000	9,320	2,861,240

We estimate the following costs to do any necessary replacements that are required through the actions of this AD. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
4 work-hours × $80 per hour = $320	$64,000	$64,320

The replacement estimate is based on replacing the pitch trim actuator with a new Simmonds-Precision P/N DL5040M8 pitch trim actuator. If the pitch trim actuator is replaced with a different P/N FAA-approved pitch trim actuator or a zero-timed FAA-approved pitch trim actuator the cost to the owner/operator could be less.

The estimated costs represented in the above actions include the costs associated with AD 98–19–15 R1, AD 2000–03–17, and the costs of this AD. The added cost impact this AD imposes upon an owner/operator over that already required by AD 98–19–15 R1 and AD 2000–03–17 is the eventual replacement of the pitch trim actuator if the airplane currently has installed a Barber-Coleman pitch trim actuator P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–25927; Directorate Identifier 2006–CE–52–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended].

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–19–15 R1, Amendment 39–11507 (65 FR 1540, January 11, 2000), and AD 2000–03–17, Amendment 39–11576 (65 FR 8037, February 17, 2000); and by adding the following new AD:

2007–16–03 M7 Aerospace LP (Type Certificate No. A5SW, A8SW, and A18SW formerly held by Fairchild Aircraft Incorporated): Amendment 39–15142; Docket No. FAA–2006–25927; Directorate Identifier 2007–CE–52–AD.

Effective Date

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

Affected ADs

(b) This AD supersedes the following ADs:

(1) AD 98–19–15 R1, Amendment 39–11507; and

(2) AD 2000–03–17, Amendment 39–11576.

Applicability

(c) This AD applies to all Models SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), SA227–PC, and SA227–TT airplanes, all serial numbers, that:

(1) are certificated in any category; and

(2) are equipped with pitch trim actuator Barber-Coleman part number (P/N) 27–19008–001, Barber-Coleman P/N 27–19008–002, Barber-Coleman P/N 27–19008–004, Barber-Coleman P/N 27–19008–005, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, Simmonds-Precision P/N DL5040M5, Simmonds-Precision P/N DL5040M6, or Simmonds-Precision P/N DL5040M8.

Unsafe Condition

(d) This AD results from reports of mechanical failure of the pitch trim actuator causing the horizontal stabilizer to move to full aircraft nose up. We are issuing this AD to detect excessive freeplay or rod slippage in the pitch trim actuator, which, if not detected and corrected, could result in pitch trim actuator failure. We are also issuing to lessen the severity of pitch upset if a pitch trim actuator mechanical failure occurs. These conditions could lead to possible loss of control. In addition, we are issuing to eliminate the use of certain pitch trim actuators that require frequent critical inspections or replacements.

Compliance

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

(1) *For airplanes with a Barber-Coleman pitch trim actuator P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005:* Before further flight after September 25, 1998 (the effective date of AD 98–19–15), incorporate the text in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD into the Limitations Section of the FAA-approved airplane flight manual (AFM). The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD into the AFM Limitations Section. This may be done by inserting a copy of this AD into the AFM. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(i) ''Limit the maximum indicated airspeed to maneuvering airspeed (Va) as shown in the appropriate airplane flight manual (AFM)''; and

(ii) ''The minimum crew required is two pilots.''

Note 1: Fairchild Service Letter 226–SL–017, Fairchild Service Letter 227–SL–033, and Fairchild Service Letter CC7–SL–023, all FAA Approved: August 26, 1998; Revised: September 2, 1998, address the subject matter of this AD.

Note 2: The before further flight compliance time of paragraph (e)(1) of this AD is retained from AD 98–19–15 R1.

Note 3: Installation of any FAA-approved pitch trim actuator other than the Barber-Coleman P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005 terminates the requirements of paragraph (e)(1) of this AD.

(2) *For all airplanes:* Do the following actions at the times specified in the initial inspection or overhaul column and the repetitive inspection or overhaul column in table 1 of this AD:

(i) *For airplanes equipped with a Simmonds-Precision pitch trim actuator P/N DL5040M5, P/N DL5040M6, or P/N DL5040M8:* Measure the freeplay of the pitch trim actuator and inspect the pitch trim actuator for rod slippage using the INSTRUCTIONS section of Fairchild Aircraft SA226 Series Service Letter (SL) 226–SL–005 or Fairchild Aircraft SA227 Series SL 227–SL–011, both Revised: August 3, 1999; or Fairchild Aircraft SA227 Series Service Letter CC7–SL–028, Issued: August 12, 1999, as applicable.

(ii) *For airplanes equipped with Barber-Colman pitch trim actuators P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005:* Do a functional inspection of the pitch trim actuator using the INSTRUCTIONS section of Fairchild Aircraft SA226 Series SL 226–SL–014, Fairchild Aircraft SA227 Series SL 227–SL–031, or Fairchild Aircraft SA227 Series SL CC7–SL–021; all Revised: February 1, 1999; as applicable.

Note 4: The actions in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD are the same as the actions in AD 2000–03–17. The only difference between this AD and AD 2000–03–17 is the addition of life limits to Barber-Coleman pitch trim actuators P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005.

(iii) *For airplanes equipped with Barber-Colman pitch trim actuators P/N 27–19008–006 or P/N 27–19008–007:* Overhaul the pitch trim actuator following the applicable maintenance manual.

(3) *For all airplanes:* Before further flight, replace the pitch trim actuator following the applicable maintenance manual when any of the following occurs:

(i) The pitch trim actuator is inspected following paragraphs (e)(2)(i) and (e)(2)(ii) of this AD and the freeplay limitations are exceeded, rod slippage is found, or a ratcheting sound occurs, as specified in the applicable service letters; or

(ii) The installed pitch trim actuator reaches its repetitive replacement time as specified in table 1 in paragraph (e)(4) of this AD.

(4) Table 1 below presents the pitch trim actuators that could be installed and the compliance times for the initial inspections or overhaul, repetitive inspections or overhaul, and repetitive replacements required by this AD:

TABLE 1.—INSPECTION/OVERHAUL AND REPLACEMENT REQUIREMENTS FOR PITCH TRIM ACTUATORS

Condition	Initial inspection or overhaul	Repetitive inspection or overhaul	Repetitive replacement
(i) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have an original Simmonds-Precision pitch trim actuator, P/N DL5040M5, installed.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 3,000 hours time-in-service (TIS) on the pitch trim actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 250 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 250 hours TIS until accumulating the hours TIS specified in paragraph (e)(4)(i) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 5,000 hours TIS on the pitch trim actuator, 500 hours TIS after the initial inspection, or within 30 days after September 7, 2007 (the effective date of this AD), whichever occurs later.
(ii) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have a replacement Simmonds-Precision pitch trim actuator, P/N DL5040M5, installed.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 5,000 hours TIS on the pitch trim actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in paragraph (e)(4)(ii) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 6,500 hours TIS on the pitch trim actuator or within 30 days after September 7, 2007 (the effective date of this AD), whichever occurs later.
(iii) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have a replacement Simmonds-Precision pitch trim actuator, P/N DL5040M6, installed. This part can be new, modified from a P/N DL5040M5 pitch trim actuator, or overhauled and zero-timed.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 7,500 hours TIS on the pitch trim actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in paragraph (e)(4)(iii) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 9,900 hours TIS on the pitch trim actuator or within 30 days after September 7, 2007 (the effective date of this AD), whichever occurs later.
(iv) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have a replacement Simmonds-Precision pitch trim actuator, P/N DL5040M5, installed that was overhauled and zero-timed where both nut assemblies, P/N AA56142, were replaced with new assemblies during overhaul.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 5,000 hours TIS on the pitch trim actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in paragraph (e)(4)(iv) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 6,500 hours TIS on the pitch trim actuator or within 30 days after September 7, 2007 (the effective date of this AD), whichever occurs later.

TABLE 1.—INSPECTION/OVERHAUL AND REPLACEMENT REQUIREMENTS FOR PITCH TRIM ACTUATORS—Continued

Condition	Initial inspection or overhaul	Repetitive inspection or overhaul	Repetitive replacement
(v) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have a replacement Simmonds-Precision P/N DL5040M5 pitch trim actuator installed that was overhauled and zero-timed where both nut assemblies, P/N AA56142, were *not* replaced with new assemblies during overhaul.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 3,000 hours TIS on the pitch trim actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 250 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 250 hours TIS until accumulating the hours TIS specified in paragraph (e)(4)(v) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 5,000 hours TIS on the pitch trim actuator or within 30 days after September 7, 2007 (the effective date of this AD), whichever occurs later.
(vi) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have a newly fabricated or overhauled and zero-timed Barber-Colman pitch trim actuator, P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005.	Inspect following paragraph (e)(2)(ii) of this AD before accumulating 500 hours total TIS on the pitch trim actuator or within 50 hours TIS after December 1, 1997 (the effective date of AD 97–23–01), whichever occurs later.	Inspect following paragraph (e)(2)(ii) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in paragraph (e)(4)(vi) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 5,000 hours TIS on the pitch trim actuator or within 30 days after September 7, 2007 (the effective date of this AD), whichever occurs later.
(vii) For the Models SA227–CC and SA227–DC that have a Simmonds-Precision pitch trim actuator P/N DL5040M5 or P/N DL5040M6 installed.	None	None	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006 or P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 1,500 hours TIS on the pitch trim actuator or within 30 days after September 7, 2007 (the effective date of this AD), whichever occurs later.
(viii) For the Models SA227–CC and SA227–DC that have a newly fabricated or overhauled and zero-timed Barber-Colman pitch trim actuator, P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005.	Inspect following paragraph (e)(2)(ii) of this AD before accumulating 500 hours total TIS on the pitch trim actuator or within 50 hours TIS after December 1, 1997 (the effective date of AD 97–23–01), whichever occurs later.	Inspect following paragraph (e)(2)(ii) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in paragraph (e)(4)(viii) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 5,000 hours TIS on the pitch trim actuator or within 30 days after September 7, 2007 (the effective date of this AD), whichever occurs later.
(ix) For all affected airplanes with a Simmonds-Precision pitch trim actuator, P/N DL5040M8, installed.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 7,500 hours TIS on the pitch trim actuator or within the next 50 hours TIS after April 10, 2000 (the effective date of AD 2000–03–17), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in paragraph (e)(4)(ix) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006 or P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 9,900 hours TIS on the pitch trim actuator or within 30 days after September 7, 2007 (the effective date of this AD), whichever occurs later.
(x) For all affected airplanes with a Barber-Colman P/N 27–19008–006 or 27–19008–007 pitch trim actuator installed.	Overhaul following paragraph (e)(2)(iii) of this AD before accumulating 2,000 hours TIS on the pitch trim actuator.	Overhaul following paragraph (e)(2)(iii) of this AD before accumulating 2,000 hours TIS on the pitch trim actuator.	No replacement requirements.

(5) *For all airplane models except Models SA227–CC and SA227–DC:* As of September 7, 2007 (the effective date of this AD), do not install as a replacement any of the following pitch trim actuators or FAA-approved equivalent P/Ns:

(i) Barber-Colman P/N 27–19008–001;
(ii) Barber-Colman P/N 27–19008–002;
(iii) Barber-Colman P/N 27–19008–004;
(iv) Barber-Colman P/N 27–19008–005; or
(v) Simmonds-Precision P/N DL5040M5.

(6) *For all airplane Models SA227–CC and SA227–DC:* As of September 7, 2007 (the effective date of this AD), do not install as a replacement any of the following pitch trim actuators or FAA-approved equivalent P/Ns:

(i) Barber-Colman P/N 27–19008–001;
(ii) Barber-Colman P/N 27–19008–002;
(iii) Barber-Colman P/N 27–19008–004;
(iv) Barber-Colman P/N 27–19008–005;
(v) Simmonds-Precision P/N DL5040M5; or
(vi) Simmonds-Precision P/N DL5040M6.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office (ACO), FAA, ATTN: Werner Koch, Aerospace Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298, has the authority to approve AMOCs for this AD, if requested using the procedures found 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.

Material Incorporated by Reference

(g) You must use the service information specified in table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) On April 10, 2000 (65 FR 8037, February 17, 2000) the Director of the Federal Register approved the incorporation by reference of the service information listed in table 2 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact M7 Aerospace LP, 10823 N. E. Entrance, San Antonio, Texas 78216.

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

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service Letter (SL)	Date
Fairchild Aircraft SA226 Series SL 226–SL–005	Revised: August 3, 1999.
Fairchild Aircraft SA227 Series SL 227–SL–011	Revised: August 3, 1999.
Fairchild Aircraft SA227 Series SL CC7–SL–028	Issued: August 12, 1999.
Fairchild Aircraft SA226 Series SL 226–SL–014	Revised: February 1, 1999.
Fairchild Aircraft SA227 Series SL 227–SL–031	Revised: February 1, 1999.
Fairchild Aircraft SA227 Series SL CC7–SL–021	Revised: February 1, 1999.

Issued in Kansas City, Missouri, on July 27, 2007.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15018 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 2007N–0267]

Medical Devices; General and Plastic Surgery Devices; Classification of Absorbable Poly(hydroxybutyrate) Surgical Suture Produced by Recombinant DNA Technology

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the absorbable poly(hydroxybutyrate) surgical suture produced by recombinant deoxyribonucleic acid (DNA) technology into class II (special controls). The special control that will apply to the device is the guidance document entitled ''Class II Special Controls Guidance Document: Absorbable Poly(hydroxybutyrate) Surgical Suture Produced by Recombinant DNA Technology.'' The agency is classifying these devices into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of these devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control for this device.

DATES: This rule is effective September 4, 2007. The classification was effective February 8, 2007.

FOR FURTHER INFORMATION CONTACT: Nada O. Hanafi, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3555.

SUPPLEMENTARY INFORMATION:

I. What is the Background of this Rulemaking?

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless the device is classified or reclassified into class I or class II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device type. Within 30 days after the issuance of an order classifying the device, FDA will publish a notice in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued an order on November 7, 2005, classifying the absorbable poly(hydroxybutyrate)

surgical suture produced by recombinant DNA technology in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or class II. On May 12, 2006, after Tepha, Inc., had received CDRH's response to an April 7, 2006, appeal from the company, Tepha, Inc., submitted a petition under section 513(f)(2) of the act requesting classification of the device. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the device type, absorbable poly(hydroxybutyrate) surgical suture produced by recombinant DNA technology, can be classified into class II because special controls, in addition to general controls, are adequate to provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish special controls to provide such assurance.

The device type is assigned the generic name, ''absorbable poly(hydroxybutyrate) surgical suture produced by recombinant DNA technology,'' and is identified as an absorbable surgical suture made of material isolated from prokaryotic cells produced by recombinant DNA technology. The device is intended for use in general soft tissue approximation and ligation.

FDA has identified the risks to health associated with this type of device as: Improper selection and use, suture breakage, adverse tissue reaction, and infection. The special control FDA is establishing is a special controls guidance document that FDA believes will aid in mitigating the potential risks to health, as described in table 1 of this document.

TABLE 1.—RISKS TO HEALTH AND MITIGATION MEASURES

Identified Risk	Mitigation Measures
Improper selection and use	Physical and performance characteristics Biocompatibility Labeling
Suture breakage	Physical and performance characteristics Expiration dating
Adverse tissue reaction (i.e., irritation, inflammation, immune response)	Biocompatibility
Infection	Sterility

FDA believes that special controls, in addition to general controls, address the risks to health identified above and provide reasonable assurances of the safety and effectiveness of the device type. Thus, on February 8, 2007, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification at 21 CFR 878.4494.

Following the effective date of the final classification rule, manufacturers will need to address the issues covered in the special controls guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, however, FDA has determined that premarket review of the requirements as outlined in § 807.87 will provide reasonable assurance of the safety and effectiveness of the device. Thus, persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the device they intend to market.

II. What is the Environmental Impact of This Rule?

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Thus, neither an environmental assessment nor an environmental impact statement is required.

III. What is the Economic Impact of This Rule?

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device into class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Does This Final Rule Have Federalism Implications?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. How Does This Rule Comply with the Paperwork Reduction Act of 1995?

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 is not required. The guidance for this final rule references previously approved collections of information found in FDA regulations. These collections of information are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

VI. What References Are on Display?

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Tepha, Inc., on May 12, 2006.

List of Subjects in 21 CFR Part 878

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Section 878.4494 is added to subpart E to read as follows:

§ 878.4494 Absorbable poly(hydroxybutyrate) surgical suture produced by recombinant DNA technology.

(a) *Identification.* An absorbable poly(hydroxybutyrate) surgical suture is an absorbable surgical suture made of material isolated from prokaryotic cells produced by recombinant deoxyribonucleic acid (DNA) technology. The device is intended for use in general soft tissue approximation and ligation.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Absorbable Poly(hydroxybutyrate) Surgical Suture Produced by Recombinant DNA Technology.'' For the availability of this guidance document see § 878.1(e).

Dated: July 23, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–15064 Filed 8–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 31, 53, 54, and 56

[TD 9350]

RIN 1545–BE24

AJCA Modifications to the Section 6011 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6011 of the Internal Revenue Code that modify the rules relating to the disclosure of reportable transactions under section 6011. These regulations affect taxpayers participating in reportable transactions under section 6011, material advisors responsible for disclosing reportable transactions under section 6111, and material advisors responsible for keeping lists under section 6112.

DATES: *Effective Date:* These regulations are effective August 3, 2007.

FOR FURTHER INFORMATION CONTACT: Charles D. Wien, Michael H. Beker, or Tolsun N. Waddle, 202–622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend 26 CFR part 1 by modifying and clarifying the rules relating to the disclosure of reportable transactions under section 6011. This document also contains final regulations that amend 26 CFR parts 20, 25, 31, 53, 54, and 56 by modifying the rules for purposes of estate, gift, employment, and pension and exempt organizations excise taxes that require the disclosure of listed transactions by certain taxpayers on their Federal tax returns under section 6011.

The American Jobs Creation Act of 2004, Public Law 108–357, (118 Stat. 1418), (AJCA) was enacted on October 22, 2004. The AJCA revised sections 6111 and 6112, thereby necessitating changes to the rules under section 6011. On November 1, 2006, the IRS and Treasury Department issued a notice of proposed rulemaking and temporary and final regulations under sections 6011, 6111, and 6112 (REG–103038–05, REG–103039–05, REG–103043–05, TD 9295) (the November 2006 regulations). The November 2006 regulations were published in the **Federal Register** (71 FR 64488, 71 FR 64496, 71 FR 64501, 71 FR 64458) on November 2, 2006.

The IRS and Treasury Department received written public comments responding to the proposed regulations and held a public hearing regarding the proposed rules on March 20, 2007. After consideration of the comments received and the comments made at the hearing, the proposed regulations are adopted as revised by this Treasury decision. These final regulations generally retain the provisions of the proposed regulations but include some modifications based on the recommendations made in the public comments.

Summary of Comments and Explanation of Provisions

Nine written comments were received in response to the NPRM. All comments were considered and are available for public inspection upon request.

Transactions of Interest

The proposed regulations identified transactions of interest as a new reportable transaction category. As stated in the preamble to the proposed regulations, a transaction of interest is a transaction that the IRS and Treasury Department believe has a potential for tax avoidance or evasion, but for which the IRS and Treasury Department lack enough information to determine whether the transaction should be identified specifically as a tax avoidance transaction. These final regulations adopt the language in the proposed regulations regarding transactions of interest without modification. This language provides that a transaction of interest is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest. These final regulations also retain the language in the proposed regulations that provide that a taxpayer's participation in a transaction of interest will be determined in the published guidance which identifies the transaction of interest.

Several commentators requested more specificity and guidance on the definition of what constitutes a transaction of interest. Specifically, the commentators recommended that the term ''participation,'' for purposes of determining whether a taxpayer participated in a transaction of interest, be defined in the regulations rather than in the published guidance identifying the transaction of interest. The commentators also requested that the published guidance describing a transaction of interest be crafted in a clear and specific manner, thereby enabling taxpayers to determine whether they participated in a transaction of interest. One commentator also recommended providing a list of factors in the regulations that the IRS would consider when identifying a transaction of interest. Further, several commentators requested that the IRS and Treasury Department provide notice to taxpayers that the IRS and Treasury Department are considering designating a particular transaction as a transaction of interest and requesting comments prior to publishing guidance identifying a transaction as a transaction of interest.

The IRS and Treasury Department believe that providing a specific definition for the transactions of interest category in the regulations would unduly limit the IRS and Treasury Department's ability to identify transactions that have the potential for tax avoidance or evasion. In order to maintain flexibility in identifying a transaction of interest, the description of a transaction of interest will be provided in the published guidance that identifies the transaction of interest. The published guidance identifying a transaction of interest will provide taxpayers with the information necessary to determine whether a particular transaction is the same as or substantially similar to the transaction described in the published guidance and to determine who participated in the transaction.

The IRS and Treasury Department do not believe that the regulations should be amended to include language requiring the IRS and Treasury Department to provide advance notice for transactions of interest as suggested by the commentators. However, the IRS and Treasury Department may choose to publish advance notice and request comments in certain circumstances. The determination of whether to provide advance notice and a request for comments will be made on a transaction by transaction basis.

The proposed regulations also provide that upon publication of the final regulations, the transactions of interest category of reportable transaction will apply to transactions entered into on or after November 2, 2006. These final regulations adopt the effective date stated in the proposed regulations.

The preamble to the proposed regulations provides that when the IRS and Treasury Department have gathered enough information to make an informed decision as to whether a particular transaction of interest is a tax avoidance type of transaction, the IRS and Treasury Department may take one or more actions, including removing the transaction from the transaction of interest category in published guidance, designating the transaction as a listed transaction, or providing a new category of reportable transaction. Several commentators recommended that the period during which a transaction may be considered a transaction of interest be limited to twenty-four months, unless the IRS and Treasury Department affirmatively act to extend the designation for an additional twenty-four months with no limit on the number of permissible extensions. One commentator suggested that the length of the period be limited to twenty-four months, with no extensions.

The IRS and Treasury Department believe that limiting the length of time a transaction may be designated a transaction of interest would be contrary to the purpose of the transactions of interest category of reportable transaction and would hinder the ability of the IRS and Treasury Department to efficiently and effectively gather the necessary information to determine whether a particular transaction is a tax avoidance type of transaction. Accordingly, these final regulations do not adopt these suggestions.

Disclosure of Reportable Transactions by Owners of a Pass-Through Entity

I. Timing of Disclosures

The proposed regulations provide that if a taxpayer who is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust receives a timely Schedule K–1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K–1, the taxpayer determines that the taxpayer participated in a reportable transaction, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with the Office of Tax Shelter Analysis (OTSA) within 45 calendar days after the due date of the taxpayer's return (including extensions). Several commentators requested that the proposed regulations not limit relief to taxpayers who receive a timely Schedule K–1 before the due date of their return. Others believed the 45 day disclosure period was too short. One commentator recommended that the provision apply to late disclosures that were inadvertent or non-abusive. One commentator recommended that the 10 day period be extended to 30 days and the 45 day disclosure period be extended to 90 days. With respect to the date the disclosure period begins, two commentators commented that the disclosure period should begin on the date the taxpayer receives the timely Schedule K–1.

The IRS and Treasury Department agree that the 45 day disclosure period should be extended. These final regulations extend the disclosure period to 60 calendar days. The IRS and Treasury Department believe that this additional period will provide taxpayers with ample time to review the entity's return and comply with any administrative and regulatory requirements before filing their disclosure statement. It should be noted that if a taxpayer receives a timely Schedule K–1 after the due date of the taxpayer's return (including extensions), the taxpayer will have received the timely Schedule K–1 less than 10 calendar days before the due date of the return and will have 60 calendar days after the due date of the taxpayer's return (including extensions) to file the disclosure statement.

II. Pass-Through Owners

Several commentators have suggested that the disclosure obligations of owners of a pass-through entity that participates in a reportable transaction be amended to provide that only certain owners of the pass-through entity are required to disclose their participation in the reportable transaction. One commentator suggested that an owner of a pass-through entity should be removed from this disclosure obligation when (1) the owner did not know and should not have known that the pass-through entity engaged in the reportable transaction; and (2) the pass-through entity failed to disclose timely its participation in the reportable transaction on its return to OTSA. The commentator also recommends that if the owner knew or reasonably should have known of the pass-through entity's participation in the reportable transaction, the owner should be required to file a disclosure statement even if the pass-through entity did not disclose the transaction to the owner. A different commentator suggested that an

owner of a pass-through entity not be required to disclose the owner's participation in a reportable transaction, even if the owner knew or should have known of the pass-through entity's participation in the reportable transaction.

Several commentators also suggested adopting a de minimis ownership rule exempting taxpayers owning less than a certain percentage of the pass-through entity from the disclosure requirements. One commentator suggested exempting owners of 5 percent or less of the outstanding interests in the pass-through entity that participates in a reportable transaction.

The IRS and Treasury Department are aware that certain partners, shareholders, and beneficiaries may file income tax returns that reflect the tax consequences, tax benefits, or tax strategy of a reportable transaction even though the taxpayer is unaware that the pass-through entity engaged in the reportable transaction. The IRS and Treasury Department recognize the concerns of the commentators. In light of the potential monetary penalties for failing to disclose participation in a reportable transaction and in order to maintain flexibility in determining who should be subject to the disclosure requirements for a particular transaction, these final regulations amend the proposed regulations to add language providing flexibility to the IRS and Treasury Department to issue other provisions for disclosure under § 1.6011–4 in published guidance.

Time Period for Disclosing Participation in a Listed Transaction and Transaction of Interest

Under the proposed regulations if a transaction becomes a listed transaction or a transaction of interest after the filing of a taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the listed transaction or transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction or transaction of interest, then a disclosure statement must be filed, regardless of whether the taxpayer participated in the listed transaction or transaction of interest in the year the transaction became a listed transaction or a transaction of interest, with OTSA within 60 calendar days after the date on which the transaction became a listed transaction or a transaction of interest. The proposed regulations also provide that the Commissioner may determine the time for disclosure of listed transactions and transactions of interest in the published guidance identifying the transaction.

Many commentators suggested that the current rule, which requires the disclosure of subsequently identified listed transactions on the taxpayer's next filed tax return be retained in light of the potential monetary penalties and potential administrative burden due to the shortened disclosure period. One commentator recommended that the taxpayer be required to file the disclosure statement by the later of the taxpayer's next filed tax return or within 60 calendar days after the date on which the transaction becomes a listed transaction or transaction of interest.

A critical factor in the ability to analyze a particular transaction is the ability to have the necessary information available in a timely manner. Thus, requiring taxpayers to file a disclosure statement with OTSA in a timely manner is essential. Because the IRS and Treasury Department recognize that compliance within 60 calendar days may be burdensome in certain circumstances, the proposed regulations are amended to provide that taxpayers have 90 calendar days to disclose their participation in a subsequently identified listed transaction or transaction of interest.

Brief Asset Holding Period Reportable Transaction Category

Due to changes in section 901 and based on comments received, the IRS and Treasury Department have determined that the brief asset holding period reportable transaction category is no longer necessary. These final regulations therefore remove this category as a reportable transaction category.

Form 8271

Before the enactment of the AJCA, section 6111 provided that tax shelter organizers were required to provide investors in tax shelters the registration number for the tax shelter. Section 301.6111–1T, Q&A 55, requires investors to report the registration number of the tax shelter to the IRS on Form 8271, ''Investor Reporting of Tax Shelter Registration Number'', and attach the Form 8271 to any return on which any deduction, loss, credit, or other tax benefit attributable to the tax shelter is claimed. Because only a few investors must still file Form 8271 for pre-AJCA section 6111 tax shelters and because the IRS already is aware of these transactions, the IRS and Treasury Department have decided that investors are no longer required to file Forms 8271 otherwise due on or after August 3, 2007. The Form 8271 will be obsoleted. Taxpayers required to file Form 8886, ''Reportable Transaction Disclosure Statement'', pursuant to § 1.6011–4(d), and Form 8271 with respect to the same transaction only need to report the registration number on Form 8886.

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 these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 35) do not apply. The disclosure statement referenced in these regulations has been made available for public comment and any update to the disclosure statement will be made available for public comment in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Charles D. Wien, Michael H. Beker, and Tolsun N. Waddle, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 56

Excise taxes, Lobbying, Nonprofit organizations, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 20, 25, 31, 53, 54, and 56 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1**. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6011–4 is revised to read as follows:

§ 1.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general*. Every taxpayer that has participated, as described in paragraph (c)(3) of this section, in a reportable transaction within the meaning of paragraph (b) of this section and who is required to file a tax return must file within the time prescribed in paragraph (e) of this section a disclosure statement in the form prescribed by paragraph (d) of this section. The fact that a transaction is a reportable transaction shall not affect the legal determination of whether the taxpayer's treatment of the transaction is proper.

(b) *Reportable transactions*—(1) *In general*. A reportable transaction is a transaction described in any of the paragraphs (b)(2) through (7) of this section. The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan.

(2) *Listed transactions*. A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

(3) *Confidential transactions*—(i) *In general*. A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee.

(ii) *Conditions of confidentiality*. A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the minimum fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(iii) *Minimum fee*. For purposes of this paragraph (b)(3), the minimum fee is—

(A) $250,000 for a transaction if the taxpayer is a corporation;

(B) $50,000 for all other transactions unless the taxpayer is a partnership or trust, all of the owners or beneficiaries of which are corporations (looking through any partners or beneficiaries that are themselves partnerships or trusts), in which case the minimum fee is $250,000.

(iv) *Determination of minimum fee*. For purposes of this paragraph (b)(3), in determining the minimum fee, all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction are taken into account. Fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable in light of the facts and circumstances. For purposes of this paragraph (b)(3), a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property. The IRS will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a confidential transaction constitutes fees.

(v) *Related parties*. For purposes of this paragraph (b)(3), persons who bear a relationship to each other as described in section 267(b) or 707(b) will be treated as the same person.

(4) *Transactions with contractual protection*—(i) *In general*. A transaction with contractual protection is a transaction for which the taxpayer or a related party (as described in section 267(b) or 707(b)) has the right to a full or partial refund of fees (as described in paragraph (b)(4)(ii) of this section) if all or part of the intended tax consequences from the transaction are not sustained. A transaction with contractual protection also is a transaction for which fees (as described in paragraph (b)(4)(ii) of this section) are contingent on the taxpayer's realization of tax benefits from the transaction. All the facts and circumstances relating to the transaction will be considered when determining whether a fee is refundable or contingent, including the right to reimbursements of amounts that the parties to the transaction have not designated as fees or any agreement to provide services without reasonable compensation.

(ii) *Fees*. Paragraph (b)(4)(i) of this section only applies with respect to fees paid by or on behalf of the taxpayer or a related party to any person who makes or provides a statement, oral or written, to the taxpayer or related party (or for whose benefit a statement is made or provided to the taxpayer or related party) as to the potential tax consequences that may result from the transaction.

(iii) *Exceptions*—(A) *Termination of transaction*. A transaction is not considered to have contractual protection solely because a party to the transaction has the right to terminate the transaction upon the happening of an event affecting the taxation of one or more parties to the transaction.

(B) *Previously reported transaction*. If a person makes or provides a statement to a taxpayer as to the potential tax consequences that may result from a transaction only after the taxpayer has entered into the transaction and reported the consequences of the transaction on a filed tax return, and the person has not previously received fees from the taxpayer relating to the transaction, then any refundable or contingent fees are not taken into account in determining whether the transaction has contractual protection. This paragraph (b)(4) does not provide any substantive rules regarding when a person may charge refundable or contingent fees with respect to a

transaction. See Circular 230, 31 CFR part 10, for the regulations governing practice before the IRS.

(5) *Loss transactions*—(i) *In general.* A loss transaction is any transaction resulting in the taxpayer claiming a loss under section 165 of at least—

(A) $10 million in any single taxable year or $20 million in any combination of taxable years for corporations;

(B) $10 million in any single taxable year or $20 million in any combination of taxable years for partnerships that have only corporations as partners (looking through any partners that are themselves partnerships), whether or not any losses flow through to one or more partners; or

(C) $2 million in any single taxable year or $4 million in any combination of taxable years for all other partnerships, whether or not any losses flow through to one or more partners;

(D) $2 million in any single taxable year or $4 million in any combination of taxable years for individuals, S corporations, or trusts, whether or not any losses flow through to one or more shareholders or beneficiaries; or

(E) $50,000 in any single taxable year for individuals or trusts, whether or not the loss flows through from an S corporation or partnership, if the loss arises with respect to a section 988 transaction (as defined in section 988(c)(1) relating to foreign currency transactions).

(ii) *Cumulative losses.* In determining whether a transaction results in a taxpayer claiming a loss that meets the threshold amounts over a combination of taxable years as described in paragraph (b)(5)(i) of this section, only losses claimed in the taxable year that the transaction is entered into and the five succeeding taxable years are combined.

(iii) *Section 165 loss*—(A) For purposes of this section, in determining the thresholds in paragraph (b)(5)(i) of this section, the amount of a section 165 loss is adjusted for any salvage value and for any insurance or other compensation received. See § 1.165–1(c)(4). However, a section 165 loss does not take into account offsetting gains, or other income or limitations. For example, a section 165 loss does not take into account the limitation in section 165(d) (relating to wagering losses) or the limitations in sections 165(f), 1211, and 1212 (relating to capital losses). The full amount of a section 165 loss is taken into account for the year in which the loss is sustained, regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or a net capital loss under section 1212 that is a carryback or carryover to another year. A section 165 loss does not include any portion of a loss, attributable to a capital loss carryback or carryover from another year, that is treated as a deemed capital loss under section 1212.

(B) For purposes of this section, a section 165 loss includes an amount deductible pursuant to a provision that treats a transaction as a sale or other disposition, or otherwise results in a deduction under section 165. A section 165 loss includes, for example, a loss resulting from a sale or exchange of a partnership interest under section 741 and a loss resulting from a section 988 transaction.

(6) *Transactions of interest.* A transaction of interest is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest.

(7) [*Reserved*].

(8) *Exceptions*—(i) *In general.* A transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction under paragraphs (b)(3) through (7) of this section, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of this section. The Commissioner may make a determination by individual letter ruling under paragraph (f) of this section that an individual letter ruling request on a specific transaction satisfies the reporting requirements of this section with regard to that transaction for the taxpayer who requests the individual letter ruling.

(ii) *Special rule for RICs.* For purposes of this section, a regulated investment company (RIC) as defined in section 851 or an investment vehicle that is owned 95 percent or more by one or more RICs at all times during the course of the transaction is not required to disclose a transaction that is described in any of paragraphs (b)(3) through (5) and (b)(7) of this section unless the transaction is also a listed transaction or a transaction of interest.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Taxpayer.* The term *taxpayer* means any person described in section 7701(a)(1), including S corporations. Except as otherwise specifically provided in this section, the term *taxpayer* also includes an affiliated group of corporations that joins in the filing of a consolidated return under section 1501.

(2) *Corporation.* When used specifically in this section, the term *corporation* means an entity that is required to file a return for a taxable year on any 1120 series form, or successor form, excluding S corporations.

(3) *Participation*—(i) *In general*—(A) *Listed transactions.* A taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under paragraph (b)(2) of this section. A taxpayer also has participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy described in published guidance that lists a transaction under paragraph (b)(2) of this section. Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance also may identify types or classes of persons that will not be treated as participants in a listed transaction.

(B) *Confidential transactions.* A taxpayer has participated in a confidential transaction if the taxpayer's tax return reflects a tax benefit from the transaction and the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited in the manner described in paragraph (b)(3) of this section. If a partnership's, S corporation's or trust's disclosure is limited, and the partner's, shareholder's, or beneficiary's disclosure is not limited, then the partnership, S corporation, or trust, and not the partner, shareholder, or beneficiary, has participated in the confidential transaction.

(C) *Transactions with contractual protection.* A taxpayer has participated in a transaction with contractual protection if the taxpayer's tax return reflects a tax benefit from the transaction and, as described in paragraph (b)(4) of this section, the taxpayer has the right to the full or partial refund of fees or the fees are contingent. If a partnership, S corporation, or trust has the right to a full or partial refund of fees or has a contingent fee arrangement, and the partner, shareholder, or beneficiary does not individually have the right to the refund of fees or a contingent fee arrangement, then the partnership, S corporation, or trust, and not the partner, shareholder, or beneficiary, has participated in the transaction with contractual protection.

(D) *Loss transactions.* A taxpayer has participated in a loss transaction if the

taxpayer's tax return reflects a section 165 loss and the amount of the section 165 loss equals or exceeds the threshold amount applicable to the taxpayer as described in paragraph (b)(5)(i) of this section. If a taxpayer is a partner in a partnership, shareholder in an S corporation, or beneficiary of a trust and a section 165 loss as described in paragraph (b)(5) of this section flows through the entity to the taxpayer (disregarding netting at the entity level), the taxpayer has participated in a loss transaction if the taxpayer's tax return reflects a section 165 loss and the amount of the section 165 loss that flows through to the taxpayer equals or exceeds the threshold amounts applicable to the taxpayer as described in paragraph (b)(5)(i) of this section. For this purpose, a tax return is deemed to reflect the full amount of a section 165 loss described in paragraph (b)(5) of this section allocable to the taxpayer under this paragraph (c)(3)(i)(D), regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or net capital loss under section 1212 that the taxpayer may carry back or carry over to another year.

(E) *Transactions of interest.* A taxpayer has participated in a transaction of interest if the taxpayer is one of the types or classes of persons identified as participants in the transaction in the published guidance describing the transaction of interest.

(F) [*Reserved*].

(G) *Shareholders of foreign corporations—(1) In general.* A reporting shareholder of a foreign corporation participates in a transaction described in paragraphs (b)(2) through (5) and (b)(7) of this section if the foreign corporation would be considered to participate in the transaction under the rules of this paragraph (c)(3) if it were a domestic corporation filing a tax return that reflects the items from the transaction. A reporting shareholder of a foreign corporation participates in a transaction described in paragraph (b)(6) of this section only if the published guidance identifying the transaction includes the reporting shareholder among the types or classes of persons identified as participants. A reporting shareholder (and any successor in interest) is considered to participate in a transaction under this paragraph (c)(3)(i)(G) only for its first taxable year with or within which ends the first taxable year of the foreign corporation in which the foreign corporation participates in the transaction, and for the reporting shareholder's five succeeding taxable years.

(2) Reporting shareholder. The term *reporting shareholder* means a United States shareholder (as defined in section 951(b)) in a controlled foreign corporation (as defined in section 957) or a 10 percent shareholder (by vote or value) of a qualified electing fund (as defined in section 1295).

(ii) *Examples.* The following examples illustrate the provisions of paragraph (c)(3)(i) of this section:

Example 1. Notice 2003–55 (2003–2 CB 395), which modified and superseded Notice 95–53 (1995–2 CB 334) (see § 601.601(d)(2) of this chapter), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and treats the amount realized from the assignment as its current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a transferred basis transaction, for example, a transaction described in section 351. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor's and transferee corporation's tax returns reflect tax positions described in Notice 2003–55. Therefore, the transferor and transferee corporation have participated in the listed transaction. In the section 351 transaction, the transferor will have received stock with low value and high basis from the transferee corporation. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a transferred basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived indirectly from the lease stripping transaction, then the taxpayer has participated in the listed transaction. Accordingly, the taxpayer must disclose the transaction and the manner of the taxpayer's participation in the transaction under the rules of this section. For purposes of this example, if a bank lends money to the transferor, transferee corporation, or taxpayer for use in their transactions, the bank has not participated in the listed transaction because the bank's tax return does not reflect tax consequences or a tax strategy described in the listing notice (nor does the bank's tax return reflect a tax benefit derived from tax consequences or a tax strategy described in the listing notice) nor is the bank described as a participant in the listing notice.

Example 2. XYZ is a limited liability company treated as a partnership for tax purposes. X, Y, and Z are members of XYZ. X is an individual, Y is an S corporation, and Z is a partnership. XYZ enters into a confidential transaction under paragraph (b)(3) of this section. XYZ and X are bound by the confidentiality agreement, but Y and Z are not bound by the agreement. As a result of the transaction, XYZ, X, Y, and Z all reflect a tax benefit on their tax returns. Because XYZ's and X's disclosure of the tax treatment and tax structure are limited in the manner described in paragraph (b)(3) of this section and their tax returns reflect a tax benefit from the transaction, both XYZ and X have participated in the confidential transaction. Neither Y nor Z has participated in the confidential transaction because they are not subject to the confidentiality agreement.

Example 3. P, a corporation, has an 80% partnership interest in PS, and S, an individual, has a 20% partnership interest in PS. P, S, and PS are calendar year taxpayers. In 2006, PS enters into a transaction and incurs a section 165 loss (that does not meet any of the exceptions to a section 165 loss identified in published guidance) of $12 million and offsetting gain of $3 million. On PS' 2006 tax return, PS includes the section 165 loss and the corresponding gain. PS must disclose the transaction under this section because PS' section 165 loss of $12 million is equal to or greater than $2 million. P is allocated $9.6 million of the section 165 loss and $2.4 million of the offsetting gain. P does not have to disclose the transaction under this section because P's section 165 loss of $9.6 million is not equal to or greater than $10 million. S is allocated $2.4 million of the section 165 loss and $600,000 of the offsetting gain. S must disclose the transaction under this section because S's section 165 loss of $2.4 million is equal to or greater than $2 million.

(4) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it involves different entities or uses different Internal Revenue Code provisions. (See for example, Notice 2003–54 (2003–2 CB 363), describing a transaction substantially similar to the transactions in Notice 2002–50 (2002–2 CB 98), and Notice 2002–65 (2002–2 CB 690).) The following examples illustrate situations where a transaction is the same as or substantially similar to a listed transaction under paragraph (b)(2) of this section. (Such transactions may also be reportable transactions under paragraphs (b)(3) through (7) of this section.) See § 601.601(d)(2)(ii)(*b*) of this chapter. The following examples illustrate the provisions of this paragraph (c)(4):

Example 1. Notice 2000–44 (2000–2 CB 255) (see § 601.601(d)(2)(ii)(*b*) of this chapter), sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis

in the partnership for the cost of the purchased options but does not adjust basis under section 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000–44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000–44. See § 601.601(d)(2)(ii)(*b*).

Example 2. Notice 2001–16 (2001–1 CB 730) (see § 601.601(d)(2)(ii)(*b*) of this chapter), sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001–16 describes M as a member of a consolidated group that has a loss within the group or as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001–16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain on the sale of those assets with currently generated losses. See § 601.601(d)(2)(ii)(*b*).

(5) *Tax.* The term *tax* means Federal income tax.

(6) *Tax benefit.* A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(7) *Tax return.* The term *tax return* means a Federal income tax return and a Federal information return.

(8) *Tax treatment.* The tax treatment of a transaction is the purported or claimed Federal income tax treatment of the transaction.

(9) *Tax structure.* The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal income tax treatment of the transaction.

(d) *Form and content of disclosure statement.* A taxpayer required to file a disclosure statement under this section must file a completed Form 8886, ''Reportable Transaction Disclosure Statement'' (or a successor form), in accordance with this paragraph (d) and the instructions to the form. The Form 8886 (or a successor form) is the disclosure statement required under this section. The form must be attached to the appropriate tax return(s) as provided in paragraph (e) of this section. If a copy of a disclosure statement is required to be sent to the Office of Tax Shelter Analysis (OTSA) under paragraph (e) of this section, it must be sent in accordance with the instructions to the form. To be considered complete, the information provided on the form must describe the expected tax treatment and all potential tax benefits expected to result from the transaction, describe any tax result protection (as defined in § 301.6111–3(c)(12) of this chapter) with respect to the transaction, and identify and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the reportable transaction and the identity of all parties involved in the transaction. An incomplete Form 8886 (or a successor form) containing a statement that information will be provided upon request is not considered a complete disclosure statement. If the form is not completed in accordance with the provisions in this paragraph (d) and the instructions to the form, the taxpayer will not be considered to have complied with the disclosure requirements of this section. If a taxpayer receives one or more reportable transaction numbers for a reportable transaction, the taxpayer must include the reportable transaction number(s) on the Form 8886 (or a successor form). See § 301.6111–3(d)(2) of this chapter.

(e) *Time of providing disclosure*—(1) *In general.* The disclosure statement for a reportable transaction must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, a disclosure statement for a reportable transaction must be attached to each amended return that reflects a taxpayer's participation in a reportable transaction. A copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction. If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. In the case of a taxpayer that is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust, the disclosure statement for a reportable transaction must be attached to the partnership, S corporation, or trust's tax return for each taxable year in which the partnership, S corporation, or trust participates in the transaction under the rules of paragraph (c)(3)(i) of this section. If a taxpayer who is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust receives a timely Schedule K–1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K–1, the taxpayer determines that the taxpayer participated in a reportable transaction within the meaning of paragraph (c)(3) of this section, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 60 calendar days after the due date of the taxpayer's return (including extensions). The Commissioner in his discretion may issue in published guidance other provisions for disclosure under § 1.6011–4.

(2) *Special rules*—(i) *Listed transactions and transactions of interest.* In general, if a transaction becomes a listed transaction or a transaction of interest after the filing of a taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the listed transaction or transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction or transaction of interest, then a disclosure statement must be filed, regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or a transaction of interest, with OTSA within 90 calendar days after the date on which the transaction became a listed transaction or a transaction of interest. The Commissioner also may determine the time for disclosure of listed transactions and transactions of interest in the published guidance identifying the transaction.

(ii) *Loss transactions.* If a transaction becomes a loss transaction because the losses equal or exceed the threshold amounts as described in paragraph (b)(5)(i) of this section, a disclosure statement must be filed as an attachment to the taxpayer's tax return for the first taxable year in which the threshold amount is reached and to any subsequent tax return that reflects any amount of section 165 loss from the transaction.

(3) *Multiple disclosures.* The taxpayer must disclose the transaction in the time and manner provided for under the

provisions of this section regardless of whether the taxpayer also plans to disclose the transaction under other published guidance, for example, § 1.6662–3(c)(2).

(4) *Example.* The following example illustrates the application of this paragraph (e):

Example. In January of 2008, F, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction and is not a transaction described in any of the paragraphs (b)(3) through (7) of this section. All the tax benefits from the transaction are reported on F's 2008 tax return filed timely in April 2009. On May 2, 2011, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Upon issuance of the May 2, 2011 notice, the transaction becomes a reportable transaction described in paragraph (b) of this section. The period of limitations on assessment for F's 2008 taxable year is still open. F is required to file Form 8886 for the transaction with OTSA within 90 calendar days after May 2, 2011.

(f) *Rulings and protective disclosures*—(1) *Rulings.* If a taxpayer requests a ruling on the merits of a specific transaction on or before the date that disclosure would otherwise be required under this section, and receives a favorable ruling as to the transaction, the disclosure rules under this section will be deemed to have been satisfied by that taxpayer with regard to that transaction, so long as the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section. If a taxpayer requests a ruling as to whether a specific transaction is a reportable transaction on or before the date that disclosure would otherwise be required under this section, the Commissioner in his discretion may determine that the submission satisfies the disclosure rules under this section for the taxpayer requesting the ruling for that transaction if the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section. The potential obligation of the taxpayer to disclose the transaction under this section will not be suspended during the period that the ruling request is pending.

(2) *Protective disclosures.* If a taxpayer is uncertain whether a transaction must be disclosed under this section, the taxpayer may disclose the transaction in accordance with the requirements of this section and comply with all the provisions of this section, and indicate on the disclosure statement that the disclosure statement is being filed on a protective basis. The IRS will not treat disclosure statements filed on a protective basis any differently than other disclosure statements filed under this section. For a protective disclosure to be effective, the taxpayer must comply with these disclosure regulations by providing to the IRS all information requested by the IRS under this section.

(g) *Retention of documents.* (1) In accordance with the instructions to Form 8886 (or a successor form), the taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the tax treatment or tax structure of the transaction. The documents must be retained until the expiration of the statute of limitations applicable to the final taxable year for which disclosure of the transaction was required under this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) The documents may include the following:

(i) Marketing materials related to the transaction;

(ii) Written analyses used in decision-making related to the transaction;

(iii) Correspondence and agreements between the taxpayer and any advisor, lender, or other party to the reportable transaction that relate to the transaction;

(iv) Documents discussing, referring to, or demonstrating the purported or claimed tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction.

(2) A taxpayer is not required to retain earlier drafts of a document if the taxpayer retains a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of the document that is material to an understanding of the purported tax treatment or tax structure of the transaction.

(h) *Effective/applicability date*—(1) *In general.* This section applies to transactions entered into on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006. Paragraph (f)(1) of this section applies to ruling requests received on or after November 1, 2006. Otherwise, the rules that apply with respect to transactions entered into before August 3, 2007, are contained in § 1.6011–4 in effect prior to August 3, 2007 (see 26 CFR part 1 revised as of April 1, 2007).

(2) [*Reserved*].

§ 1.6011–4T [Removed]

■ **Par. 3.** Section 1.6011–4T is removed.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Par. 4.** The authority citation for part 20 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 5.** Section 20.6011–4 is revised to read as follows:

§ 20.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2)(ii)(*b*) of this chapter), and the listed transaction or transaction of interest involves an estate tax under chapter 11 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date.* This section applies to listed transactions entered into on or after January 1, 2003. This section applies to transactions of interest entered into on or after November 2, 2006.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 6.** The authority citation for part 25 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 7.** Section 25.6011–4 is revised to read as follows:

§ 25.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2)(ii)(*b*) of this chapter), and the listed transaction or transaction of interest involves a gift tax under chapter 12 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date.* This section applies to listed transactions entered into on or after January 1, 2003. This section applies to transactions of interest entered into on or after November 2, 2006.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

■ **Par. 8.** The authority citation for part 31 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 9.** Section 31.6011–4 is revised to read as follows:

§ 31.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2)(ii)(*b*) of this chapter), and the listed transaction or transaction of interest involves an employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date.* This section applies to listed transactions entered into on or after January 1, 2003. This section applies to transactions of interest entered into on or after November 2, 2006.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 10.** The authority citation for part 53 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 11.** Section 53.6011–4 is revised to read as follows:

§ 53.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2)(ii)(*b*) of this chapter), and the listed transaction or transaction of interest involves an excise tax under chapter 42 of subtitle D of the Internal Revenue Code (relating to private foundations and certain other tax-exempt organizations), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date.* This section applies to listed transactions entered into on or after January 1, 2003. This section applies to transactions of interest entered into on or after November 2, 2006.

PART 54—PENSION EXCISE TAXES

■ **Par. 12.** The authority citation for part 54 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 13.** Section 54.6011–4 is revised to read as follows:

§ 54.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2)(ii)(*b*) of this chapter), and the listed transaction or transaction of interest involves an excise tax under chapter 43 of subtitle D of the Internal Revenue Code (relating to qualified pension, etc., plans) the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date.* This section applies to listed transactions entered into on or after January 1, 2003. This section applies to transactions of interest entered into on or after November 2, 2006.

PART 56—PUBLIC CHARITY EXCISE TAXES

■ **Par. 14.** The authority citation for part 56 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 15.** Section 56.6011–4 is revised to read as follows:

§ 56.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction or transaction of interest involves an excise tax under chapter 41 of subtitle D of the Internal Revenue Code (relating to public charities), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to listed transactions entered into on or after January 1, 2003. This section applies to transactions of interest entered into on or after November 2, 2006.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 25, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 07–3786 Filed 7–31–07; 11:22 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9352]

RIN 1545–BE28

AJCA Modifications to the Section 6112 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6112 of the Internal Revenue Code that provide the rules relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions. These regulations affect material advisors responsible for keeping lists under section 6112.

DATES: *Effective Date:* These regulations are effective August 3, 2007.

FOR FURTHER INFORMATION CONTACT: Charles D. Wien, Michael H. Beker, or Tolsun N. Waddle, 202–622–3070; (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1686. Responses to these collections of information are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number assigned by the Office of Management and Budget.

The estimated annual burden per recordkeeper for the collection of information in § 301.6112–1 is 100 hours and the estimated number of recordkeepers is 500.

Comments concerning the accuracy of these burden estimates and suggestions

for reducing these burdens should be sent to Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations that amend 26 CFR part 301 by amending the rules relating to the list maintenance requirements of material advisors with respect to reportable transactions under section 6112.

The American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418), (AJCA) was enacted on October 22, 2004. Section 815 of the AJCA amended section 6112 to provide that each material advisor (as defined in section 6111, as amended by the AJCA) with respect to any reportable transaction is required to maintain a list (in such manner as the Secretary may by regulations prescribe) identifying each person with respect to whom the advisor acted as a material advisor with respect to the transaction, and containing other information as the Secretary may by regulations require. Section 815 of the AJCA is effective for transactions with respect to which material aid, assistance, or advice is provided after October 22, 2004. Prior to the amendments to section 6111 made by the AJCA, the definition of material advisor was in § 301.6112–1 of the Procedure and Administration Regulations.

On November 1, 2006, the IRS and Treasury Department issued a notice of proposed rulemaking and temporary and final regulations under sections 6011, 6111, and 6112 (REG–103038–05, REG–103039–05, REG–103043–05, TD 9295) (the November 2006 regulations). The November 2006 regulations were published in the **Federal Register** (71 FR 64488, 71 FR 64496, 71 FR 64501, 71 FR 64458) on November 2, 2006.

The IRS and Treasury Department received written public comments responding to the proposed regulations and held a public hearing regarding the proposed rules on March 20, 2007. After consideration of the comments received and comments made at the hearing, the proposed regulations are adopted as revised by this Treasury decision. These final regulations generally retain the provisions of the proposed regulations but include some modifications based on recommendations in the public comments.

Summary of Comments and Explanation of Provisions

Furnishing of Lists

The proposed regulations provided that each material advisor must prepare and maintain a list for each reportable transaction. The proposed regulations also provided that each list must include three components: An itemized statement, a description of the transaction, and documents. Further, the proposed regulations provided that each material advisor responsible for maintaining a list must, upon written request by the IRS, make each component of the list available to the IRS by furnishing each component of the list to the IRS within 20 business days from the day on which the request is provided. The proposed regulations stated that each component of the list must be furnished to the IRS in a form that enables the IRS to determine without undue delay or difficulty the information required to be on the list. If any component of the list is not in such form, the material advisor will not be considered to have complied with the list maintenance provisions of section 6112 and the regulations thereunder.

Several commentators recommended that the proposed regulations should provide the IRS with flexibility to determine, based on the amount of information required, a production schedule that will be sufficient to avoid the imposition of penalties. Two commentators suggested providing a phased disclosure procedure. One commentator recommended that the 20 business days begin after the advisor had an adequate opportunity to gather the required information. Another commentator recommended amending the proposed regulations to provide a substantial compliance standard.

The IRS and Treasury Department believe that providing the IRS the ability to determine an alternative production schedule will benefit both taxpayers and the IRS. These final regulations remove the language regarding the period for furnishing a list or the components of the list to the IRS because that period will be addressed in forthcoming published guidance under section 6708. In addition, an alternative schedule for furnishing the list or the components of the list will be addressed in published guidance under section 6708.

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. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that most of the information is already required to be reported under the current regulations; the clarifications and new information required by the final regulations add little or no new burden to the existing requirements. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Charles D. Wien, Michael H. Beker, and Tolsun N. Waddle, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6112–1 is revised to read as follows:

§ 301.6112–1 Material advisors of reportable transactions must keep lists of advisees, etc.

(a) *In general.* Each material advisor, as defined in § 301.6111–3(b), with

respect to any reportable transaction, as defined in § 1.6011–4(b) of this chapter, shall prepare and maintain a list in accordance with paragraph (b) of this section and shall furnish such list to the Internal Revenue Service (IRS) in accordance with paragraph (e) of this section.

(b) *Preparation and maintenance of lists*—(1) *In general.* A separate list must be prepared and maintained for each reportable transaction. However, one list must be maintained for substantially similar transactions. A list must be maintained in a form that enables the IRS to determine without undue delay or difficulty the information required in paragraph (b)(3) of this section. The Commissioner in his discretion may provide in published guidance a form or method for maintaining and/or furnishing the list.

(2) *Persons required to be included on lists.* A material advisor is required to maintain a list identifying each person with respect to whom the advisor acted as a material advisor with respect to the reportable transaction. However, a material advisor is not required to identify a person on the list if the person entered into a listed transaction or a transaction of interest more than 6 years before the transaction was identified in published guidance as a listed transaction or a transaction of interest.

(3) *Contents.* Each list must include the three components described in paragraph (b)(3)(i), (ii), and (iii) of this section.

(i) *Statement.* An itemized statement containing the following information—

(A) The name of each reportable transaction, the citation to the published guidance number identifying the transaction if the transaction is a listed transaction or a transaction of interest, and the reportable transaction number obtained under section 6111;

(B) The name, address, and TIN of each person required to be included on the list;

(C) The date on which each person required to be included on the list entered into each reportable transaction, if known by the material advisor;

(D) The amount invested in each reportable transaction by each person required to be included on the list, if known by the material advisor;

(E) A summary or schedule of the tax treatment that each person is intended or expected to derive from participation in each reportable transaction; and

(F) The name of each other material advisor to the transaction, if known by the material advisor.

(ii) *Description of the transaction.* A detailed description of each reportable transaction that describes both the tax structure of the transaction and the purported tax treatment of the transaction.

(iii) *Documents.* The following documents—

(A) A copy of any designation agreement (as described in paragraph (f) of this section) to which the material advisor is a party; and

(B) Copies of any additional written materials, including tax analyses or opinions, relating to each reportable transaction that are material to an understanding of the purported tax treatment or tax structure of the transaction that have been shown or provided to any person who acquired or may acquire an interest in the transactions, or to their representatives, tax advisors, or agents, by the material advisor or any related party or agent of the material advisor. However, a material advisor is not required to retain earlier drafts of a document provided the material advisor retains a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of such document that is material to an understanding of the purported tax treatment or the tax structure of the transaction.

(c) *Definitions.* For purposes of this section, the following terms are defined as:

(1) *Material advisor.* The term *material advisor* is defined in § 301.6111–3(b).

(2) *Reportable transaction.* The term *reportable transaction* is defined in § 1.6011–4(b)(1) of this chapter.

(3) *Listed transaction.* The term *listed transaction* is defined in § 1.6011–4(b)(2) of this chapter. See also §§ 20.6011–4(a), 25.6011–4(a), 31.6011–4(a), 53.6011–4(a), 54.6011–4(a), or 56.6011–4(a) of this chapter.

(4) *Substantially similar.* The term *substantially similar* is defined in § 1.6011–4(c)(4) of this chapter.

(5) *Person.* The term *person* is defined in § 301.6111–3(c)(4).

(6) *Related party.* A person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(7) *Tax.* The term *tax* is defined in § 301.6111–3(c)(6).

(8) *Tax benefit.* The term *tax benefit* is defined in § 301.6111–3(c)(7).

(9) *Tax return.* The term *tax return* is defined in § 301.6111–3(c)(8).

(10) *Tax structure.* The term *tax structure* is defined in § 301.6111–3(c)(9).

(11) *Tax treatment.* The term *tax treatment* is defined in § 301.6111–3(c)(10).

(12) *Transaction of interest.* The term *transaction of interest* is defined in § 1.6011–4(b)(6) of this chapter. See also §§ 20.6011–4(a), 25.6011–4(a), 31.6011–4(a), 53.6011–4(a), 54.6011–4(a), or 56.6011–4(a) of this chapter.

(d) *Retention of lists.* Each material advisor must maintain each component of the list described in paragraph (b)(3) of this section in a readily accessible form for seven years following the earlier of the date on which the material advisor last made a tax statement relating to the transaction, or the date the transaction was last entered into, if known. If the material advisor required to prepare, maintain, and furnish the list is a corporation, partnership, or other entity (entity) that has dissolved or liquidated before completion of the seven-year period, the person responsible under state law for winding up the affairs of the entity must prepare, maintain and furnish each component of the list on behalf of the entity, unless the entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. If state law does not specify any person as responsible for winding up the affairs, then each of the directors of the corporation, the general partners of the partnership, or the trustees, owners, or members of the entity are responsible for preparing, maintaining and furnishing each component of the list on behalf of the entity, unless the entity submits the list to the OTSA within 60 days after the dissolution or liquidation. The responsible person must also provide notice to OTSA of such dissolution or liquidation within 60 days after the dissolution or liquidation. The list and the notice provided to OTSA must be sent to: Internal Revenue Service, OTSA Mail Stop 4915, 1973 North Rulon White Blvd., Ogden, Utah 84404, or to such other address as provided by the Commissioner.

(e) *Furnishing of lists*—(1) *In general.* Each material advisor responsible for maintaining a list must, upon written request by the IRS, make each component of the list described in paragraph (b)(3) of this section available to the IRS. Each component of the list must be furnished to the IRS in a form that enables the IRS to determine without undue delay or difficulty the information required in paragraph (b)(3) of this section. If any component of the list is not in a form that enables the IRS to determine without undue delay or difficulty the information required in paragraph (b)(3) of this section, the

material advisor will not be considered to have complied with the list maintenance provisions in section 6112 and this section. A material advisor must make the list or each component of the list available to the IRS within the period prescribed in section 6708 or published guidance relating to section 6708.

(2) *Claims of privilege.* Each material advisor who is required to maintain a list with respect to a reportable transaction, must still maintain the list pursuant to the requirements of this section even if a person asserts a claim of privilege with respect to the information specified in paragraph (b)(3)(iii)(B) of this section.

(f) *Designation agreements.* If more than one material advisor is required to maintain a list of persons for a reportable transaction, in accordance with paragraph (b) of this section, the material advisors may designate by written agreement a single material advisor to maintain the list or a portion of the list. The designation of one material advisor to maintain the list does not relieve the other material advisors from their obligation to furnish the list to the IRS in accordance with paragraph (e)(1) of this section, if the designated material advisor fails to furnish the list to the IRS in a timely manner. A material advisor is not relieved from the requirement of this section because a material advisor is unable to obtain the list from any designated material advisor, any designated material advisor did not maintain a list, or the list maintained by any designated material advisor is not complete.

(g) *Effective/applicability date.* In general, this section applies to transactions with respect to which a material advisor makes a tax statement under § 301.6111–3 on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor makes a tax statement under § 301.6111–3 on or after November 2, 2006. Otherwise, the rules that apply before August 3, 2007 are contained in § 301.6112–1 in effect prior to August 3, 2007 (see 26 CFR part 301 revised as of April 1, 2007), and see also Notice 2004–80 (2004–50 IRB 963); Notice 2005–17 (2005–8 IRB 606); and Notice 2005–22 (2005–12 IRB 756) (see § 601.601(d)(2)).

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 25, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 07–3787 Filed 7–31–07; 11:22 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9351]

RIN 1545–BE26

AJCA Modifications to the Section 6111 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6111 of the Internal Revenue Code that provide the rules relating to the disclosure of reportable transactions by material advisors. These regulations affect material advisors responsible for disclosing reportable transactions under section 6111 and material advisors responsible for keeping lists under section 6112.

DATES: *Effective Date:* These regulations are effective August 3, 2007.

FOR FURTHER INFORMATION CONTACT: Charles D. Wien, Michael H. Beker, or Tolsun N. Waddle, 202–622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend 26 CFR part 301 by providing rules relating to the disclosure of reportable transactions by material advisors under section 6111.

The American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418), (AJCA) was enacted on October 22, 2004. Section 815 of the AJCA amended section 6111 to require each material advisor with respect to any reportable transaction to make a return (in such form as the Secretary may prescribe) setting forth: (1) Information identifying and describing the transaction; (2) information describing any potential tax benefits expected to result from the transaction; and (3) such other information as the Secretary may prescribe. Section 6111(a), as amended, also provides that the return must be filed not later than the date specified by the Secretary. Section 6111(b)(1), as amended, provides a definition for the term material advisor and includes as part of that definition a requirement that the material advisor derive certain threshold amounts of gross income that the Secretary may prescribe. The AJCA amendments to section 6111 also authorize the Secretary to prescribe regulations that provide: (1) That only one person shall be required to meet the requirements of section 6111(a) in cases in which two or more persons would otherwise be required to meet such requirements; (2) exemptions from the requirements of section 6111; and (3) rules as may be necessary or appropriate to carry out the purposes of section 6111. Section 815 of the AJCA is effective for transactions with respect to which material aid, assistance, or advice is provided after October 22, 2004.

In response to the AJCA, the IRS and Treasury Department issued interim guidance on section 6111 in Notice 2004–80 (2004–2 CB 963); Notice 2005–17 (2005–1 CB 606); Notice 2005–22 (2005–1 CB 756); and Notice 2006–6 (2006–5 IRB 385) (see § 601.601(d)(2)). On November 1, 2006, the IRS and Treasury Department issued a notice of proposed rulemaking and temporary and final regulations under sections 6011, 6111, and 6112 (REG–103038–05, REG–103039–05, REG–103043–05, TD 9295) (the November 2006 regulations). The November 2006 regulations were published in the **Federal Register** (71 FR 64488, 71 FR 64496, 71 FR 64501, 71 FR 64458) on November 2, 2006.

The IRS and Treasury Department received written public comments responding to the proposed regulations and held a public hearing regarding the proposed rules on March 20, 2007. After consideration of the comments received and comments made at the hearing, the proposed regulations are adopted as revised by this Treasury decision. These final regulations generally retain the provisions of the proposed regulations but include some modifications based on recommendations in the public comments.

Summary of Comments and Explanation of Provisions

Nine written comments were received in response to the NPRM. All comments were considered and are available for public inspection upon request.

Reportable Transaction Number

The proposed regulations provide that a material advisor must provide a reportable transaction number to all

taxpayers and material advisors to whom the material advisor makes or provides tax statements. Many commentators commented that the requirement to provide the reportable transaction number to all taxpayers and material advisors to whom the material advisor makes or provides tax statements is overly broad and suggested, instead, that the reportable transaction number only be required to be furnished to those for whom the taxpayer acted as a material advisor. One commentator recommended that the regulation be amended to remove the obligation to provide a reportable transaction number. Another commentator recommended that a material advisor should be required to provide the reportable transaction number to taxpayers only in the case of marketed transactions. The commentator also commented that in a purely one-on-one, non-abusive transaction, the use of the reportable transaction number may infringe upon the attorney-client relationship.

The IRS and Treasury Department attempted to balance the need for disclosure of reportable transactions with the resulting burden imposed upon taxpayers. The IRS and Treasury Department do not believe that requiring a material advisor to provide a reportable transaction number to certain taxpayers and material advisors imposes an undue burden upon taxpayers in light of the benefit to tax administration. However, the IRS and Treasury Department recognize that requiring the reportable transaction number to be provided to all persons for whom the material advisor made a tax statement may be unnecessary. Therefore, these final regulations state that a material advisor is required to provide a reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor.

Material Advisor Fee Threshold Language

The proposed regulations provide, in general, that a lower threshold amount of gross income applies in the case of a reportable transaction when substantially all of the tax benefits are provided to natural persons (looking through any partnerships, S corporations, or trusts). The IRS and Treasury Department received comments asking for clarification of the term ''substantially all of the tax benefits.''

The final regulations provide that the determination of whether the lower threshold amount applies is based on the facts and circumstances. Generally, unless the facts and circumstances prove otherwise, if 70 percent or more of the tax benefits from a reportable transaction are provided to natural persons (looking through any partnerships, S corporations, or trusts) then substantially all of the tax benefits will be considered to be provided to natural persons.

Material Advisor Disclosure of the Identity of Other Material Advisors

The proposed regulations provide that a material advisor who is required to file a disclosure statement must also disclose the identity of other material advisors. Two commentators recommended that these final regulations be amended to provide that a material advisor must provide the identity of other material advisors only if the material advisor has actual knowledge of such other material advisors.

After carefully considering the recommendation by the commentators, these final regulations provide that a material advisor must provide the identities of any material advisor(s) who the material advisor knows or has reason to know acted as a material advisor with respect to the transaction.

Designation Agreements

The proposed regulations provide that if more than one material advisor is required to disclose a reportable transaction under section 6111, the material advisors may designate by written agreement a single material advisor to disclose the transaction. The designation of one material advisor to disclose the transaction does not relieve the other material advisors of their obligation to disclose the transaction to the IRS in accordance with section 6111, if the designated material advisor fails to disclose the transaction to the IRS in a timely manner. One commentator recommended that a good faith participation in a designation agreement be treated as if the non-designated material advisor has satisfied the advisor's obligations under section 6111 and/or section 6112. The commentator also suggested that if the previous recommendation is not adopted, that these final regulations prohibit designation agreements entirely.

These final regulations do not adopt the recommendation of the commentator. The purpose of the designation agreement language is to reduce the burden on material advisors in complying with the disclosure and list maintenance regulations while balancing the need of the IRS and Treasury Department to receive the necessary information described in sections 6111 and 6112. The designation agreement allows material advisors, if they choose, to have one material advisor comply with the disclosure and list maintenance obligations rather than multiple advisors maintaining duplicative lists. Inherent in the language is the assumption that the designated material advisor will comply with the requirements. Absolving the non-designated material advisors from the obligations listed in sections 6111 and 6112 for good faith designation agreements would require the IRS to determine whether the designation agreement was entered into in good faith and would increase the burdens on tax administration.

Form 8271

Before the enactment of the AJCA, section 6111 provided that tax shelter organizers were required to provide investors in tax shelters the registration number for the tax shelter. Section 301.6111–1T, Q&A 55, requires investors to report the registration number of the tax shelter to the IRS on Form 8271, ''Investor Reporting of Tax Shelter Registration Number'', and attach the Form 8271 to any return on which any deduction, loss, credit, or other tax benefit attributable to the tax shelter is claimed. Because only a few investors must still file Form 8271 for pre-AJCA section 6111 tax shelters and because the IRS already is aware of these transactions, the IRS and Treasury Department have decided that investors are no longer required to file Forms 8271 otherwise due on or after August 3, 2007. The Form 8271 will be obsoleted. However, these final regulations continue to require that material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor.

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 these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 35) do not apply. The return referenced in these regulations will be made available for public comment in accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. chapter 35). Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Charles D. Wien, Michael H. Beker, and Tolsun N. Waddle, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding entries in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *
Section 301.6111–3 also issued under 26 U.S.C. 6111.

■ **Par. 2.** Section 301.6111–3 is added to read as follows:

§ 301.6111–3 Disclosure of reportable transactions.

(a) *In general.* Each material advisor, as defined in paragraph (b) of this section, with respect to any reportable transaction, as defined in § 1.6011–4(b) of this chapter, must file a return as described in paragraph (d) of this section by the date described in paragraph (e) of this section.

(b) *Material advisor*—(1) *In general.* A person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in paragraph (b)(3) of this section for the material aid, assistance, or advice. The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan or arrangement, and includes any series of steps carried out as part of a plan.

(2) *Material aid, assistance, or advice*—(i) *In general.* Except as provided in paragraph (b)(5) of this section, a person provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any transaction if the person makes or provides a tax statement to or for the benefit of—

(A) A taxpayer who either is required to disclose the transaction under §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter because the transaction is a listed transaction or a transaction of interest, or would have been required to disclose the transaction under §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter if the transaction had become a listed transaction or a transaction of interest within the period of limitations in § 1.6011–4(e) of this chapter;

(B) A taxpayer who the potential material advisor knows is or reasonably expects to be required to disclose the transaction under § 1.6011–4 of this chapter because the transaction is or is reasonably expected to become a transaction described in § 1.6011–4(b)(3) through (5) or (7) of this chapter;

(C) A material advisor who is required to disclose the transaction under this section because it is a listed transaction or a transaction of interest; or

(D) A material advisor who the potential material advisor knows is or reasonably expects to be required to disclose the transaction under this section because the transaction is or is reasonably expected to become a transaction described in § 1.6011–4(b)(3) through (5) or (7) of this chapter.

(ii) *Tax statement*—(A) *In general.* A tax statement is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011–4(b)(2) through (7) of this chapter. A tax statement under this section includes tax result protection that insures some or all of the tax benefits of a reportable transaction.

(B) *Confidential transactions.* A statement relates to a tax aspect of a transaction that causes it to be a confidential transaction if the statement concerns a tax benefit related to the transaction and either the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited in the manner described in § 1.6011–4(b)(3) of this chapter by or for the benefit of the person making the statement, or the person making the statement knows the taxpayer's disclosure of the tax structure or tax aspects of the transaction is limited in the manner described in § 1.6011–4(b)(3) of this chapter.

(C) *Transactions with contractual protection.* A statement relates to a tax aspect of a transaction that causes it to be a transaction with contractual protection if the statement concerns a tax benefit related to the transaction and either—

(*1*) The taxpayer has the right to a full or partial refund of fees paid to the person making the statement or the fees are contingent in the manner described in § 1.6011–4(b)(4) of this chapter; or

(*2*) The person making the statement knows or has reason to know that the taxpayer has the right to a full or partial refund of fees (described in § 1.6011–4(b)(4)(ii) of this chapter) paid to another if all or part of the intended tax consequences from the transaction are not sustained or that fees (as described in § 1.6011–4(b)(4)(ii) of this chapter) paid by the taxpayer to another are contingent on the taxpayer's realization of tax benefits from the transaction in the manner described in § 1.6011–4(b)(4) of this chapter.

(D) *Loss transactions.* A statement relates to a tax aspect of a transaction that causes it to be a loss transaction if the statement concerns an item that gives rise to a loss described in § 1.6011–4(b)(5) of this chapter.

(E) [*Reserved*].

(iii) *Special rules*—(A) *Capacity as an employee.* A material advisor generally does not include a person who makes a tax statement solely in the person's capacity as an employee, shareholder, partner or agent of another person. Any tax statement made by that person will be attributed to that person's employer, corporation, partnership or principal. However, a person shall be treated as a material advisor if that person forms or avails of an entity with the purpose of avoiding the rules of section 6111 or 6112 or the penalties under section 6707 or 6708.

(B) *Post-filing advice.* A person will not be considered to be a material advisor with respect to a transaction if that person does not make or provide a tax statement regarding the transaction until after the first tax return reflecting tax benefit(s) of the transaction is filed with the IRS. However, this exception does not apply to a person who makes a tax statement with respect to the transaction if it is expected that the taxpayer will file a supplemental or amended return reflecting additional tax benefits from the transaction.

(C) *Publicly filed statements.* A tax statement with respect to a transaction that includes only information about the transaction contained in publicly available documents filed with the Securities and Exchange Commission no later than the close of the transaction will not be considered a tax statement to or for the benefit of a person described in paragraph (b)(2) of this section.

(3) *Gross income derived for material aid, assistance, or advice*—(i) *Threshold amount*—(A) *In general.* The threshold amount of gross income is $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons (looking through any partnerships, S corporations, or trusts). For all other transactions, the threshold amount is $250,000.

(B) *Listed transactions and transactions of interest.* For listed transactions described in §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter, the threshold amounts in paragraph (b)(3)(i)(A) of this section are reduced from $50,000 to $10,000 and from $250,000 to $25,000. For transactions of interest described in §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter, the threshold amounts in paragraph (b)(3)(i)(A) of this section may be reduced as identified in the published guidance describing the transaction.

(C) [*Reserved*].

(D) *Substantially all of the tax benefits.* For purposes of this section, the determination of whether substantially all of the tax benefits from a reportable transaction are provided to natural persons is made based on all the facts and circumstances. Generally, unless the facts and circumstances prove otherwise, if 70 percent or more of the tax benefits from a reportable transaction are provided to natural persons (looking through any partnerships, S corporations, or trusts) then substantially all of the tax benefits will be considered to be provided to natural persons.

(ii) *Gross income derived directly or indirectly for the material aid, assistance, or advice.* In determining the amount of gross income a person derives directly or indirectly for material aid, assistance, or advice, all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a reportable transaction are taken into account. Fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable in light of all of the facts and circumstances. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property. The IRS will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a reportable transaction constitutes gross income derived directly or indirectly for aid, assistance, or advice. For purposes of this section, the threshold amount must be met independently for each transaction that is a reportable transaction and aggregation of fees among transactions is not required.

(4) *Date a person becomes a material advisor*—(i) *In general.* A person will be treated as becoming a material advisor when all of the following events have occurred (in no particular order)—

(A) The person provides material aid, assistance or advice as described in paragraph (b)(2) of this section;

(B) The person directly or indirectly derives gross income in excess of the threshold amount as described in paragraph (b)(3) of this section; and

(C) The transaction is entered into by the taxpayer to whom or for whose benefit the person provided the tax statement, or in the case of a tax statement provided to another material advisor, when the transaction is entered into by a taxpayer to whom or for whose benefit that material advisor provided a tax statement.

(ii) *Determining if the taxpayer entered into the transaction.* Material advisors, including those who cease providing services before the time the transaction is entered into, must make reasonable and good faith efforts to determine whether the event described in paragraph (b)(4)(i)(C) of this section has occurred.

(iii) *Listed transactions and transactions of interest.* If a transaction that was not a reportable transaction is identified as a listed transaction or a transaction of interest in published guidance after the occurrence of the events described in paragraph (b)(4)(i) of this section, the person will be treated as becoming a material advisor on the date the transaction is identified as a listed transaction or a transaction of interest.

(5) *Other persons designated as material advisors.* Published guidance may identify other types or classes of persons as material advisors.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Reportable transaction.* The term *reportable transaction* is defined in § 1.6011–4(b)(1) of this chapter.

(2) *Listed transaction.* The term *listed transaction* is defined in § 1.6011–4(b)(2) of this chapter. See also §§ 20.6011–4(a), 25.6011–4(a), 31.6011–4(a), 53.6011–4(a), 54.6011–4(a), or 56.6011–4(a) of this chapter.

(3) *Derive.* The term *derive* means receive or expect to receive.

(4) *Person.* The term *person* means any person described in section 7701(a)(1), including an affiliated group of corporations that join in the filing of a consolidated return under section 1501.

(5) *Substantially similar.* The term *substantially similar* is defined in § 1.6011–4(c)(4) of this chapter.

(6) *Tax.* The term *tax* means Federal tax.

(7) *Tax benefit.* A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(8) *Tax return.* The term *tax return* means a Federal tax return and a Federal information return.

(9) *Tax structure.* The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal tax treatment of the transaction.

(10) *Tax treatment.* The tax treatment of a transaction is the purported or claimed Federal tax treatment of the transaction.

(11) *Taxpayer.* The term *taxpayer* is defined in § 1.6011–4(c)(1) of this chapter.

(12) *Tax result protection.* The term *tax result protection* includes insurance company and other third party products commonly described as tax result insurance.

(13) *Transaction of interest.* The term *transaction of interest* is defined in § 1.6011–4(b)(6) of this chapter. See also §§ 20.6011–4(a), 25.6011–4(a), 31.6011–4(a), 53.6011–4(a), 54.6011–4(a), or 56.6011–4(a) of this chapter.

(d) *Form and content of material advisor's disclosure statement*—(1) *In general.* A material advisor required to

file a disclosure statement under this section must file a completed Form 8918, ''Material Advisor Disclosure Statement'' (or successor form) in accordance with this paragraph (d) and the instructions to the form. To be considered complete, the information provided on the form must describe the expected tax treatment and all potential tax benefits expected to result from the transaction, describe any tax result protection with respect to the transaction, and identify and describe the transaction in sufficient detail for the IRS to be able to understand the tax structure of the reportable transaction and the identity of any material advisor(s) whom the material advisor knows or has reason to know acted as a material advisor as defined in paragraph (b) of this section with respect to the transaction. An incomplete form containing a statement that information will be provided upon request is not considered a complete disclosure statement. A material advisor may file a single form for substantially similar transactions. An amended form must be filed if information previously provided is no longer accurate, if additional information that was not disclosed becomes available, or if there are material changes to the transaction. A material advisor is not required to file an additional form for each additional taxpayer that enters into the same or substantially similar transaction. If the form is not completed in accordance with the provisions in this paragraph (d) and the instructions to the form, the material advisor will not be considered to have complied with the disclosure requirements of this section.

(2) *Reportable transaction number.* The IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in paragraph (b) of this section. The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

(e) *Time of providing disclosure.* The material advisor's disclosure statement for a reportable transaction must be filed with the Office of Tax Shelter Analysis (OTSA) by the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to OTSA at the address provided in the instructions for Form 8918 (or a successor form).

(f) *Designation agreements.* If more than one material advisor is required to disclose a reportable transaction under this section, the material advisors may designate by written agreement a single material advisor to disclose the transaction. The transaction must be disclosed by the last day of the month following the end of the calendar quarter that includes the earliest date on which a material advisor who is a party to the agreement became a material advisor with respect to the transaction as described in paragraph (b)(4) of this section. The designation of one material advisor to disclose the transaction does not relieve the other material advisors of their obligation to disclose the transaction to the IRS in accordance with this section, if the designated material advisor fails to disclose the transaction to the IRS in a timely manner.

(g) *Protective disclosures.* If a potential material advisor is uncertain whether a transaction must be disclosed under this section, the advisor may disclose the transaction in accordance with the requirements of this section and comply with all the provisions of this section, and indicate on the disclosure statement that the disclosure statement is being filed on a protective basis. The IRS will not treat disclosure statements filed on a protective basis any differently than other disclosure statements filed under this section. For a protective disclosure to be effective, the advisor must comply with the regulations under this section and § 301.6112–1 by providing to the IRS all information requested by the IRS under these sections.

(h) *Rulings.* If a potential material advisor requests a ruling as to whether a specific transaction is a reportable transaction on or before the date that disclosure would otherwise be required under this section, the Commissioner in his discretion may determine that the submission satisfies the disclosure rules under this section for that transaction if the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section. The potential obligation of the person to disclose the transaction under this section (or to maintain or furnish the list under § 301.6112–1) will not be suspended during the period that the ruling request is pending.

(i) *Effective/applicability date*—(1) *In general.* This section applies to transactions with respect to which a material advisor makes a tax statement on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006 with respect to which a material advisor makes a tax statement under § 301.6111–3 on or after November 2, 2006. Paragraph (h) of this section applies to ruling requests received on or after November 1, 2006. Otherwise, the rules that apply with respect to transactions entered into before August 3, 2007 are contained in Notice 2004–80 (2004–50 IRB 963); Notice 2005–17 (2005–8 IRB 606); and Notice 2005–22 (2005–12 IRB 756) (see § 601.601(d)(2)(ii)(*b*) in effect prior to August 3, 2007.

(2) [*Reserved*].

§ 301.6111–3T [Removed]

■ **Par. 3.** Section 301.6111–3T is removed.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 25, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 07–3788 Filed 7–31–07; 11:22 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 571

[Docket No. USA–2007–0017]

RIN 0702–AA57

Recruiting and Enlistments

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army has revised its regulation that prescribes policies and procedures concerning recruiting and enlistment into the Regular Army and its Reserve Components.

DATES: *Effective Date:* September 4, 2007.

ADDRESSES: Deputy Chief of Staff, G–1, ATTN: DAPE-MPA, 300 Army Pentagon, Washington, DC 20310.

FOR FURTHER INFORMATION CONTACT: Denise Mills, (703) 695–9262.

SUPPLEMENTARY INFORMATION:

A. Background

The Administrative Procedure Act, as amended by the Freedom of Information Act, requires publication of certain policies and procedures and other information concerning the Department of the Army in the **Federal Register**. The policies and procedures covered by this part fall into that category. The Army has changed the publications and policies, thus requiring the rules in the **Federal Register** to be updated. The Department of the Army published a proposed rule in the **Federal Register** on May 10, 2007 (72 FR 26576) with the comment period ending on July 9, 2007. The Department of the Army received no comments on the proposed rule.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule does not include a mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that, according to the criteria defined in Executive Order 12866, this rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that, according to the criteria defined in Executive Order 13045, this rule does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that, according to the criteria defined in Executive Order 13132, this rule does not apply because it will not have a substantial 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.

Alphonsa D. Green,
Chief, Recruiting Policy Branch.

List of Subjects in 32 CFR Part 571

Military personnel.

■ For reasons stated in the preamble, the Department of the Army revises 32 CFR part 571 to read as follows:

PART 571—RECRUITING AND ENLISTMENTS

Subpart A—Recruiting and Enlistment Eligibility

Sec.
571.1 General.
571.2 Basic qualifications for enlistment.
571.3 Waiver enlistment criteria.
571.4 Periods of enlistment.
571.5 Enlistment options.

Authority: 10 U.S.C. 504, 505, 509, 513, 520, 3262.

Subpart A—Recruiting and Enlistment Eligibility

§ 571.1 General.

(a) *Purpose.* This part gives the qualifications for men and women enlisting in the Regular Army (RA) or Reserve Components (RC). The procedures simplify and standardize the processing of recruited applicants. The applicant's ability to meet all requirements or exceptions will determine eligibility. This includes obtaining prescribed waivers.

(b) *References*—

(1) *Required Publications.*

(i) AR 601–210, Active and Reserve Components Enlistment Program. (Cited in §§ 571.2, 571.3, and 571.5).

(ii) AR 40–501, Standards of Medical Fitness. (Cited in §§ 571.2 and 571.3).

(iii) AR 600–9, The Army Weight Control Program. (Cited in §§ 571.2 and 571.3).

(2) *Related Publications.*

(i) DOD Directive 1304.26, Qualifications for Enlistment, Appointment, and Induction.

(ii) Army Retention Program.

(c) *Definitions.* The following definitions apply to this part:

(1) *Enlistment.* Voluntary contract (DD Form 4) for military service that creates military status as an enlisted member of the Regular Army or a Reserve Component. This includes enlistment of both non-prior service and prior service personnel.

(2) *Reenlistment.* The second or subsequent voluntary enrollment in the Regular Army or a Reserve Component as an enlisted member.

(3) *United States Army.* The Regular Army, Army of the United States (AUS), Army National Guard of the United States (ARNGUS), and the United States Army Reserve (USAR).

(4) *Regular Army (RA).* The Regular Army is the component of the Army that consists of persons whose continuous service on active duty in both peace and war is contemplated by law and of retired members of the Regular Army.

(5) *Prior Service (PS).* For persons enlisting in the RA, those who have 180 days or more of active duty in any component; or, for persons enlisting in a Reserve Component, those who have 180 days of active duty in any component of the armed forces and who have been awarded an MOS; or former members of an armed forces academy who did not graduate and who served 180 days or more.

(6) *Non-Prior Service (NPS).* Those persons who have never served in any component of the armed forces or who have served less than 180 days of active duty as a member of any component of the armed forces. Reserve Component applicants must not have been awarded an MOS; or have enlisted illegally while underage and been separated for a void enlistment; or be a former member of a service academy who did not graduate and who served fewer than 180 days; or have completed ROTC and served only Active Duty for Training as an officer.

(7) *Delayed Entry Program (DEP).* A program in which Soldiers may enlist and are assigned to a United States Army Reserve (USAR) Control Group until they enlist in the Regular Army. The Commanding General, United States Army Recruiting Command

(USAREC) is authorized by 10 U.S.C. 513 to organize and administer DEP.

§ 571.2 Basic qualifications for enlistment.

(a) Age requirements for non-prior service and prior service personnel are defined in AR 601–210.

(b) Applicants must meet citizenship requirements as defined in AR 601–210.

(c) Non-prior and prior service applicants must meet medical fitness standards prescribed in AR 40–501. Height and weight standards for non-prior service personnel AR 40–501 and in AR 600–9 for prior service personnel.

(d) Education standards, dependency criteria, and trainability requirements are prescribed in AR 601–210.

§ 571.3 Waiver enlistment criteria.

(a) *Waiver criteria*—

(1) All persons who process applicants for enlistment in the Army use the utmost care to procure qualified personnel. Eligibility of personnel for enlistment will be based upon their ability to meet all requirements, including procurement of prescribed waivers.

(2) Applicants applying for moral or medical waivers will document their waiver requests, as prescribed by AR 601–210 or AR 40–501.

(3) The approval authorities for various types of waiver requests are set forth in AR 601–210. Commanders at levels below the approval authority may disapprove waivers for applicants who do not meet prescribed standards and who do not substantiate a meritorious case.

(4) Unless otherwise stated in AR 601–210, waivers are valid for 6 months.

(b) Nonwaiver medical, moral, and administrative disqualifications are defined in AR 601–210.

§ 571.4 Periods of enlistment.

Enlistments are authorized for periods of 2, 3, 4, 5, 6, 7, or 8 years.

§ 571.5 Enlistment options.

Personnel who enlist in the Regular Army for 2 or more years may select certain initial assignments or classifications, provided they meet the criteria set forth in AR 601–210 and valid Army requirements exist for the assignments and skills.

[FR Doc. E7–15122 Filed 8–2–07; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD13–07–025]

RIN 1625–AA08

Special Local Regulations, Seattle Seafair, Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations (SLR) for the Seattle Seafair, Lake Washington, Washington. These special local regulations limit the movement of non-participating vessels in the regulated race area and provide for a viewing area for spectator craft. This rule is needed to provide for the safety of life on navigable waters during Seafair. The rule adds four hours to the effective time period each day of enforcement of the existing SLR to accommodate the addition of a fireworks display in this year's Seafair and to promote safety for spectators and participants through consistency in enforcement periods.

DATES: This rule is effective from 8 p.m. until 11:59 p.m. on August 2–5, 2007 unless sooner cancelled by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–07–025 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Steve Kee, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6002.

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) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of the events on the date and times this rule will be in effect. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event.

On July 2, 2001, the Coast Guard published a final rule (66 FR 34822) modifying the regulations in 33 CFR 100.1301 for the safe execution of the Seattle Seafair Unlimited Hydroplane races on the waters of Lake Washington. This special local regulation (SLR) provides for a regulated area to protect spectators while providing unobstructed vessel traffic lanes to ensure timely arrival of emergency response craft. Movements are regulated for all vessels in the area as described under 33 CFR 100.1301 or unless otherwise regulated by the COTP or his designee. This temporary final rule is required to increase the length of time affected by the regulation.

Background and Purpose

For more than 50 years Seafair on Lake Washington has been a Pacific Northwest tradition, entertaining millions of people over that period. However, this entertaining event involves risks to both spectators and participants. During Seafair, the marine congestion associated with the number of boats, swimmers, and spectators on shore challenges even the most experienced seaman. These conditions necessitate the maintenance of a regulated area to protect spectators while providing unobstructed vessel traffic lanes to ensure timely arrival of emergency response craft.

The Coast Guard is establishing this regulation to protect vessels and persons from the hazards associated with the fallout of burning embers that will be generated by the fireworks display in this year's Seafair and to promote safety for spectators and participants through consistency in enforcement periods. The regulated area is also intended to protect boaters from the hazards associated with excessive vessel congestion associated with Seafair's activities.

Discussion of Rule

This rule will control the movement of all vessels in a regulated area on Lake Washington as indicated in section 2 of this Temporary Final Rule. This rule adds four hours to the effective time period each day of enforcement of the existing SLR to accommodate the addition of a fireworks display for this year's Seafair and to promote safety for spectators and participants through consistency in enforcement periods.

The Coast Guard, through this action, intends to promote the safety of personnel and vessels in the area. The

regulated areas will be enforced by the U.S. Coast Guard. The Captain of the Port may be assisted in the enforcement of the regulations by other federal, state, or local agencies.

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 is unnecessary. This change slightly modifies existing safety regulations and should not effect the economic activities of any Seafair participant or spectator. The regulation is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the fireworks event to occur. This rule is effective from 8 p.m. until 11:59 p.m. on August 2–5, 2007. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard 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.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this portion of Lake Washington during the time this regulation is in effect. The regulations will not have a significant economic impact due to its short duration and small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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 by the Coast Guard.

Collection of Information

This 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 rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This 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

This Temporary Final 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 M16475.1D, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are not 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)(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—MARINE EVENTS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. From 8 p.m. through 11:59 p.m. on August 2–5, 2007, a temporary § 100.T13–020 is added to read as follows:

§ 100.T13–020 Special Local Regulations, Seattle Seafair, Lake Washington, WA.

(a) This section is in effect from 8 p.m. until 11:59 p.m. on August 2–5, 2007 unless sooner cancelled by the Captain of the Port.

(b) The area where the Coast Guard will restrict general navigation by this regulation during the hours it is in effect is: The waters of Lake Washington bounded by the Interstate 90 (Mercer Island/Lacey V. Murrow) Bridge, the western shore of Lake Washington, and the east/west line drawn tangent to Bailey Peninsula and along the shoreline of Mercer Island.

(c) The area described in paragraph (b) of this section has been divided into two zones. The zones are separated by a line perpendicular from the I–90 Bridge to the northwest corner of the East log boom and a line extending from the southeast corner of the East log boom to the southeast corner of the hydroplane race course and then to the northerly tip of Ohlers Island in Andrews Bay. The western zone is designated Zone I, the eastern zone, Zone II. (Refer to NOAA Chart 18447).

(d) The Coast Guard will maintain a patrol consisting of Coast Guard vessels, assisted by Auxiliary Coast Guard vessels, in Zone II. The Coast Guard patrol of this area is under the direction of the Coast Guard Patrol Commander (the ''Patrol Commander''). The Patrol Commander is empowered to control the movement of vessels on the racecourse and in the adjoining waters during the period this regulation is in effect. The Patrol Commander may be assisted by other federal, state and local law enforcement agencies.

(e) Only authorized vessels may be allowed to enter Zone I during the hours this regulation is in effect. Vessels in the vicinity of Zone I shall maneuver and anchor as directed by Coast Guard Officers or Petty Officers.

(f) During the times in which the regulation is in effect, swimming, wading, or otherwise entering the water in Zone I by any person is prohibited.

(g) During the times in which the regulation is in effect, any person swimming or otherwise entering the water in Zone II shall remain within ten (10) feet of a vessel.

(h) During the times this regulation is in effect, rafting to a log boom will be limited to groups of three vessels.

(i) During the times this regulation is in effect, up to six (6) vessels may raft together in Zone II if none of the vessels are secured to a log boom.

(j) During the times this regulation is in effect, only vessels authorized by the Patrol Commander, other law enforcement agencies or event sponsors shall be permitted to tow other watercraft or inflatable devices.

(k) Vessels permitted to proceed through either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (07) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(l) Upon completion of the daily activities, all vessels leaving either Zone I or Zone II shall proceed at speeds of seven (07) miles per hour or less. The maximum speed may be reduced at the discretion of the Patrol Commander.

(m) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the Patrol Commander shall serve as signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard may be assisted by other federal, state and local law enforcement agencies, as well as official Seafair event craft.

Dated: July 23, 2007.

R.R. Houck,

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

[FR Doc. E7–15141 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 3

[EPA–HQ–OEI–2003–0001; FRL–8449–8]

RIN 2025–AA07

Extension of Cross-Media Electronic Reporting Rule Deadline for Authorized Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Final Cross-Media Electronic Reporting Rule (CROMERR) deadline for authorized programs (states, tribes, or local governments) with existing electronic document receiving systems to submit an application for EPA approval to revise or modify their authorized programs. This action will extend the current October 13, 2007, deadline until October 13, 2008.

DATES: This rule is effective on October 2, 2007 without further notice, unless EPA receives relevant adverse comment by September 4, 2007. If EPA receives relevant adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2003–0001, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Mail:* CROMERR Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand Delivery: EPA Docket Room, EPA West, Room 3334, 1301 Constitution Avenue, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2003–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the CROMERR Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the CROMERR Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1697; *huffer.evi@epa.gov*, or David Schwarz, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1704; *chwarz.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What does this Rule do?

This rule provides temporary regulatory relief to states, tribes, and local governments with ''authorized programs'' as defined in 40 Code of Federal Regulations (CFR) § 3.3. Any such authorized program that operates an ''existing electronic document receiving system'' as defined in 40 CFR Section 3.3 will have an additional year to submit an application to revise or modify its authorized program to meet the requirements of 40 CFR part 3. Specifically, this direct final rule amends 40 CFR 3.1000(a)(3) by extending the October 13, 2007, deadline to October 13, 2008.

II. Why is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because the Agency views this as a noncontroversial action and anticipates no adverse comment. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements beyond those imposed by the underlying final rule (70 FR 59848, October 13, 2007). Based on what EPA has learned in our consultations with states, the Agency does not believe that extending the current deadline by one year for authorized programs to submit their applications to EPA for approval of their existing electronic reporting systems will negatively impact compliance with CROMERR and will benefit both authorized programs and EPA.

Additionally, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate proposed rule to consider adoption of the time extension contained in this direct final rule should the Agency receive relevant adverse comments regarding this direct final rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this direct final rule or the proposed rule listed elsewhere in today's **Federal Register** must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives relevant adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. EPA will address all public comments in any subsequent final rule based on the proposed rule.

III. Does This Action Apply to Me?

This action will affect states, tribes, and local governments that have an authorized program as defined in 40 CFR 3.3 and also have an existing electronic document receiving system, as defined in 40 CFR 3.3. For purposes of this rulemaking, the term ''state'' includes the District of Columbia and the United States territories, as specified in the applicable statutes. That is, the term ''state'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Marina Islands, and the Trust Territory of the Pacific Islands, depending on the statute.

Category	Examples of affected entities
Local government	Publicly owned treatment works, owners and operators of treatment works treating domestic sewage, local and regional air boards, local and regional waste management authorities, and municipal and other drinking water authorities.
Tribe and State governments	States, tribes or territories that administer any federal environmental programs delegated, authorized, or approved by EPA under Title 40 of the CFR.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

IV. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

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

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. This direct final rule merely extends the regulatory schedule for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems. There are no costs associated with this rule.

B. Paperwork Reduction Act

This action does not impose any information collection burden. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 3) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2025–0003, EPA ICR number 2002.03. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672. The ICR is also available electronically in *http://www.regulations.gov*.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that meets the definition for small businesses based on SBA size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000 (Under the RFA definition, States and tribal governments are not considered small governmental jurisdictions.); and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the possibility of economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this direct final rule are small governmental jurisdictions. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This direct final rule merely extends the current regulatory schedule for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems. EPA has therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, tribe, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, tribe, and local

governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribes, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, tribe, or local governments or the private sector. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for states, tribes, and local governments, in the aggregate, or the private sector in any one year. Thus, today's action is not subject to the requirements in Sections 202 and 205 of UMRA.

EPA has also determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments, as described in the UMRA, and thus this rule is not subject to the requirements in Section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

EPA has concluded that this final rule does not have tribal implications. It will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This final rule is not subject to Executive Order 13045 because it is not an economically significant action as defined by Executive Order 12866 and it does not establish an environmental standard intended to mitigate health or safety risks. This action merely extends the current regulatory schedule for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements.

H. Executive Order 13211: Energy Effects

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. EPA's compliance with 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113, 12(d) (15 U.S.C. 272 note)) has been addressed in the preamble of the underlying final rule (70 FR 59848, October 13, 2007).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental

justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This direct final rule merely extends the current regulatory schedule for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems.

K. 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). This rule will become effective on October 2, 2007.

List of Subjects in 40 CFR Part 3

Environmental protection, Conflict of interests, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

Dated: July 26, 2007.

Stephen L. Johnson,

Administrator.

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

PART 3—CROSS-MEDIA ELECTRONIC REPORTING

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

Authority: 7 U.S.C. 136 to 136y; 15 U.S.C. 2601 to 2692; 33 U.S.C. 1251 to 1387; 33 U.S.C. 1401 to 1445; 33 U.S.C. 2701 to 2761; 42 U.S.C. 300f to 300j–26; 42 U.S.C. 4852d; 42 U.S.C. 6901–6992k; 42 U.S.C. 7401 to 7671q; 42 U.S.C. 9601 to 9675; 42 U.S.C. 11001 to 11050; 15 U.S.C. 7001; 44 U.S.C. 3504 to 3506.

Subpart D—Electronic Reporting Under EPA-Authorized State, Tribe, and Local Programs

■ 2. Section 3.1000 is amended by revising paragraph (a)(3) to read as follows:

§ 3.1000 How does a state, tribe, or local government revise or modify its authorized program to allow electronic reporting?

(a) * * *

(3) *Programs already receiving electronic documents under an authorized program:* A state, tribe, or local government with an existing electronic document receiving system for an authorized program must submit an application to revise or modify such authorized program in compliance with paragraph (a)(1) of this section no later than October 13, 2008. On a case-by-case basis, this deadline may be extended by the Administrator, upon request of the state, tribe, or local government, where the Administrator determines that the state, tribe, or local government needs additional time to make legislative or regulatory changes in order to meet the requirements of this part.

* * * * *

[FR Doc. E7–15013 Filed 8–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0541; FRL–8449–6]

Approval and Promulgation of Air Quality Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Michigan Department of Environmental Management (MDEQ) on March 31, 2006, to revise the Michigan State Implementation Plan (SIP) to amend R336.1627 and R336.2005, and adopt R336.2004. These changes take place within Part 6, Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions; Delivery Vessels; Vapor Collection Systems; and Part 10, Intermittent Testing and Sampling, respectively.

DATES: This rule is effective on October 2, 2007, unless EPA receives adverse written comments by September 4, 2007. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0541 by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0541. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Jonathan Nichols, Life Scientist, at (312) 353–7942 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jonathan Nichols, Life Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7942, *nichols.jonathan@epa.gov.*

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

I. Background
A. When did the State submit the requested rule revisions to EPA?
B. Did Michigan hold public hearings for each of these rule revisions?
II. What are the revisions that the State requests be incorporated into the SIP?
A. Part 6—Emission Limitations for Existing Sources
B. Part 10—Changes to Intermittent Testing and Sampling
III. What is EPA's evaluation of the rule?
IV. Statutory and Executive Order Reviews

I. Background

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

MDEQ submitted the requested rule revisions on March 31, 2006.

B. Did Michigan hold public hearings for each of these rule revisions?

MDEQ held a public hearing for the rule revisions on October 31, 2005, and did not receive any adverse comments.

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

The State has requested the following revisions: Changes to Part 6, Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions; and changes to Part 10, Intermittent Testing and Sampling. The revisions are described in more detail below.

A. Part 6—Emission Limitations for Existing Sources

MDEQ is requesting the amendment of Part 6, R336.1627, in order to replace the MDEQ Vapor Tightness Test (VTT) method with EPA Method 27. The MDEQ VTT method is not an acceptable substitution for the leak test required by the U.S. Department of Transportation (U.S. DOT). Therefore, tank trucks must undergo VTT using both state and federal test methods. As written, EPA Method 27 is more stringent than the leak test required by MDEQ, satisfying both U.S. DOT and MDEQ standards.

In addition, MDEQ is requesting an amendment to test submittal requirements in order to provide consistency between U.S DOT and MDEQ requirements with regard to the time period within which tank trucks must be tested. The amendment would require delivery vessels to perform the VTT within one year of the date of the previous test, rather than the existing, narrow time period of April 1 to June 30. Under the amendment, the results of the test would be submitted to MDEQ within 30 days of test completion. Upon successful completion of the required testing, the vessel would be deemed provisionally certified providing the department does not invalidate the certification by issuing disapproval within 45 days of receipt of the results.

B. Part 10—Changes to Intermittent Testing and Sampling

MDEQ is requesting the amendment of Part 10, Intermittent Testing and Sampling, to incorporate Method 27 by reference at R336.2004, and to amend R336.2005, the reference test method used to detect gasoline vapor leaks by a combustible gas detector. The amendment to R336.2005 removes the VTT component, but leaves the reference test method to detect gasoline vapor leaks by a combustible gas detector intact. Method 27, which is more stringent than the existing state VTT method, is incorporated in R336.2004.

III. What is EPA's evaluation of the rule?

We are approving revisions to the Michigan SIP in two areas: (1) To amend R336.1627 of Part 6, Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions; Delivery Vessels; Vapor Collection Systems, by replacing the MDEQ VTT method with EPA Method 27, and to adopt the U.S. DOT annual VTT requirement and test submittal requirements; and, (2) to amend Part 10, Intermittent Testing and Sampling, through incorporating Method 27 by reference at R336.2004, and to amend R336.2005, the reference test method used to detect gasoline vapor leaks by a combustible gas detector.

The main revisions to R336.1627 are the replacement of its VTT test with Method 27 and the requirement to test the delivery vessel within one year of the previous test. Both of these revisions are consistent with EPA guidance. In addition, the following factors add to the effectiveness of this rule: (1) the testing stations are certified by the Michigan Department of Transportation and the tests that are performed at these stations are spot checked by the MDEQ; (2) the MDEQ has a history of reviewing all test results, and rejects those that are inadequate, within 30 days; and, (3) the Michigan gasoline terminals do not accept any tank trucks that are not certified to be in compliance with R336.1627, and are prohibited from accepting uncertified trucks due to the emission limitations found in 40 CFR part 60, subpart XX, which cover the same sources through limits on loading racks at bulk liquid gasoline terminals constructed or modified after December 17, 1980, that deliver liquid product into gasoline tank trucks. These regulations require that a gasoline terminal owner or operator not reload gasoline delivery vessels without documentation indicating that a VTT has been performed.

Michigan rule R336.1627 provides that the vessel is deemed to have passed the gasoline vapor leak detection test if Michigan does not notify the owner or operator of the vessel of the vessel's failure to pass the test within 45 days. EPA strongly discourages the use of default approvals. However, we find this rule to be approvable due to the special circumstances described above and also because recertification is required within a year. Nevertheless, should Michigan revise its rules to remove the safeguards described above,

EPA will require the State to revise this section of the SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective October 2, 2007 without further notice unless we receive relevant adverse written comments by September 4, 2007. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective October 2, 2007.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

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

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13132: Federalism

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

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

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

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 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: July 24, 2007.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart X—Michigan

■ 2. In § 52.1170(c) the table is amended as follows:

■ a. Under Part 6 by revising entry ''R336.1627''.

■ b. Under Part 10 by revising entries ''R336.2004'' and ''R336.2005''.

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 6. Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions				
*	*	*	*	*
R336.1627	Delivery Vessels; Vapor Collection Systems	2/22/06	8/3/07, [Insert page number where the document begins].	
*	*	*	*	*
Part 10. Intermittent Testing and Sampling				
*	*	*	*	*
R336.2004	Appendix A; reference test methods; adoption of federal reference test methods.	2/22/06	8/3/07, [Insert page number where the document begins].	
R336.2005	Reference test methods for state-requested tests of delivery vessels.	2/22/06	8/3/07, [Insert page number where the document begins].	
*	*	*	*	*

* * * * *

[FR Doc. E7–15011 Filed 8–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2006–0362–200702; FRL–8449–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky: Redesignation of Boyd County, Kentucky Portion of the Huntington-Ashland 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a request, submitted on September 29, 2006, from the Commonwealth of Kentucky (Kentucky), through the Kentucky Division for Air Quality (KDAQ), to redesignate the Kentucky portion of the bi-state Huntington-Ashland 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Kentucky portion of the bi-state Huntington-Ashland 8-hour ozone nonattainment area (hereafter referred to as ''Boyd County'') is comprised of one county in Kentucky (Boyd County) and two counties in West Virginia (Cabell and Wayne Counties). EPA's approval of Kentucky's redesignation request is based upon the determination that Kentucky has demonstrated that Boyd County has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire (including both the Kentucky and West Virginia counties) bi-state Huntington-Ashland 8-hour ozone nonattainment area has attained the 8-hour ozone standard. Additionally, EPA is approving a revision to the Kentucky State Implementation Plan (SIP) including the 8-hour ozone maintenance plan for Boyd County that contains the new 2018 motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOCs). Through this action, EPA is also finding the 2018 MVEBs adequate for the purposes of transportation conformity. On May 17, 2006, the State of West Virginia submitted a redesignation request and maintenance plan through a separate action. The final rulemaking approving the West Virginia submittal was published in the **Federal Register** on September 15, 2006. MVEBs for Cabell and Wayne Counties in West Virginia were approved through EPA's September 15, 2006, action.

DATES: *Effective Date:* This rule will be effective September 4, 2007.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2006–0362. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA

requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

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

SUPPLEMENTARY INFORMATION:

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I. What is the Background for the Actions?

On September 29, 2006, Kentucky, through the KDAQ, submitted a request to redesignate Boyd County to attainment for the 8-hour ozone standard, and for EPA approval of the Kentucky SIP revision containing a maintenance plan for Boyd County. In an action published on May 11, 2007 (72 FR 26759), EPA proposed to approve the redesignation of Boyd County to attainment. EPA also proposed approval of Kentucky's plan for maintaining the 8-hour NAAQS as a SIP revision, and proposed to approve the 2018 state [1] MVEBs for Boyd County that were contained in the maintenance plan. EPA received no comments on the May 11, 2007, proposal. Today's rule is EPA's final action following the May 11, 2007, proposed rule.

Today, EPA is also providing information on the status of the Agency's transportation conformity adequacy determination for the new state MVEBs for the year 2018 that are contained in the maintenance plan for Boyd County. The maintenance plan establishes the following state MVEBs for Boyd County.

BOYD COUNTY 2018 MVEBS

[Tons per day]

	2018
VOCs	1.18
NO_X	1.30

EPA's adequacy public comment period on these budgets (as contained in Kentucky's submittal) began on June 21, 2006, and closed on July 23, 2006. No comments were received during EPA's adequacy public comment period. Through this **Federal Register** notice, EPA is finding the 2018 state MVEBs, as contained in Kentucky's submittal, adequate. These MVEBs meet the adequacy criteria contained in the Transportation Conformity Rule. The new state MVEBs must be used for future transportation conformity determinations.

Various aspects of EPA's Phase 1 8-hour ozone implementation rule were challenged in court and on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS, remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision affirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth in the proposal action for Boyd County, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of Boyd County to attainment. Even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

With respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8th decision clarified that for those areas with 1-hour MVEBs in their 1-hour maintenance plans (in this instance, Boyd County), anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must continue to comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

II. What Actions are EPA Taking?

EPA is taking final action to approve Kentucky's redesignation request and to change the legal designation of Boyd County from nonattainment to attainment for the 8-hour ozone NAAQS. The entire bi-state Huntington-Ashland 8-hour ozone nonattainment area is comprised of one county in Kentucky (Boyd County) and two West Virginia Counties (Cabell and Wayne Counties). This final action addresses

[1] The term ''state'' with regard to MVEBs refers to the portion of the area, in a multi-state area, for which the MVEBs apply. In this case, the term ''state'' indicates that the MVEBs cover Boyd County, and also indicates to transportation conformity implementers in this area that there are separate MVEBs for the West Virginia portion of this area. EPA's Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards explains more about the possible geographical extent of an MVEB, how these geographical areas are defined, and how transportation conformity is implemented in these different geographical areas. For the purposes of today's final action, the term ''state MVEBs'' refers to the Boyd County MVEBs being approved as part of the Boyd County maintenance plan.

only Boyd County. EPA has already taken action on the redesignation request and maintenance plan for the West Virginia portion of this area in a separate action. EPA is also approving Kentucky's 8-hour ozone maintenance plan for Boyd County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep Boyd County in attainment for the 8-hour ozone NAAQS through 2018. These approval actions are based on EPA's determination that Kentucky has demonstrated that Boyd County has met the criteria for redesignation to attainment specified in the CAA, including a demonstration that the entire bi-state Huntington-Ashland Area has attained the 8-hour ozone standard. EPA's analyses of Kentucky's 8-hour ozone redesignation request and maintenance plan are described in detail in the proposed rule published May 11, 2007 (72 FR 26759).

Consistent with the CAA, the maintenance plan that EPA is approving today also includes 2018 state MVEBs for NO_X and VOCs for Boyd County. In this action, EPA is approving these 2018 MVEBs. For regional emission analysis years that involve years prior to 2018, the applicable budgets, for the purpose of conducting transportation conformity analyses, are the 1-hour ozone maintenance plan state MVEBs. For regional emission analysis years that involve the year 2018 and beyond, the applicable budgets, for the purpose of conducting transportation conformity analyses, are the new 2018 MVEBs. EPA is finding adequate and approving the Boyd County MVEBs for NO_X and VOCs in this action. MVEBs for Cabell and Wayne Counties in West Virginia were found adequate and approved through a separate action.

III. Why Are We Taking These Actions?

EPA has determined that the entire bi-state Huntington-Ashland Area has attained the 8-hour ozone standard and has also determined that Kentucky has demonstrated that all other criteria for the redesignation of Boyd County from nonattainment to attainment of the 8-hour ozone NAAQS have been met. See, section 107(d)(3)(E) of the CAA. EPA is also taking final action to approve the maintenance plan for Boyd County as meeting the requirements of sections 175A and 107(d) of the CAA. Furthermore, EPA is finding adequate and approving the new 2018 state MVEBs contained in Kentucky's maintenance plan because these MVEBs are consistent with maintenance for the entire bi-state Huntington-Ashland Area. In the May 11, 2007, proposal to redesignate Boyd County, EPA described the applicable criteria for redesignation to attainment and its analysis of how those criteria have been met. The rationale for EPA's findings and actions is set forth in the proposed rulemaking and summarized in this rulemaking.

IV. What Are the Effects of These Actions?

Approval of the redesignation request changes the official designation of Boyd County, Kentucky for the 8-hour ozone NAAQS, found at 40 CFR Part 81. The approval also incorporates into the Kentucky SIP a plan for maintaining the 8-hour ozone NAAQS in Boyd County through 2018. The maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS, and establishes state MVEBs for the year 2018 for Boyd County. In a separate action, EPA has already approved 8-hour ozone MVEBs for the West Virginia portions (Cabell and Wayne Counties) of this area.

V. Final Action

After evaluating Kentucky's redesignation request, EPA is taking final action to approve the redesignation and change the legal designation of Boyd County, Kentucky from nonattainment to attainment for the 8-hour ozone NAAQS. Through this action, EPA is also approving into the Kentucky SIP the 8-hour ozone maintenance plan for Boyd County, which includes the new state 2018 MVEBs of 1.18 tpd for VOCs, and 1.30 tpd for NO_X. Within 24 months from the publication date for this final rule, the Kentucky transportation partners will need to demonstrate conformity to these new MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which was signed into law on August 10, 2005. EPA has taken action on the West Virginia SIP through a separate rulemaking, and the transportation partners are currently using the West Virginia 8-hour ozone MVEBs.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and 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 affects the status of a geographical area, does not impose any new requirements on sources or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the Commonwealth to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews

a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 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) of the CAA.)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 25, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

40 CFR part 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920 is amended by adding a new entry at the end of the table for ''Huntington-Ashland 8-hour Ozone Maintenance Plan'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	* *	*	*	*
Huntington-Ashland 8-hour Ozone Maintenance Plan.	Boyd County	09/29/06	08/03/07 [Insert first page of publication].	

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.318, the table entitled ''Kentucky-Ozone (8-Hour Standard)'' is amended by revising the entry for ''Huntington-Ashland, WV–KY:'', ''Boyd County'' to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	*	*	
Huntington-Ashland, WV–KY:				
Boyd County	09/04/07	Attainment.		
* * * *	*	*	*	

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E7–14982 Filed 8–2–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 070712318–7318–01; I.D. 110306A]

RIN 0648–AU81

Sea Turtle Conservation; Observer Requirement for Fisheries

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

ACTION: Final rule.

SUMMARY: Pursuant to its authority under the Endangered Species Act of 1973 (ESA), NMFS issues this final regulation to require fishing vessels subject to the jurisdiction of the United States that are identified through the annual determination process specified in the rule to take observers upon NMFS' request. The purpose of this measure is to learn more about sea turtle interactions with fishing operations, to evaluate existing measures to reduce sea turtle takes, and to determine whether additional measures to address prohibited sea turtle takes may be necessary. NMFS and/or interested cooperating entities will pay the direct costs of the observer. Through this rule, NMFS also extends the number of days from 30 to 180 (with a possible 60–day extension) that the agency may place observers in response to a determination by the Assistant Administrator that the unauthorized take of sea turtles may be likely to jeopardize their continued existence under existing regulations. This extension will help the agency address immediate observer needs in response to an emergency sea turtle-related event.

DATES: Effective September 4, 2007.

ADDRESSES: Requests for copies of the Environmental Assessment and Final Regulatory Impact Review (EA/RIR) prepared for this final rule should be addressed to the Chief, Marine Mammal and Turtle Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Tanya Dobrzynski (ph. 301–713–2322, fax 301–427–2522, email *Tanya.Dobrzynski@noaa.gov* or Therese Conant (ph. 301–713–2322, fax 301–427–2522, email *Therese.Conant@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Purpose

Under the ESA, 16 U.S.C. 1531 *et seq.*, NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened.

All sea turtles that are found in U.S. waters are listed as either endangered or threatened under the ESA. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green sea turtles in Florida and on the Pacific coast of Mexico and breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is one of the main sources of sea turtle injury and mortality nationwide. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Section 11 of the ESA authorizes the issuance of regulations to enforce the prohibitions against take. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to section 7 or 10, respectively, of the ESA. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. In some cases, NMFS has been able to make this determination because the fishery is conducted with a modified gear or modified fishing practice that NMFS has been able to evaluate. However, for some Federal fisheries and most state fisheries, NMFS has not granted an exception primarily because we lack information about fishery-turtle interactions. Therefore, any incidental take of sea turtles in those fisheries is unlawful as it has not been exempted from the ESA prohibition on take.

The most effective way for NMFS to learn more about sea turtle-fishery interactions is to place observers aboard fishing vessels. NMFS issues this regulation to establish procedures through which each year NMFS will identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers. NMFS and/or interested cooperating entities will pay the direct costs for observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be eligible to be observed for five years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing interactions; and to determine whether additional measures are needed to implement ESA take prohibitions and conserve turtles.

Other Procedures for Observer Placement

Prior to this final rule, NMFS established a regulatory procedure to place observers on vessels contingent upon a determination by the NMFS Assistant Administrator that the unauthorized take of sea turtles may be likely to jeopardize their continued existence (50 CFR 223.206(d)(4)). In that regulation, NMFS limited observer coverage requirements within a fishery to 30 days, with the possibility of renewal for additional periods of 30 days each. NMFS has used this procedure to address immediate observer needs, such as when fishery activity and relatively high sea turtle strandings have occurred simultaneously in a particular area. However, these temporary observer requirements are designed to respond to acute problems, and not to implement monitoring programs that yield statistically rigorous information, which is one of the purposes of this rule. Further, because 30 days does not always provide the opportunity to investigate the cause of an event, such as elevated sea turtle strandings, and renewing the measure for additional 30–day periods can be time-consuming and result in lost opportunities to monitor a critical event, through this rule, NMFS is extending the number of days the observer coverage requirements under 50 CFR 223.206(d)(4) may remain

effective from 30 to 180 days, with a possible 60–day extension. The combined 240 days is consistent with the emergency regulatory provision in section 4(b)(7) of the ESA.

As a condition of exempting incidental take from the ESA take prohibition in certain fisheries, NMFS has also implemented observer coverage or monitoring requirements under the authority of the ESA on a fishery-by-fishery basis, such as in the shrimp trawl, summer flounder trawl, Virginia pound net, and other fisheries. These requirements were implemented only after data from strandings, temporary observer coverage, or other sources indicated that prohibited sea turtle takes were occurring in those fisheries.

NMFS has also placed observers on vessels in federally-managed fisheries under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, as amended in 1996 and 2006 (Magnuson-Stevens Act), and the Marine Mammal Protection Act, as amended in 1994 (MMPA), to document fish bycatch and incidental mortality and serious injury of marine mammals, respectively. The Magnuson-Stevens Act authorizes NMFS to require observers on fisheries managed under a Federal fishery management plan, while the MMPA allows NMFS to require observers in both Federal and non-federal commercial fisheries depending on the level of interaction between fisheries and marine mammals.

Secondary to collecting information on fish and marine mammal bycatch through placement of observers on fishing vessels via these statutes, NMFS has also collected data on sea turtle interactions in fisheries. Nonetheless, actions taken under the MMPA and Magnuson-Stevens Act do not provide sea turtle bycatch information on a sufficiently comprehensive basis. The Magnuson-Stevens Act only provides NMFS authority to require observers on vessels in fisheries managed under a Federal fishery management plan (16 U.S.C. 1853(b)(8)). Thus, the authority primarily covers fisheries operating in Federal waters, and not state fisheries where sea turtle interactions also occur. The MMPA allows NMFS to require observers on commercial fisheries that have been listed on the annual List of Fisheries as Category I (where incidental mortality and serious injury of marine mammals is considered ''frequent'') and Category II (where incidental mortality and serious injury of marine mammals is considered ''occasional''), but not Category III (where there is a remote likelihood of or no known incidental mortality and serious injury of marine mammals) (16 U.S.C. 1387), under which the majority of fisheries are listed. Furthermore, the List of Fisheries applies to commercial fisheries, and observers are not placed on recreational vessels, which in some cases use identical gear to commercial fishermen that is known to incidentally take sea turtles. Given that some state, recreational, and Category III fisheries may cause incidental take of sea turtles, neither the Magnuson-Stevens Act nor the MMPA provides broad enough authority to monitor fisheries that may incidentally take sea turtles. Additionally, monitoring programs established under the Magnuson-Stevens Act or MMPA are designed primarily to optimize observation of fish or marine mammal bycatch, respectively, and may only collect sea turtle bycatch information secondarily. This is not optimal since the sampling regime for other species may not adequately cover times and areas where sea turtle interactions are most likely to occur. Thus, to obtain the most representative data on sea turtle takes in various fisheries, NMFS needs to design sampling programs based on sea turtle distribution and abundance and directed toward those gear types and fisheries that are a priority concern for sea turtle recovery.

NMFS has also relied on using voluntary observer coverage to obtain data in several non-federally managed fisheries. For example, from November 1 - 20, 1999, 56 dead sea turtles washed ashore in a small area of Pamlico Sound, North Carolina, in the vicinity of Hatteras and Ocracoke Inlets (64 FR 70196, December 16, 1999). Thirty-five of the sea turtles were Kemp's ridleys, the most endangered species of sea turtle. Many sink gillnet fishing vessels were operating in the vicinity. North Carolina state observers were placed on a limited number of the gillnet boats to monitor sea turtle interactions. Because both state and NMFS' observer placement was voluntary, many of the fishermen elected not to carry observers, which resulted in limited information on sea turtle interactions in areas where the interactions were most likely to occur. Adequate sampling occurred only after North Carolina received an ESA section 10(a)(1)(B) incidental take permit (67 FR 67150, November 4, 2002) and observer coverage was a requirement of the permit. These events in North Carolina highlight that a voluntary observer program limits the extent of coverage and hinders the collection of reliable data.

Sea Turtle/Fisheries Interactions

Sea turtle takes have been documented for numerous gear types/fisheries along the Atlantic, Gulf of Mexico, and Pacific coasts. Both commercial and recreational fisheries in state and federal waters use gear types that may incidentally take sea turtles. Data available on the extent of sea turtle interactions vary by gear type, area, and season. Nonetheless, certain types of gear are more prone to incidentally capturing sea turtles than others, depending on the way the gear is fished and the time and area within which it is fished.

Fisheries that use trawls, gillnets, seines, pound nets, traps, pots, dredges, longlines, and hook and line, for example, are potential sources of sea turtle take. Incidental take has been documented in these gear types where the distributions of sea turtles and fisheries overlap. For example, alternative monitoring platforms used to monitor the VA pound net fishery revealed that sea turtle takes are a concern in this fishery. As a result, NMFS implemented management measures aimed at reducing sea turtle interactions in pound net leaders in the southern portion of the Chesapeake Bay from May 6–July 15 of each year, when sea turtles are known to be present and sea turtle strandings are known to occur (71 FR 36024, June 23, 2006). NMFS conducted an ESA section 7 consultation on the pound net fishery and determined that the fishery with the management measures was not likely to jeopardize sea turtles and the agency was able to exempt the fishery from the ESA prohibition on take. While these measures may be reducing the number of sea turtle takes in pound nets, sea turtle strandings in the area have continued despite the management measures. Other fisheries, such as inshore gillnet and purse seine fisheries in the area, may also be contributing to the problem and need to be further evaluated.

There are similar examples in other areas around the United States where more comprehensive and targeted observer coverage on fishing vessels is needed to better understand and address the problem of prohibited sea turtle takes incidental to fishing activities, such as the shrimp fishery in the state and Federal waters of the southeast United States and the Gulf of Mexico. This rule would enable NMFS to monitor gear types, such as try nets and skimmer trawls, used in this fishery, which are not currently required to use turtle excluder devices (TEDs) but that have been documented to interact with sea turtles (Epperly *et al.* 2002; Scott-Denton *et al.* 2007). Both commercial and recreational pots/traps and gillnets have been documented to interact with

sea turtles in U.S. waters (Dwyer *et al.* 2002; 67 FR 71895, December 3, 2002; NMFS SEFSC Beaufort Laboratory 2007, unpubl. data); therefore, more information is needed on potential sea turtle interactions in these gear types/fisheries to better evaluate them. In addition, long-term, comprehensive coverage is needed to fill information gaps on sea turtle takes in these and other fisheries and gear types.

Thus, through this final rule, NMFS issues ESA regulations to specify that NMFS may place observers on U.S. fishing vessels, either recreational or commercial, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the U.S. Consistent, regular monitoring via placement of observers on fishing vessels is needed to gather data on sea turtle takes and, where necessary, to evaluate existing measures and develop new management measures in certain gear types and/or fisheries to implement the prohibition on take of sea turtles. This action, issued under the authority of the ESA, is a necessary step in the process of implementing the prohibition on take of listed species and to conserve sea turtles listed as threatened or endangered.

Observer Program Design

The design of any observer program implemented under this rule, including how observers would be allocated to individual vessels, would vary among fisheries, fishing sectors, gear types, and geographic regions and would ultimately be determined by the individual NMFS Regional Office, Science Center, and/or observer program. During the program design, NMFS would be guided by the following standards in the distribution and placement of observers among fisheries identified in annual determinations and vessels in those particular fisheries:

(1) The requirements to obtain the best available scientific information;

(2) The requirement that observers be assigned fairly and equitably among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

Consistent with 16 U.S.C. 1881(b), vessels where the facilities for accommodating an observer or carrying out observer functions are so inadequate or unsafe (due to size or quality of equipment, for example) that the health or safety of the observer or the safe operation of the vessel would be jeopardized, would not be required to take observers under this rule. Nonetheless, per 50 CFR 600.746, a vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

Observer programs designed or carried out in accordance with this regulation would be required to be consistent with existing observer-related NOAA policies and regulations, such as those under the Fair Labor and Standards Act (29 U.S.C. 201 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), Observer Health and Safety regulations (50 CFR 600), and other relevant policies.

Annual Determination Process

The Assistant Administrator for Fisheries, NOAA (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, will make an annual proposed determination identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. Any final determination will be made after an opportunity for public comment. The determination will be based on the best available scientific, commercial, or other information regarding sea turtle-fishery interactions; sea turtle distribution; sea turtle strandings; fishing techniques, gears used, target species, seasons and areas fished; or qualitative data from logbooks or fisher reports.

The AA will use the most recent version of the annually published MMPA List of Fisheries (LOF) as the comprehensive list of commercial fisheries for consideration in addition to known information on non-commercial fisheries in a given area. The LOF includes all known state and federal commercial fisheries that occur in U.S. waters. The categorization scheme of fisheries on the LOF would not be relevant to this process. Unlike the LOF process, recreational fisheries likely to interact with sea turtles on the basis of the best available information may also be included in the determination of fisheries to be monitored under this rule. NMFS will consult with appropriate state or federal fisheries officials and other entities to identify which recreational fisheries should be considered in the annual determination.

Notice of the final determination will be made in writing to individuals permitted for each fishery identified for monitoring. NMFS will also notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and other means, as appropriate. Once included in the final determination, a fishery will remain eligible for observer coverage for five years to enable the design of an appropriate sampling program and to ensure collection of sufficient scientific data for analysis. If NMFS determines that more than five years are needed to obtain sufficient scientific data, NMFS will include the fishery in the AA's annual proposed determination again prior to the end of the fifth year. As part of its annual determination, NMFS will include, to the extent practicable, information on the fisheries or gear types to be sampled, geographic and seasonal scope of coverage, or any other relevant information. A 30–day delay in effective date for implementing observer coverage will follow the annual determination, except for those fisheries included in earlier annual determinations within the previous five years or where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30–day delay.

The timing of this process should be coordinated to the extent possible with the annual LOF publication process, as specified in 50 CFR 229.8.

Comments and Responses

NMFS received fourteen substantive comment letters during the comment period on the ESA observer proposed rule. These letters came from commercial fishing industry organizations, conservation organizations, states, and private individuals. In addition, approximately twenty letters of similar content were received from concerned citizens.

Comments in Support of the Rule

Comment 1: Several commenters stated that the flexibility provided in this rule would lead to better understanding of the impact of bycatch on sea turtles, particularly in state waters, where it is currently lacking. Many commenters also agreed with the need to extend the maximum number of monitoring days after declaration of an ''emergency'' event (e.g., a stranding) from 30 to 180, stating that greater sampling levels would provide more accurate estimates of interaction rates.

Response: For the reasons stated in the preamble, NMFS has decided to

proceed with development of a final rule for this action.

Comment 2: One commenter supported the broadest application of this rule, including to all commercial and recreational fishing vessels operating in state and federal waters, as well as U.S. fishing vessels operating outside the territorial seas and exclusive economic zone of the U.S.

Response: Section 9 of the ESA, and its implementing regulations, prohibits the take of endangered or threatened species by any person subject to the jurisdiction of the U.S. Accordingly, this regulation applies to U.S. commercial or recreational fishing vessels, or vessels otherwise subject to the jurisdiction of the U.S., operating in U.S. territorial waters, in the U.S. exclusive economic zone, or on the high seas. NMFS has clarified the preamble and regulatory text to reflect this.

Comments Concerning Try Nets

Comment 3: One commenter stated that increasing observer coverage for try nets should not be a priority because: (a) try nets larger than 12 feet require TEDs, and smaller try nets have a low probability of catching a turtle; (b) the shrimp fishery has declined by over 58 percent in recent years due to increasing fuel costs, shrimp imports, and hurricane effects; and there is a moratorium on federal shrimp permits.

Response: The annual determination process specified in this final rule requires NMFS to identify those fisheries it intends to observe. The selection criteria include the extent of overlap between the fishing operation and sea turtle presence, type of gear used, documented or reported interactions, and available funds. Given limited resources, NMFS will prioritize fisheries to observe, including the shrimp fishery and trynets. Factors such as the probability of an interaction, past coverage, and fishing trends will be considered.

Comments Concerning Recreational Fisheries Monitoring

Comment 4: Some commenters said the rule does not place adequate emphasis on the need to monitor and observe recreational fisheries, stating that NMFS needs to demonstrate an equal commitment to observe recreational and commercial fisheries. One commenter stated that this rule should not be finalized until a specific process to implement and achieve statistically valid observer coverage in the recreational sector has been identified.

Response: There is a need to address sea turtle bycatch in both recreational and commercial fisheries. For this reason, NMFS is providing a mechanism to monitor recreational fisheries in this rule. Nonetheless, given the diffuse nature of recreational fisheries and the lack of licensing systems in place to track participants in many recreational fisheries, NMFS recognizes that it will take time to get systems in place that allow for better tracking and understanding of the extent and impact of recreational fisheries. NMFS will consult with appropriate state and/or Federal fisheries officials and other entities to identify which recreational fisheries should be considered in the annual determination.

Comment 5: One commenter noted that recreational fisheries have grown enormously in the recent past and in many cases use the same gear as is used in the commercial sector and therefore should be considered a source of sea turtle bycatch.

Response: NMFS has provided a mechanism to monitor sea turtle bycatch in the recreational sector via this rulemaking.

Comments Concerning Observer Safety

Comment 6: One commenter pointed out that the Regulatory Impact Review correctly notes the revenue cost of lost bunk space. However, the greatest impact of lost bunk space is the increase in physical labor and/or loss of sleep for the crew. Lost bunk space reduces safety of life at sea. National Standard 10 and other provisions of the Magnuson-Stevens Act require promotion of safety at sea. This should be considered under ESA rules as well.

Response: Safety at sea is a critical consideration in placing observers on a vessel. If fewer crew are onboard, the vessel master must accommodate any change in crew capability to ensure safety. NMFS will work closely with the fishing industry, fishery management councils, and states to identify any safety issues that may arise as a result of observer placement under this rule.

Comment 7: One commenter stated that observers themselves should determine the safety of a vessel before making a trip decision.

Response: Observers conduct pre-trip safety checks and decide whether or not to board a vessel, in accordance with 50 CFR 600.746.

Comment 8: One commenter disagreed with the statement, ''Vessels too small to accommodate an observer will not be required to take an observer under this rule.'' The commenter felt there is no minimum vessel size to take an observer. Observers should be trained to work on small vessels. Small vessels can have a great impact on sea turtles and should not be excluded.

Response: Small vessels can have an impact on sea turtles, and steps should be taken to quantify and address those impacts. Safety for both the observer and crew are serious considerations in observer placement and observers monitoring small vessels receive special training so they are prepared to address those challenges. While the deployment of observers is still seen as one of the most effective approaches, there are other options that may be considered. Recent advances in technology, such as digital video and imaging, have made remote electronic monitoring a viable alternative in some cases. Additionally, alternate platforms have been used successfully to monitor Virginia pound nets and other fisheries.

Comment 9: One commenter supports the requirement that vessel owners should comply with observer health and safety requirements. Alternative monitoring systems (e.g., electronic, remote platforms) should be established for fisheries with exceedingly small vessels to be monitored so that a representative sample of vessels can be maintained.

Response: See response to comment 8.

Comment 10: One commenter noted that the reference to observer safety requirements is incorrect and should be changed to 50 CFR 600.725 and 50 CFR 600.746.

Response: NMFS has changed the reference accordingly.

Comments Concerning the Duration of Selection of a Fishery for Monitoring under this Rule

Comment 11: One commenter requested a mechanism to review the designation of a fishery for monitoring consideration more frequently than after the five-year period of inclusion on the list expires. The commenter contended that observer coverage would not necessarily be warranted after a year or season of coverage showed no turtle interactions.

Response: Due to resource constraints, NMFS will focus the annual determinations on priority fisheries. Nonetheless, NMFS needs the flexibility of a five-year period to monitor a fishery for sea turtle interactions to account for interannual variability in sea turtle bycatch rates and events, as well as in fishing effort. One year of observer coverage that shows no sea turtle interactions would not necessarily rule out that prohibited sea turtle takes occur in the observed fishery, if that year were anomalous for some reason. Furthermore, low take levels in one year or even over several years do not

necessarily mean that monitoring of a fishery should discontinue, because changes in fishing or sea turtle distribution or fishing effort may necessitate reconsidering a fishery for monitoring. There will be a comment period associated with each year=s proposed determination of fisheries to monitor, which will provide an opportunity for public input on fisheries proposed for monitoring under this regulation.

Comment 12: One commenter requested that NMFS institute a transparent process based on specific criteria for removing a fishery from the monitoring list after five years. The commenter noted this should be based on whether the fishery is believed to interact with sea turtles rather than an arbitrary time period. A fishery should remain on the list unless NMFS proves it does not interact with sea turtles. Then NMFS should propose de-listing the fishery and open that decision for public comment.

Response: NMFS believes five years will most often enable it to compile necessary information on sea turtle takes in a fishery. If after five years, NMFS feels it needs additional time to monitor the fishery, the rule provides a mechanism to reinstate the five-year period for that particular fishery. The rule states, ''If NMFS wishes to continue observations beyond the fifth year, NMFS must include the fishery in the proposed annual determination and seek comment, prior to the expiration of the fifth year.'' NMFS will notify the public whether a fishery will be removed from the annual determination, after the fifth year in that year's proposed annual determination, which will be open for public comment.

Comments Concerning Impacts on Fishermen

Comment 13: One commenter recommended the proposed rule include a section explaining fishermen's rights and options related to accommodating observers. The commenter requested that NMFS address the following questions: (a) Will fishers be apprised of how many times they will be required to have observers?; (b) What options exist for vessel owners to select date/times/locations?; What options are there for refusal?; (d) What is the penalty for non-compliance?; and (e) What can/cannot the observer do relative to vessel operations?

Response: An observer is not required to board, or stay aboard, a vessel that is unsafe or inadequate. Written notification of the final annual determination will be mailed to the owners or operators of fishing vessels. In the notification, NMFS will make every effort to provide information on the fishing sector, and temporal and geographic scope of coverage. NMFS will select optimal days, times, and locations to observe the vessel, based on appropriate sampling design and collection of scientific data regarding takes of sea turtles, and will notify fishermen accordingly. Failure to comply with the requirements under this rule may result in civil and/or criminal penalties as prescribed by the ESA. Observers may only observe and record data, and may not be required to perform duties normally performed by crew members.

Comment 14: One commenter said NMFS should consider the social and economic impacts of sea turtle observer coverage under this rule in combination with all other observer coverage requirements (e.g., for fish population assessment, other protected species monitoring) with which fishermen must comply and should establish a maximum cap on total observer trips for individual or groups of vessels at a given homeport.

Response: The standards for placing observers as specified in the final rule will ensure that cumulative social and economic burdens will be minimized. NMFS will ensure that assignment of observers is fair and equitable, and that no individual person or vessel, or group of persons or vessels, is subject to inappropriate, excessive observer coverage. NMFS will also minimize costs and avoid duplication, where practicable.

Comments Concerning Coordination with States

Comment 15: One state requested that it be directly notified of the annual proposed determination of fisheries eligible for sea turtle bycatch monitoring. Another state offered its help in identifying fisheries that should be targeted for monitoring based on the level of sea turtle interactions.

Response: Effective implementation of this rule will require regular communication and coordination with coastal states. As stated in the regulatory text at § 222.402(b), ''The Assistant Administrator shall publish the proposed determination in the **Federal Register** notice and seek comment from the public. Additionally, NMFS will notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and any other means as appropriate.'' NMFS appreciates and encourages assistance from states in identifying fisheries that should be monitored for turtle interactions.

Comments Concerning Status of Sea Turtles

Comment 16: One commenter noted that recent analyses by the state of Florida of 17 years of loggerhead turtle (*Caretta caretta*) nesting data in Florida indicate a 22.3-percent decline in nests during this period. Threats to reproductive adult populations or earlier life stages on feeding grounds (e.g., fishing interactions), as opposed to threats on land, are likely the cause of decline. The commenter contends the doubling of loggerhead strandings in Florida over the past decade supports this claim.

Response: NMFS is concerned about the recent data on loggerhead nesting trends from Florida. The Turtle Expert Working Group, a group of scientists and managers focused on turtle population assessment issues, is currently reviewing the status of loggerhead turtles, including the Florida nesting information, to try to determine the status of the species and sources of the decline. This final rule will allow for more comprehensive monitoring of sea turtle interactions in state, federal, and recreational fisheries and will help identify previously unknown sources of turtle interactions with fishing gear.

Comment 17: One commenter expressed that NMFS is putting the cart before the horse and should first determine and provide statistically valid, accurate scientific data on the actual status and population trends of turtles along the east coast before addressing turtle bycatch. The commenter claimed NMFS needs population information to determine what constitutes a significant take rate for a particular population of sea turtle. The commenter inquired how NMFS will conduct jeopardy determinations and ESA section 7 consultations without population status information.

Response: Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of an endangered species. Additionally, pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Thus, take of any level is prohibited unless it is specifically exempted from the ESA take prohibition. NMFS also has an obligation under Sec. 4(f)(1) of the ESA to develop and implement recovery plans to promote the conservation and recovery of endangered and threatened species. In collaboration with NMFS

scientists and other scientists knowledgeable in sea turtle biology and population structure, NMFS is conducting sea turtle population assessments. For instance, NMFS completed assessments on the Kemp's ridley and loggerhead in 1998 and 2000 (Turtle Expert Working Group, ''An Assessment of the Kemp's Ridley and Loggerhead Sea Turtle Populations in the Western North Atlantic,'' NOAA Technical Memorandum NMFS-SEFSC–409, 96 pp (1998); Turtle Expert Working Group, ''Assessment Update for the Kemp's Ridley and Loggerhead Sea Turtle Populations in the Western North Atlantic,'' NOAA Technical Memorandum NMFS-SEFSC–444, 115 pp (2000)), and the leatherback in 2007 (Turtle Expert Working Group, ''An Assessment of the Leatherback Population in the Atlantic Ocean,'' NOAA Technical Memorandum NMFS-SEFSC–555, 116 pp. (2007)). NMFS is currently reassessing the loggerhead population, given the recent data from Florida. NMFS uses these data and other sources of best available scientific data in ESA section 7 consultations and as the basis for other management decisions.

Comments Concerning Recommended Information Collection

Comment 18: Commenters recommended that NMFS observers collect as much data as possible on the nature of the sea turtle take, including information on the location, number, time of day, catch per unit effort, and water temperature associated with the take; and the size, genetic identity, general health (e.g., appearance of fibropapillomatosis), and behavior of the sea turtles taken. Collecting information on these parameters will help NMFS limit regulations to the appropriate parameters and not unnecessarily burden fishermen.

Response: It is important to collect all the above information, and NMFS will design observer programs to collect as much relevant information on sea turtles as possible within legal limits in order to best address prohibited sea turtle takes.

Comments Concerning Observer Coverage

Comment 19: One commenter thought it was good to extend the emergency monitoring authority currently in 50 CFR 223.206(d)(4) from 30 to 180 days, with a possible 60–day extension to 240 days, but thought the proposed regulatory language would limit the total amount of time an observer may be deployed, which current regulations do not. The commenter recommends retaining the language in the current regulation so that it does not limit total coverage under this provision to a maximum of 240 days.

Response: The 240–day maximum is consistent with ESA section 4(b)(7) and other emergency regulations that NMFS has promulgated under the ESA. Furthermore, NMFS believes that public notice and comment is appropriate if observer placement requirements are proposed for continuance after the 240–day maximum.

Comment 20: One commenter recommended that observer programs take seasons and water temperatures into account when allocating resources and observers, given that sea turtle distribution can vary seasonally, particularly at higher latitudes.

Response: Sampling designs must reflect the biology and distribution of the species to optimize monitoring of sea turtle bycatch events and increase the precision of the estimates of sea turtle interactions. NMFS' estimates of sea turtle bycatch will be enhanced by this final rule, as it eliminates the reliance on obtaining sea turtle-fishing gear interaction data through observer programs designed to monitor marine mammal or fish bycatch.

Comment 21: One commenter stated that the South Carolina shad gillnet fishery should not be included in the annual determination of fisheries for monitoring because it operates in winter when sea turtles are not present.

Response: The annual determination process specified in this final rule requires NMFS to identify those fisheries it intends to observe given concerns regarding interactions with sea turtles. The selection criteria include the extent of overlap between the fishing operation and sea turtle distribution, type of gear used, documented or reported interactions, incidence of sea turtle strandings in an area where a particular fishery operates, and available funds. Thus, where and when a fishery operates will be a factor in selection for monitoring. While sea turtles, depending on the species, are generally south or further offshore of South Carolina in the winter months, annual variability exists and sea turtles have been documented in South Carolina waters during the winter months. NMFS will work with South Carolina to determine if there is any overlap between the shad gillnet fishery and sea turtle distribution and whether monitoring of this fishery is warranted under this rule.

Comment 22: One commenter noted that sea turtle interactions in try nets and pots/traps are incredibly rare and that observer coverage would have to be extremely high to yield any information. In some fisheries, the occurrence of bycatch is so rare that placing observers would be meaningless. Therefore, NMFS should select fisheries that have a ''reasonable chance'' of observing an interaction.

Response: As stated in response to Comment 21, the annual determination process specified in this final rule requires NMFS to identify those fisheries it intends to observe given concerns regarding interactions with sea turtles. The selection criteria include the extent of overlap between the fishing operation and sea turtle distribution, type of gear used, documented or reported interactions, incidence of sea turtle strandings in an area where a particular fishery operates, and available funds. Once a fishery is selected, coverage levels are determined based on several factors, including spatial and temporal variability in the fisheries and the distribution of the species being observed. Where warranted, target coverage levels for rare events are much higher than for common events. In some currently observed fisheries (e.g., Hawaii shallow set longline fishery for swordfish) where interactions are rare, the coverage level is 100 percent to allow for accurate information to be collected. For new observer programs, a pilot study is often initiated to provide information on variability of bycatch species within the fishery. The information collected during this pilot study is then used to more accurately determine the target observer coverage necessary to provide accurate bycatch estimates (typically measured as a coefficient of variation around the bycatch estimate). If appropriate, monitoring of catch or bycatch through electronic means or alternate platforms may be evaluated during the pilot study.

Comment 23: NMFS should make every effort to obtain adequate observer coverage for all fisheries on the list, including requesting the appropriate amount of funding in the budget process.

Response: NMFS is committed to achieving adequate observer coverage, and that means making every effort to request, identify, and allocate funds. Part of the decision for placing a fishery on the list is the extent of anticipated funds. However, there are many competing needs for limited funds, and priorities could change over the time a fishery is on the list.

Comments Concerning the Annual Determination Process

Comment 24: One commenter stated that the rule must specify that the

annual review by the Assistant Administrator shall include consideration of applicable past observer coverage before final categorization of a given fishery. Such a pre-listing review, the commenter contends, would exclude many New Jersey gillnet fisheries from listing.

Response: Past monitoring of a particular fishery, and the resulting data and its present applicability, will be taken into consideration in the development of an annual determination of fisheries to be monitored under this rule, as appropriate. However, prior monitoring of a fishery does not necessarily mean it will be excluded from the annual determination if, for example, NMFS needs to obtain additional sea turtle interaction information to improve data accuracy and precision, if fishing practices or effort have changed, or if sea turtle distribution has changed based on environmental conditions.

Comment 25: Some commenters recommended that the annual determination of fisheries to be monitored not be limited by resources as indicated in one of NMFS' criteria for inclusion on the list: ''The extent to which NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.'' Instead, the determination should be as inclusive as possible, for instance, by including all fisheries with unknown levels of sea turtle interaction, and should be determined by sea turtle conservation needs and priorities rather than available funding.

Response: This process will be driven by the need to identify those fisheries in which sea turtle takes occur, so that existing management measures to reduce sea turtle takes may be evaluated and a determination made as to whether any additional measures may be necessary to implement the prohibition on take of sea turtles. Sea turtle conservation and recovery priorities will also be considered. However, NMFS included this criterion to help prioritize fisheries for monitoring. Additionally, this criterion will assist in notifying the public of NMFS' intent to monitor a given fishery.

Comment 26: One commenter stated that the rule should include a public comment process between proposed and final annual determinations of fisheries to be monitored.

Response: The final rule at§ 222.402(b) states: ''The Assistant Administrator shall publish the proposed determination and any final determination in the **Federal Register**. Public comment will be sought at the time of publication of the proposed determination.''

Comment 27: One commenter notes that listing a fishery under the annual determination simply based on similarity to other listed fisheries is inappropriate. This process should occur on a fishery by fishery basis and be examined for temporal and spatial overlap with sea turtles, regional distinctions in fishing practices, and past observer coverage.

Response: In many cases, similarities of fishing gear to gear known to take sea turtles can make it a potential threat to sea turtles if the fishery overlaps with turtles in time and space. Nonetheless, NMFS will take fishing gear deployment or other characteristics (e.g., average tow time of gear) into account, as appropriate, when proposing fisheries in the annual determination. NMFS will also attempt to design observer programs to optimize sea turtle bycatch monitoring, for instance, by deploying observers during seasons and in locations when sea turtle bycatch is believed to be most problematic. This is an important cost-effective measure.

Comment 28: One commenter asked what terms and conditions will be specified in the written annual determination of fisheries to be monitored under this rule.

Response: As stated in § 222.402(b) of the proposed and final rules, ''The proposed and final determinations will include, to the extent practicable, information on fishing sector, targeted gear type, target fishery, temporal and geographic scope of coverage, or other information, as appropriate.''

Comment 29: One commenter recommended that NMFS take advantage of other associated and independent assessments of sea turtle bycatch being undertaken by the Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic and Gulf of Mexico Fisheries (Strategy) and Project GLOBAL at Duke University.

Response: NMFS acknowledges the comment.

Comments Concerning the Use of Best Available Science

Comment 30: One commenter pointed out that the proposed rule does not specify how it will develop sampling programs that yield best available science. It should be clarified that best available science refers to information specifically about sea turtle conservation, including but not limited to, the catch rates of sea turtles in specific gear types, regions, and seasons. Resources should be allocated to yield statistically valid results. The best available science should be explicitly outlined in a published sampling design for each observed fishery that includes methodologies for maximizing precision and accuracy while minimizing bias.

Response: Observer program manuals providing details on data collection protocols are provided on each of the regional observer websites as well as on the National Observer Program (NOP) Web site (*http://www.st.nmfs.gov/st4/nop/Observer__training__resources.html*). The program manuals do not specifically provide information on sampling design, however, the sampling designs for all regional observer programs are published in many different forums, including peer reviewed journals and NMFS stock assessment reports. Sampling designs for all NMFS observer programs are developed to provide statistically valid information and to produce results that will contribute to the body of best available science. The sampling design will vary depending on many factors, including the fishery to be observed, the spatial and temporal variability in the fishery and species observed, and the overall goals of the observer program. Once a fishery is selected for observer coverage, a sampling design will be developed to yield statistically valid results. The issue of minimizing bias was addressed by the National Observer Program through a vessel selection bias workshop held in May 2006. Workshop recommendations to reduce bias included assessing the accuracy of estimated metrics used to compare observed vessels with the general fleet; selecting vessels and trips with equal probability within the sector for which bycatch are to be estimated; and identifying fishing regulations and other factors that may encourage vessel operators to alter fishing behavior when observers are present. These and other recommendations will be implemented by all regional observer programs to evaluate and minimize vessel selection and observer bias. The vessel selection bias workshop report is available online at *http://www.st.nmfs.noaa.gov/st4/nop/documents/Vessel__Selection__Bias__Report__final.pdf.*

Comments Concerning Regulatory Language

Comment 31: One commenter thought that Science Center Directors should also have authority to require fishing vessels to carry an observer, since many NMFS observer programs are operated out of Science Centers.

Response: As stated in the preamble to the proposed rule at 71 FR 76268 (December 20, 2006), and clarified in this final rule, on an annual basis, the

Assistant Administrator, in consultation with Regional Administrators and Science Center Directors, will determine which fisheries NMFS intends to monitor. Thus, Regional Offices and Science Centers, both of which administer observer programs depending on the NMFS region, will be integral to the process of identifying fisheries for monitoring as well as implementing observer coverage once those fisheries have been identified.

Comment 32: One commenter recommended that NMFS delete the statement in the proposed regulatory text, ''NMFS will pay direct costs for the observer,'' stating that it could preclude the establishment of non-NMFS-funded programs through this regulation.

Response: Partnerships with interested cooperating entities external to NMFS could enhance the potential for obtaining sea turtle bycatch information under this regulation. NMFS has changed the regulatory and preamble text to reflect this.

General Comments and Questions on the Proposed Rule

Comment 33: One commenter asked whether the agency plans to use observer information to implement broad-based measures across similar gear types or specially designed measures for specific fisheries known to interact with sea turtles.

Response: Any management measures to implement the prohibitions of take will be based on the data collected from each fishery and gear type and the recommendations of NMFS and the states in which those fisheries interactions occur. Affected states may elect to develop and apply for an ESA section 10(a)(1)(B) incidental take permit to manage their own fisheries that are known to interact with sea turtles. Alternately, NMFS has implemented ESA regulations in state waters over large geographic areas such as in the shrimp fishery. Any future measures will be fully vetted through the public rulemaking process.

Comment 34: One commenter noted that the proposed rule mentions bycatch as a leading threat to sea turtle populations worldwide but questioned what the other threats to sea turtle populations were and what type of observer programs are applied to those threats. The commenter wondered whether there were equal standards for all industries that threaten sea turtles.

Response: Information on both fishery and non-fishery threats to sea turtles is available in the sea turtle recovery plans at *http://www.nmfs.noaa.gov/pr/species/esa/turtles.htm*. Generally speaking, threats include coastal construction, poaching, power plant entrainment, and many other activities. Federal agencies whose activities affect sea turtles must consult under ESA section 7. Private and state entities whose activities affect sea turtles consult with NMFS and/or the U.S. Fish and Wildlife Service pursuant to ESA section 7 as a result of applying for a section 10(a)(1)(B) incidental take permit. As a result of those consultations, many agencies, such as the Army Corps of Engineers in their harbor maintenance program, must monitor the effects of their actions. Measures to minimize and mitigate the effects of human activities on sea turtle populations depend on the extent, frequency, and severity of the effect. Given the high level of variability in these factors, standard measures cannot be applied across industries.

Comment 35: One commenter stated that NMFS should not limit its efforts to data collection but should cap and control sea turtle take by setting meaningful bycatch limits that are enforced in a timely manner.

Response: Data collection is integral to implementing the prohibitions of take under the ESA, but is merely one step in the process. This action will also allow NMFS to better address sea turtle conservation and recovery by helping NMFS identify, quantify, and ultimately develop measures, where necessary, to reduce incidental sea turtle take in fishing gear. Voluntary and mandatory self-reporting have limited utility and the current observer requirements do not allow NMFS to sufficiently address sea turtle bycatch, as the preamble describes. To address sea turtle bycatch in fishing gear on a more comprehensive level, NMFS implemented the Sea Turtle Strategy referenced in comment 29 above. The Strategy is seeking to address prohibited sea turtle bycatch on a per-gear basis rather than a target fishery basis. Monitoring undertaken through this final rule will help provide a baseline assessment of fisheries that may be a concern, which, in combination with sea turtle population studies and other information, will help prioritize and focus measures for sea turtle conservation.

Comment 36: One commenter noted that sea turtles in shallow water zones (e.g., along the Atlantic shelf) are highly vulnerable to fisheries, especially those using trawls and dredges.

Response: This final rule will allow for more comprehensive monitoring of sea turtle interactions along the Atlantic shelf and other areas where sea turtles are found.

Comment 37: One commenter suggested NMFS continue to use alternative platforms to monitor fisheries when they are difficult to cover with observers.

Response: See response to comment 8 above.

Comment 38: One commenter questioned who qualifies and provides observers and how observers are authorized before being placed on vessels.

Response: The majority of regional observer programs operate under government contract with private observer service providers. Several programs, including the North Pacific Groundfish Observer Program, West Coast Off-shore hake observer program, and the Northeast sea scallop observer program, obtain observers through NMFS-permitted observer service providers. These providers operate through direct contracts with the fishing vessel and provide qualified observers to NMFS. The observer service providers interview, hire, and deploy the observers on fishing vessels as required either through the government contract or through NMFS regulations for the industry funded programs. NMFS has developed national observer eligibility standards to ensure that all NMFS observers have consistent minimum qualifications, including standards for education and experience, training, conflict of interest, physical condition, communication skills, and citizenship or ability to work legally in the U.S. They will be implemented by all regional observer programs. All regional observer programs provide formal observer training and all observers must pass an exam prior to deployment.

Comments on the Draft Environmental Assessment

Comment 39: One commenter supported Alternative 3 (''Require Observer Programs in All Incidental Take Permits (Section 10(a)(1)(b)) Related to Fisheries'') of the Draft Environmental Assessment accompanying the proposed rule. The commenter said this alternative would enable the most accurate bycatch monitoring and reporting, improve understanding of recreational and commercial bycatch, and be a critical step toward developing a national comprehensive bycatch program.

Response: NMFS rejected this Alternative because a comprehensive, coast-wide monitoring program is needed as an initial baseline assessment to further address sea turtle bycatch. Under this Alternative, individual states would need to assess and make determinations on whether to apply for an incidental take permit under the

ESA. The onset of observer programs may vary greatly, and geographic gaps in coverage may result. Each state's fisheries monitoring program may consist of different protocols for sampling and data collection, which may hinder the ability to compare and analyze data. NMFS believes this final rule will provide a more systematic and comprehensive framework for collecting bycatch data in fisheries of concern than would be achieved under Alternative 3. Nonetheless, this final rule does not preclude the authorities and responsibilities of ESA section 10(a)(1)(b). NMFS will work closely with states in implementing this final rule and on long-term measures to address prohibited takes of sea turtles.

Summary of Changes from the Proposed Rule

This section details and explains notable changes made to the final rule from the proposed rule.

NMFS has changed language in the preamble and regulatory text to clarify that NMFS and/or interested cooperating entities will pay direct costs for the observer. NMFS made this change in response to a comment, described above, that the rule should not preclude interested cooperating entities from supporting observer coverage for certain fisheries, as appropriate. Such partnerships exist in observer programs around the country and may help enhance coverage levels where needed.

NMFS changed language in the regulatory text at § 222.401 to clarify that the NMFS Assistant Administrator will work with both Science Center Directors and Regional Administrators to identify fisheries that should be observed for sea turtle interactions under this regulation. This is appropriate since observer programs are administered at both the Science Center and Regional office level, depending on the specific region.

NMFS clarified language in the preamble and regulatory text describing the appropriate application of the rule to U.S. fishing vessels operating inside waters of the U.S. (territorial waters and waters within the U.S. EEZ) as well as on the high seas. The rule clarifies that NMFS may place observers on either recreational or commercial U.S. fishing vessels operating within U.S. waters or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the United States.

NMFS corrects an error in § 222.402(b) that states: ''In addition, a written notification of the proposed determination will be sent to the addresses specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or upon written notification otherwise served on the owners or operators of a vessel'' (emphasis added). NMFS intended this step to occur at the final, not proposed, determination stage, where such notification would be more appropriate and cost-effective.

NMFS clarifies in the final rule the exceptions to the 30-day delay in the effective date for implementing observer coverage following a final annual determination. The Classification section of the proposed rule stated, ''A 30-day delay in effective date for implementing observer coverage will follow the annual notification, except for those fisheries that were listed in the preceding annual notification or where the AA has determined there is good cause [pursuant to the Administrative Procedure Act] to make the rule effective without a 30-day delay.'' NMFS, however, did not include the ''good cause'' portion of the exception in the regulatory text of the proposed rule due to an oversight. Thus, NMFS adds this exception to the 30-day delay in effective date to the final rule.

NMFS corrects the citation to the observer health and safety requirements in § 222.401 of the final rule.

References

Dwyer, K.L., C.E. Ryder, and R. Prescott. 2002. Anthropogenic mortality of leatherback sea turtles in Massachusetts waters. 2002. In: Proceedings of the Twenty-Second Annual Symposium on Sea Turtle Conservation and Biology. NOAA Tech Memo. NMFS-SEFSC-503, p.260.

Epperly, S., Avens,L., Garrison, L., Henwood, T., Hoggard, W., Mitchell, J., Nance, J., Poffenberger, J., Sasso, C., Scott-Denton, E., and Yeung, C. 2002. Analysis of sea turtle.

Bycatch in the commercial shrimp fisheries of Southeast U.S. waters and the Gulf of Mexico. NOAA Technical Memorandum NMFS-SEFSC-490, 88p.

National Marine Fisheries Service, Southeast Fisheries Science Center, Beaufort Laboratory. 2007. Sea Turtle Sightings Database, unpublished.

Scott-Denton, Elizabeth; Cryer, Pat; Gocke, Judith; Harrelson, Mike; Nance, James; Smith, Rebecca; and Williams, Jo Anne. CCB-0702. 2007. Incidental capture of sea turtles in the U.S. southeastern shrimp trawl fishery.

Classification

An informal Section 7 consultation was prepared for the proposed rule. It found that this action is not likely to adversely affect species listed as threatened or endangered or their associated critical habitat under the ESA.

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA prepared an environmental assessment for this rule, which resulted in a Finding of No Significant Impact. A copy of the EA is available (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

For the purpose of this certification, all fishermen affected by this rule will be considered individual small entities. Given the nature of sampling programs and limited NMFS resources, this rule will likely affect fewer than one hundred fishermen at any given time.

Individual small entities will not be required to incur direct costs for complying with this observer requirement as NMFS and/or cooperating entities will pay the direct costs associated with observer coverage. Direct costs include observer salary and insurance costs. Potential indirect costs to individual small entities required to take observers under this rule may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For all these potential indirect costs, it is important to note that, due to limited resources and sampling protocols, effective monitoring will rotate observers among a limited number of vessels in a fishery at any given time. Thus, the potential indirect costs to individual small entities further described below are expected to be minimal since observer coverage would only be required for a small percentage of an individual's total annual fishing time.

Lost space on deck for catch is a potential indirect cost to small entities. The indirect costs would potentially be less room to store catch or to house another active fishermen. However, in accordance with Observer Health and Safety standards, vessels too small to safely accommodate an observer will not be required to take an observer under this rule. Thus, the individuals most likely to be affected by this indirect cost, will not likely be required to accommodate an observer.

Lost bunk space is a potential cost in that a vessel may need to limit the number of working fishermen onboard to accommodate an observer for

overnight trips. While this could result in lost fishing effort, and therefore lost catch, this would only be a potential cost to that subset of fishing vessels for which overnight fishing trips are a regular occurrence. Furthermore, given that larger vessels are usually used for fishing involving multi-day trips, the circumstances in which an observer would significantly displace fishing effort due to lost bunk space are not expected to occur with frequency. Thus, for this and the reasons stated above, the potential indirect cost of lost bunk space to individual small entities resulting from this rule is expected to be minimal.

Lost fishing time due to time needed to process sea turtle bycatch data is another potential indirect cost to fishermen of this observer requirement. However, while individually significant, sea turtle bycatch events are generally rare occurrences. Thus, the need to process such data is not expected to occur on a frequent basis, rendering this an insignificant impact on individual fishermen. This rule includes an annual notification process whereby the Assistant Administrator for Fisheries (AA) would make an annual determination identifying which fisheries require observer coverage for the purpose of monitoring potential sea turtle takes. The determination will be based on the best available commercial, biological, and other data. NMFS will publish a proposed notice in the **Federal Register** for public comment. A 30–day delay in effective date for implementing observer coverage will follow the **Federal Register** publication of any final annual notification, except for those fisheries that were listed in the preceding annual notification or where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30–day delay. Annual notification will include, but not be limited to, information on the fisheries to be sampled, geographic and seasonal scope, and level of coverage.

For the reasons stated herein, the rule to establish mandatory observer coverage is not likely to impose a significant economic impact on a substantial number of small entities.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule contains policies with federalism implications as that term is defined in Executive Order 13132. The Assistant Administrator for NMFS notified state environmental management directors of this rule via a formal letter and detailed fact sheet describing the rule. NMFS will continue to solicit input from the appropriate officials of affected state, local, and/or tribal governments to solicit their input on the development of relevant observer programs under this rule.

List of Subjects

50 CFR Part 222

Administrative Practice and Procedure, Endangered and threatened species, Exports, Imports, Marine mammals.

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: July 30, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 222 and 223 are amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

■ 1. The authority citation for part 222 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*

■ 2. New subpart D to part 222 is added to read as follows:

Subpart D—Observer Requirement

Sec.
222.401 Observer requirement.
222.402 Annual determination of fisheries to be observed; notice and comment.
222.403 Duration of selection; effective date.
222.404 Observer program sampling.

Subpart D—Observer Requirement

§ 222.401 Observer requirement.

Any United States fishing vessel, either commercial or recreational, which operates within the territorial seas or exclusive economic zone of the United States or on the high seas, or any fishing vessel that is otherwise subject to the jurisdiction of the United States, operating in a fishery that is identified through the annual determination process specified in § 222.402 must carry aboard a NMFS-approved observer upon request by the NMFS Assistant Administrator, in consultation with NMFS Regional Administrators and Science Center Directors, as appropriate. NMFS and/or interested cooperating entities will pay direct costs for the observer. Owners and operators must comply with observer safety requirements specified at 50 CFR 600.725 and 50 CFR 600.746 and the terms and conditions specified in the written notification.

§ 222.402 Annual determination of fisheries to be observed; notice and comment.

(a) The Assistant Administrator, in consultation with Regional Administrators and Science Center Directors, will make an annual determination identifying which fisheries the agency intends to observe. This determination will be based on the extent to which:

(1) The fishery operates in the same waters and at the same time as sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

(b) The Assistant Administrator shall publish the proposed determination and any final determination in the **Federal Register**. Public comment will be sought at the time of publication of the proposed determination. In addition, a written notification of the final determination will be sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or such notification will be otherwise served on the owners or operator of the vessel. Additionally, NMFS will notify state agencies and provide notification through publication in local newspapers, radio broadcasts, and any other means as appropriate. The proposed and any final determinations will include, to the extent practicable, information on fishing sector, targeted gear type, target fishery, temporal and geographic scope of coverage, or other information, as appropriate.

(c) Fisheries listed on the most recent annual Marine Mammal Protection Act List of Fisheries in any given year, in accordance with 16 U.S.C. 1387, will serve as the comprehensive set of commercial fisheries to be considered for inclusion in the annual determination. Recreational fisheries may also be included in the annual determination.

(d) Publication of the proposed and final determinations should be coordinated to the extent possible with the annual Marine Mammal Protection Act List of Fisheries process as specified at 50 CFR 229.8.

(e) Inclusion of a fishery in a proposed or final determination does

not constitute a conclusion by NMFS that those participating in the fishery are illegally taking sea turtles.

§ 222.403 Duration of selection; effective date.

(a) Fisheries included in the final annual determination in a given year will remain eligible for observer coverage under this rule for five years, without need for NMFS to include the fishery in the intervening proposed annual determinations, to enable the design of an appropriate sampling program and to ensure collection of scientific data. If NMFS wishes to continue observations beyond the fifth year, NMFS must include the fishery in the proposed annual determination and seek comment, prior to the expiration of the fifth year.

(b) A 30–day delay in effective date for implementing observer coverage will follow the annual notification, except for those fisheries that were included in a previous determination within the preceding five years or where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30–day delay.

§ 222.404 Observer program sampling.

(a) During the program design, NMFS would be guided by the following standards in the distribution and placement of observers among fisheries and vessels in a particular fishery:

(1) The requirements to obtain the best available scientific information;

(2) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

(b) Consistent with 16 U.S.C. 1881(b), vessels where the facilities for accommodating an observer or carrying out observer functions are so inadequate or unsafe (due to size or quality of equipment, for example) that the health or safety of the observer or the safe operation of the vessel would be jeopardized, would not be required to take observers under this rule.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 4. In § 223.206, the second sentence of paragraph (d)(4)(iv) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(4) * * *

(iv) *Procedures.* * * * An emergency notification will be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each, except that emergency placement of observers will be effective for a period of up to 180 days and may be renewed for an additional period of 60 days. * * *

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[FR Doc. E7–15145 Filed 8–2–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 070726420–7421–01]

RIN 0648–XB74

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 3,530 nm^2 (12,108 km^2), southeast of Chatham, Massachusetts, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours August 5, 2007, through 2400 hours August 19, 2007.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On July 24, 2007, an aerial survey reported three aggregations of right whales, totaling thirty individuals in the proximity of 41° 23′ N latitude and 68° 50′ W longitude. The positions lie approximately 54nm southeast of Chatham, MA. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM Zone is bound by the following coordinates:

42° 00′ N., 69° 24′ W (NW Corner)
42° 00′ N., 68° 08′ W
40° 58′ N., 68° 08′ W
40° 58′ N., 69° 24′ W
42° 00′ N., 69° 24′ W (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: A portion of this DAM zone overlaps the year-round Closure Area I for Northeast Multispecies found at 50 CFR 648.81(a). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area and Great South Channel Restricted Lobster Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area, Great South Channel Restricted Gillnet Area, and Great South Channel Sliver Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours August 5, 2007, through 2400 hours August 19, 2007, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM

zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: July 30, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 07–3810 Filed 7–31–07; 3:13 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0612243158–7219–02 ; I.D. 031307C]

RIN 0648–AU51

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Fisheries; Regulatory Amendment to Reconcile State and Federal Commercial Fishing Vessel Permit Programs

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

ACTION: Final rule.

SUMMARY: NMFS is implementing regulations to modify the permitting and vessel replacement provisions for Federal limited access permit programs of the Northeastern United States, excluding American lobster. This action is intended to prevent fishing effort beyond what is accounted for in the fishery management plans (FMPs) for each fishery and to reinforce efforts undertaken by state fishery management agencies at targeting regulations specifically for vessels that participate wholly in state water fisheries. These measures are necessary to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective September 4, 2007, except for 648.4(a)(1)(i)(E) and 648.14(a)(179), which will be effective January 1, 2008.

ADDRESSES: Copies of this regulatory amendment, its Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the Environmental Assessment (EA) are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. A copy of the RIR/FRFA and the small entity compliance guide is also accessible via the Internet at *http://www.nero.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone: (978) 281–9220, fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

State and Federal FMPs governing fisheries for the same species may differ

in reporting requirements, participation restrictions, and overall strategies to control fishing mortality. These programs may be successful in achieving their objectives only when a vessel fishes in one program, either state or Federal, for an entire permit year, because the management measures are typically based on analyses of fishing effort, and where that effort is expected to take place. Federal regulations are rarely the exclusive authority governing federally permitted commercial fishing vessels. Vessels that have both Federal and state permits are bound by the more restrictive of the regulations in effect. In contrast, vessels without a valid Federal permit can be permitted by a state to fish exclusively in state territorial waters, and such vessels do not have to comply with Federal fishing regulations.

Current regulations require that a federally permitted fishing vessel must abide by Federal fishing regulations, regardless of whether the vessel is fishing in state or Federal waters. However, vessels that delay getting their Federal permit may be authorized to participate exclusively in state water fisheries under state rules and regulations. Although splitting fishing effort between state and Federal waters may have repercussions across all federally managed fisheries, the impact of vessels splitting fishing effort between state and Federal programs is thought to be greatest in Federal fisheries utilizing a fishing effort control program referred to as a days-at-sea (DAS) program, which is common in Federal fisheries management in New England. This type of program limits the amount of days that a federally permitted commercial fishing vessel can fish each year. Under current Federal regulations, a DAS vessel could increase its overall effort by fishing in state waters outside of the DAS program prior to renewal of its Federal DAS permit. Although it is estimated that less than 10 percent of federally permitted vessels currently exploit this inadvertent exception to Federal regulations, there is concern that this practice could expand, especially should further reductions in DAS be necessary. Thus, the purpose of this action is to remove an unintended consequence of having a Federal permit renewal system that effectively allows for a temporary relinquishment, or suspension, of a Federal limited access permit. It was never the intention of the regulations to allow a vessel to participate wholly in a state fishing program, in which it would not otherwise be allowed to participate under the conditions of the Federal limited access permit program for which it was eligible, while the vessel's Federal limited access permits were suspended.

This action applies only to Federal limited access and moratorium commercial fishing vessel permit holders. The terms ''limited access'' and ''moratorium'' in regards to Federal permit programs are synonymous. A limited access permit is a permit that an individual has applied for and received based on qualification criteria set forth in the FMP. By applying for and receiving a limited access permit, a vessel owner has agreed to abide by a fishing program that, in turn, grants exclusive fishing privileges. Under current regulations, a Federal limited access permit must be renewed on an annual basis. If the permit is not issued within 1 year of the last day of the permit year for which it was valid, the permit is cancelled and rendered ineligible for renewal. Open access permits, which are not affected by this action, can be applied for with minimum qualification criteria, and received on an annual basis without any deadlines.

Public comment regarding this action was solicited in the proposed rule (72 FR 17085, April 6, 2007). The comment period closed on May 7, 2007.

Management Measures

This action remedies the situation described in the preceding paragraphs by making it a condition, upon issuance of a limited access permit, that the permit holder agrees that the vessel may not fish for or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any subsequent permit year, or the permit either has been voluntarily relinquished or otherwise forfeited, revoked, or transferred from the vessel. This condition of the limited access permit is in effect for the entire duration of the permit's renewal eligibility period. For example, if an issued permit expired on April 30, 2006, a vessel owner would have until April 30, 2007, to be reissued the permit. Thus, the vessel owner would be subject to the permit condition through April 30, 2007. By participating in a Federal limited access fishing program, a vessel owner is agreeing to participate wholly in that program and be subject to all of its accompanying regulations until such time that the vessel owner is no longer eligible to renew his/her vessel's limited access permit. This measure impacts the Federal limited access commercial fishing vessel permits issued by the NMFS Northeast Regional Office that are listed in Table 1. Any future limited access permits implemented by the NMFS, Northeast Regional Office, unless otherwise explicitly exempted, are subject to this rule. The second measure included in this action limits the number of vessel replacements allowed during a permit year. This measure is also applicable to all future and current limited access vessels, which are listed in Table 1. These measures are discussed separately below.

TABLE 1.—LIST OF NORTHEAST REGION LIMITED ACCESS PERMIT CATEGORIES AFFECTED BY FINAL RULE

Fishery	Limited access permit categories
Atlantic Sea Scallop	2, 3, 4, 5, 6, 7, 8, 9.
NE Multispecies	A, C, D, E, F, HA.
Monkfish	A, B, C, D, F, G, H.
Maine Ocean Quahog.	7.
Summer Flounder	1.
Scup	1.
Black Sea Bass	1.
Atlantic Herring	A, B, C.
Squid, Mackerel, Butterfish.	1, 5.
Golden Tilefish	A, B, C.
Atlantic Deep-Sea Red Crab.	B, C.

Limited Access Permit Fishing Prohibition After Expiration and Prior To Renewal

Under this action, a commercial fishing vessel that was issued, or is in possession of, a valid Federal limited access fishing permit at the end of the permit year immediately preceding the current permit year, is prohibited from landing any fish managed under 50 CFR part 648 for which the vessel would be authorized under the conditions of the limited access permit(s), unless at least one of the following conditions is met:

- The vessel owner has renewed the Federal limited access permit(s) for the current permit year;
- The vessel owner has voluntarily permanently relinquished the vessel's Federal limited access permit(s); or
- The vessel has been replaced by another vessel and the permit eligibility has moved to the new vessel or was placed into Confirmation of Permit History (CPH).

In other words, a vessel owner who is eligible to renew his/her vessel's Federal limited access permit is prohibited from fishing for and/or possessing any fish for which the vessel would be authorized under the respective limited access permit, from any waters, unless the limited access permit(s) has been renewed or removed from the vessel. All vessel reporting

requirements for the limited access permits the vessel is eligible to renew remain in effect unless the limited access permit(s) have been relinquished or transferred to another vessel or CPH. This includes completed fishing vessel trip reports (VTRs) for the entire period that the vessel was issued or eligible to be issued a limited access permit. Since these restrictions are a condition of the issuance of a limited access permit, this rule does not apply to an individual until after an individual has applied for or been issued a limited access permit on or after the effective date of this final rule.

The vessel owner must take an action, as outlined below, regarding the limited access permit for which he/she is eligible at the time the first permit application is submitted for a subsequent permit year. Actions that could be taken are the renewal, relinquishment, or transfer of the limited access permit(s). All limited access permits for which a vessel is eligible must be renewed at the same time. In addition, a vessel that is eligible for a Federal limited access permit may be issued a Federal open access fishing permit only at the same time, or after, the limited access permits have been either renewed, relinquished, or transferred for the given permit year. For example, if a vessel owner eligible for a limited access NE multispecies permit would like to be issued the limited access NE multispecies permit, an open access skate permit, and an open access spiny dogfish permit during a given year he/she must apply for all three permits at the same time, or renew the limited access NE multispecies permit prior to adding the open access skate and dogfish permits. The open access skate and dogfish permits could be applied for together or separately after the limited access NE multispecies permit was renewed. Failure to renew a limited access permit by the end of the permit year will result in the loss of eligibility to renew the permit in subsequent permit years.

Thus, this action commits a limited access vessel to a specific fishery program (state or Federal) prior to engaging in any fishing activities. This measure eliminates an inadvertent exception to Federal regulations that is currently exploited by a minority of vessel owners and/or operators and potentially prevents more vessel owners and/or operators from taking advantage of this situation in the future.

One-Time Vessel Replacement Per Permit Year

This action allows only one transfer of limited access permits per permit year, unless the vessel being replaced has been rendered inoperable and not repairable, due to unforeseen circumstances. The intent of this measure is to deter vessel owners from moving limited access permits off their primary vessel prior to the start of a permit year and then moving them back onto their primary vessel after the primary vessel has fished part of the permit year in a state waters fishery program. Under this scenario, a vessel owner is prohibited from transferring the permits back onto the secondary vessel prior to the start of the following permit year. The previous vessel replacement measures were implemented in order to give flexibility to vessel owners to purchase and replace a vessel in a timely manner. The action maintains this flexibility while ensuring that the vessel replacement program is not utilized to avoid Federal regulations for a period of time.

Comments and Responses

NMFS did not receive any public comment on the proposed rule during the comment period.

Changes From the Proposed Rule

The regulatory text from the proposed rule has been modified to clarify that the vessel reporting requirements, specifically fishing vessel trip reports, for vessels eligible to renew a limited access permit remain in effect unless the limited access permit(s) have been relinquished, transferred to another vessel, or placed into CPH. This requirement was explicitly stated in the preamble of the proposed rule and repeated again in the preamble of this final rule. This clarification revises the regulatory text in paragraph § 648.7(b)(1)(i).

Classification

This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648. The Regional Administrator determined that management measures contained in this final rule are necessary for the conservation and management of fisheries of the Northeastern United States and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. A description of the reasons why this action is being taken by the Agency and the objectives of this final rule are contained in the preambles of the proposed and final rules. This action does not duplicate, overlap, or conflict with any other Federal rules.

Final Regulatory Flexibility Analysis

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this entire FRFA in support of the management measures contained in this permitting action. The FRFA incorporates the economic impacts summarized in the IRFA and the corresponding RIR that were prepared for this action. A summary of the IRFA was published in the Classification section of the proposed rule and is not repeated here. Copies of the IRFA, FRFA and RIR prepared for this action are available from the Northeast Regional Office (see **ADDRESSES**). A description of why this action was taken, the objectives of, and the legal basis for this rule, are contained in the preamble to the proposed rule and this final rule and are not repeated here.

Summary of Issues Raised by the Public Comments in Response to the IRFA

No public comments on the proposed rule were received.

Description and Estimate of Number of Small Entities To Which This Rule Will Apply

Approximately 3,700 vessels could be affected by this action. In all, these participants generate close to $1 billion annually from the sale of fish and shellfish. The Small Business Administration (SBA) size standard for small commercial fishing entities is $4.0 million in gross receipts and would apply to all limited access permit holders affected by this action.

Data compiled by NMFS from the 2004 fishing year (FY) indicate that 64 vessels delayed their permit renewal and landed fish during the time their Federal permit was invalid. In the same year, eight vessels were replaced that reported landings later in the same fishing year. Thus, this final rule will potentially impact 72 vessels out of over 3,700 federally permitted limited access vessels in the NE Region. An average of 94 percent of vessel owners here renewed their permits by May 1, the start of the permit year for the majority of the fisheries affected, over the last few years. With this level of compliance, only about 370 entities, including the aforementioned vessels that reported landings during this time period, will likely be affected by the permit renewal portion of this action.

In addition to vessels delaying their permit renewal, some vessels are replaced by another fishing vessel during the permit year. Under this circumstance, the former vessel, which now no longer has Federal permits associated with it, may then continue to

fish outside of Federal regulations in state waters. Across all limited access fisheries, approximately eight vessels landed fish as a result of replacing a vessel and then continuing to fish with the old vessel in 2004.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This final rule will not alter the current reporting and recordkeeping requirements for commercial fishing vessels in the Northeast Region. The permit regulations promulgated under this rule modifies the timing and reduces the frequency of permit renewal and vessel replacement applications, respectively.

Description of Minimization of Economic Impacts on Small Entities

As mentioned previously, all entities to which this final rule applies are considered small entities by SBA size standards. Data show that only a small number of vessels currently exploit the inadvertent exception to Federal regulations that this action rectifies. In developing this rule, NMFS closely examined previous vessel permit renewal and vessel replacement practices to identify a way to achieve the goals of this final rule without disrupting the practices of the majority of Federal commercial fishing vessel permit holders. The other alternative analyzed to achieve the goals of this rule would have introduced a deadline for permit renewal applications and a new ''Reserve Permit'' if that deadline was missed. Thus, this rule minimizes economic impacts on small entities to the greatest extent practicable.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of commercial Federal limited access permits. The guide will also be available on the internet at *http://www.nero.noaa.gov.* Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

Reporting and Recordkeeping Requirements

This action does not contain an additional collection-of-information requirement subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS Northeast Region commercial fishing vessel permit applications and vessel replacement applications are part of the collection of information under OMB Control Number 0648–0202. The current expiration date for OMB Control Number 0648–0202 is November 30, 2009.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 25, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, a definition for ''Permit year'' is added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Permit year means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year;

(2) For all other fisheries in this part, from May 1 through April 30 of the following year.

* * * * *

■ 3. In § 648.4, paragraphs (a)(1)(i)(B), (a)(1)(i)(E), (a)(1)(i)(K), and (b) are revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(B) *Application/renewal restrictions.* All limited access or moratorium permits established under this section must be issued on an annual basis by the last day of the permit year for which the permit is required, unless a confirmation of permit history (CPH) has been issued as specified in paragraph (a)(1)(i)(J) of this section. If a vessel is issued more than one limited access or moratorium permit under this section, these permits will be regarded as a permit suite. Permit renewal or relinquishment must be made at the time the first permit application is submitted for a new permit year. Application for limited access or moratorium permits must be received no later than 30 days before the last day of the permit year of the earliest expiration date for any permit in the suite of such permits issued to the vessel. Failure to renew a limited access or moratorium permit in any permit year bars the renewal of the permit in subsequent years. Open access permits may not be issued to a vessel eligible to renew a limited access or moratorium permit until such time that the vessel's limited access or moratorium permit(s) are renewed or voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section, or otherwise transferred from the vessel.

* * * * *

(E) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), an owner of a vessel that has been issued any limited access or moratorium permit under this section is limited to one vessel replacement per permit year, using the earliest permit year start date of the limited access or moratorium permits for which the vessel is eligible, unless the vessel has been rendered inoperable and non-repairable. To be eligible for a limited access or moratorium permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

* * * * *

(K) *Abandonment or voluntary relinquishment of a limited access or moratorium permit.* If a vessel's limited access or moratorium permit for a particular fishery is voluntarily relinquished to the Regional Administrator or abandoned through failure to renew or otherwise, no limited access or moratorium permit for that fishery may be reissued or renewed based on that vessel's limited access or moratorium permit history or to any other vessel relying on that vessel's limited access or moratorium permit history.

* * * * *

(b) *Permit conditions.* (1)(i) Any person who applies for and is issued or renews a fishing permit under this section agrees, as a condition of the permit, that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward

of the EEZ; and without regard to where such fish or gear are possessed, taken, or landed); are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part, except tilefish, must comply with the more restrictive requirement. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the tilefish management unit for tilefish managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium; or a spiny dogfish or bluefish commercial vessel permit, must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coast-wide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the **Federal Register** stating that the quota for the tilefish limited access category under which a vessel is fishing has been harvested. Owners or operators fishing for surfclams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters.

(ii) Any person who applies for or has been issued a limited access or moratorium permit on or after September 4, 2007 agrees, as a condition of the permit, that the vessel may not fish for, catch, possess, or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any subsequent permit year, or the permit either has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

(2) A vessel that is issued or renewed a limited access or moratorium permit on or after September 4, 2007 for any fishery governed under this section is prohibited from fishing for, catching, possessing, and/or landing any fish for which the vessel would be authorized under the respective limited access or moratorium permit in or from state and/or Federal waters in any subsequent permit year, unless and until the limited access or moratorium permit has been issued or renewed pursuant to paragraph (a)(1)(i)(B) of this section and the valid permit is on board the vessel. This prohibition does not apply to a vessel for which the limited access or moratorium permit has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

* * * * *

■ 4. In § 648.7, paragraph (b)(1)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(b) * * *

(1) * * *

(i) The owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. As stated in paragraph (f)(2)(i) of this section, if no fishing trip is made during a month, a report stating so must be submitted for each month. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, ''small'' (i.e., less than 23 inches (58.42 cm), total length) or ''large'' (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

■ 5. In § 648.14, paragraph (a)(31)(ii) is revised, and paragraphs (a)(178) and (a)(179) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(31) * * *

(ii) The NE multispecies were harvested by a vessel not issued a NE multispecies permit, nor eligible to renew or be reissued a limited access NE multispecies permit as specified in § 648.4 (b)(2), that fishes for NE multispecies exclusively in state waters;

* * * * *

(178) If eligible for re-issuance or renewal of a limited access or moratorium permit:

(i) Fish for, take, catch, harvest or land any species of fish regulated by this part for which the vessel is eligible to possess under a limited access or moratorium permit until the vessel has been reissued the applicable limited access or moratorium permit by NMFS.

(ii) [Reserved]

(179) Attempt to replace a limited access or moratorium fishing vessel, as specified at § 648.4(a)(1)(i)(E), more than one time during a permit year, unless the vessel has been rendered inoperable and non-repairable.

* * * * *

[FR Doc. E7–15135 Filed 8–2–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060824226–6322–02]

RIN 0648–AV69

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments; Correction

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

ACTION: Final rule; inseason adjustments to groundfish anagement measures; correction.

SUMMARY: This final rule corrects publication errors in the final rule announcing inseason changes to management measures in the commercial Pacific Coast groundfish fishery, which were published in the **Federal Register** on July 5, 2007, and are effective August 1, 2007. This correction reinstates several trip limits in the limited entry commercial groundfish trawl fishery that were inadvertently omitted in the final rule. These changes ensure that the trip limits, intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks, remain in place.

DATES: Effective 0001 hours (local time) August 1, 2007.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail *gretchen.arentzen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's (Council's) Web site at *http://www.pcouncil.org/.*

Background

This correction reinstates several limited entry trawl commercial trip limits that were published in a proposed rule on September 29, 2006 (71 FR 57764) and implemented in a final rule on December 29, 2006 (71 FR 78638). Trip limits are an important management measure used in the Pacific Coast groundfish fishery to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks. The trip limits that are the subject of this correction are contained in Tables 3 (North) and 3 (South) to part 660 subpart G.

Need for the Correction

Due to a formatting error, these trip limits were inadvertently omitted during the publication of inseason changes on July 5, 2007 (72 FR 36617), which are effective August 1, 2007.

List of Subjects in 50 CFR Part 660

Fisheries and fishing.

Dated: July 31, 2007.

James P. Burgess,

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

■ 50 CFR part 660 is corrected by making the following correcting amendments:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. Tables 3 (North) and 3 (South) to part 660 subpart G are revised to read as follows:

BILLING CODE 3510–22–P

Table 3 (North) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

062007

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:						
North of 48°10.00' N. lat.	75 fm - modified 250 fm [7/]	75 fm - 250 fm	shore - 150 fm		shore - 200 fm	shore - modified 200 fm [7/]
48°10.00' N. lat. - 46°38.17' N. lat.			75 fm - 150 fm		75 fm - 200 fm	75 fm - modified 200 fm [7/]
46°38.17' N. lat. - 46°16.00 N. lat.			60 fm -150 fm		60 fm -200 fm	75 fm - modified 200 fm [7/]
46°16.00 N. lat. - 45°03.83 N. lat			75 fm - 150 fm	75 fm - 200 fm		75 fm - modified 200 fm [7/]
45°03.83' N. lat. - 43°20.83' N. lat.			75 fm - 200 fm			75 fm - modified 200 fm [7/]
43°20.83' N. lat. - 42°40.50' N. lat.			shore - 200fm			shore - modified 200 fm [7/]
42°40.50' N lat -40°10.00' N. lat.			75 fm - 200 fm			75 fm - modified 200 fm [7/]

Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

1	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months		1,500 lb/ 2 months		
2	**Pacific ocean perch**	3,000 lb/ 2 months				
3	**DTS complex**					
4	Sablefish					
5	large & small footrope gear	13,000 lb/ 2 months		15,000 lb/ 2 months		13,000 lb/ 2 months
6	selective flatfish trawl gear	5,000 lb/ 2 months	8,000 lb/ 2 months	5,000 lb/ 2 months		
7	multiple bottom trawl gear [8/]	5,000 lb/ 2 months	8,000 lb/ 2 months	5,000 lb/ 2 months		
8	Longspine thornyhead					
9	large & small footrope gear	22,000 lb/ 2 months			25,000 lb/ 2 months	
10	selective flatfish trawl gear	3,000 lb/ 2 months				
11	multiple bottom trawl gear [8/]	3,000 lb/ 2 months				
12	Shortspine thornyhead					
13	large & small footrope gear	7,500 lb/ 2 months		10,000 lb/ 2 months		
14	selective flatfish trawl gear	3,000 lb/ 2 months				
15	multiple bottom trawl gear [8/]	3,000 lb/ 2 months				
16	Dover sole					
17	large & small footrope gear	80,000 lb/ 2 months		60,000 lb/ 2 months		80,000 lb/ 2 months
18	selective flatfish trawl gear	40,000 lb/ 2 months		38,000 lb/ 2 months		25,000 lb/ 2 months
19	multiple bottom trawl gear [8/]	40,000 lb/ 2 months		38,000 lb/ 2 months		25,000 lb/ 2 months

TABLE 3 (North)

Table 3 (North). Continued

20	**Whiting**						TABLE 3 (North) con't
21	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
22	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
23	**Flatfish** (except Dover sole)						
24	Arrowtooth flounder						
25	large & small footrope gear	100,000 lb/ 2 months		Arrowtooth included within other flatfish limits - - see below			
26	selective flatfish trawl gear	90,000 lb/ 2 months					
27	multiple bottom trawl gear [8/]	90,000 lb/ 2 months					
28	Other flatfish [3/], English sole, starry flounder, & Petrale sole						
29	large & small footrope gear for Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months (including arrowtooth), no more than 20,000 lb/ 2 months of which may be petrale sole.		110,000 lb/ 2 months (including arrowtooth)	
30	large & small footrope gear for Petrale sole	50,000 lb/ 2 months				30,000 lb/ 2 months	
31	selective flatfish trawl gear for Other flatfish[3/], English sole, & starry flounder	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 20,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 15,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months (including arrowtooth), no more than 8,000 lb/ 2 months of which may be petrale sole.	
32	selective flatfish trawl gear for Petrale sole						
33	multiple bottom trawl gear [8/]	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 20,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 15,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months (including arrowtooth), no more than 8,000 lb/ 2 months of which may be petrale sole.	
34	**Minor shelf rockfish[1/], Shortbelly, Widow & Yelloweye rockfish**						
35	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
36	large & small footrope gear	300 lb/ 2 months					
37	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish		300 lb/ month	
38	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish		300 lb/ month	

Table 3 (North). Continued

39	**Canary rockfish**				TABLE 3 (North) con't
40	large & small footrope gear	CLOSED			
41	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month	
42	multiple bottom trawl gear 8/	CLOSED			
43	**Yellowtail**				
44	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.			
45	large & small footrope gear	300 lb/ 2 months			
46	selective flatfish trawl gear	2,000 lb/ 2 months			
47	multiple bottom trawl gear 8/	300 lb/ 2 months			
48	**Minor nearshore rockfish & Black rockfish**				
49	large & small footrope gear	CLOSED			
50	selective flatfish trawl gear	300 lb/ month			
51	multiple bottom trawl gear 8/	CLOSED			
52	**Lingcod** 4/				
53	large & small footrope gear	1,200 lb/ 2 months	4,000 lb/ 2 months		
54	selective flatfish trawl gear		1,200 lb/2 months		
55	multiple bottom trawl gear 8/				
56	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months
57	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
58	**Other Fish** 5/	Not limited			

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

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TABLE 3 (South)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	40°10' - 38° N. lat.	100 fm - modified 200 fm [7/]	100 fm - 150 fm				100 fm - modified 200 fm [7/]
	38° - 34°27' N. lat.	100 fm - 150 fm					
	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
	All trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**						
2	40°10' - 38° N lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
3	South of 38° N lat.	40,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
6	South of 38° N. lat	40,000 lb/ 2 months					
7	**DTS complex**						
8	Sablefish	14,000 lb/ 2 months					
9	Longspine thornyhead	22,000 lb/ 2 months					
10	Shortspine thornyhead	7,500 lb/ 2 months					
11	Dover sole	70,000 lb/ 2 months			80,000 lb/ 2 months		
12	**Flatfish** (except Dover sole)						
13	Other flatfish[3/], English sole, & starry flounder						
14	40°10' - 38° N. lat.	110,000 lb/ 2 months	Other flatfish, English sole, starry flounder & Petrale sole: 110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	Other flatfish, English sole, starry flounder, arrowtooth flounder & Petrale sole: 110,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole			110,000 lb/ 2 months (including arrowtooth)
15	South of 38° N. lat.						
16	Petrale sole	50,000 lb/ 2 months					50,000 lb/ 2 months
17	Arrowtooth flounder						
18	40°10' - 38° N. lat.	10,000 lb/ 2 months		Arrowtooth included within other flatfish limits - - see above			
19	South of 38° N lat.						
20	**Whiting**						
21	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season CLOSED					
22	large & small footrope gear	Before the primary whiting season. 20,000 lb/trip. -- During the primary season 10,000 lb/trip -- After the primary whiting season: 10,000 lb/trip.					

Table 3 (South). Continued

23	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**				
24	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month			
25	large footrope or midwater trawl for Chilipepper	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months	
26	large footrope or midwater trawl for Widow & Yelloweye	CLOSED			
27	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month			
28	small footrope trawl for Chilipepper	500 lb/ month		800 lb/ month	
29	**Bocaccio**				
30	large footrope or midwater trawl	300 lb/ 2 months			
31	small footrope trawl	CLOSED			
32	**Canary rockfish**				
33	large footrope or midwater trawl	CLOSED			
34	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month	
35	**Cowcod**	CLOSED			
36	**Minor nearshore rockfish & Black rockfish**				
37	large footrope or midwater trawl	CLOSED			
38	small footrope trawl	300 lb/ month			
39	**Lingcod[4/]**				
40	large footrope or midwater trawl	1,200 lb/ 2 months	4,000 lb/ 2 months		
41	small footrope trawl		1,200 lb/ 2 months		
42	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months
43	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
44	**Other Fish[5/] & Cabezon**	Not limited			

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 07–3811 Filed 7–31–07; 3:13 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 72, No. 149
Friday, August 3, 2007

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1739

RIN 0572–AC09

Community Connect Broadband Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service, an agency delivering the United States Department of Agriculture's Rural Development Utilities Program, hereinafter referred to as Rural Development and/or the Agency, is issuing proposed regulations to amend its Community-Oriented Connectivity Broadband Grant Program (Community Connect Broadband Grant Program). The Agency has determined that expanding the resource materials used to determine community eligibility for the program will result in a larger number of eligible communities. In addition, Rural Development has changed the test for economic hardship, allowing the applicant community's median household income to be compared to that of its state, which is also expected to increase the number of eligible applicants. Lastly, the Agency is proposing to amend its regulations to specify operating expenses which are approved for grant funding. This proposed rule is not applicable to Community Connect grant applications filed for funding during fiscal year 2007.

In the Rules and Regulations section of this **Federal Register**, the Agency is publishing this action as a direct final rule without prior proposal because the Agency views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If the Agency receives adverse comments, a timely document will be published in the **Federal Register** and all public comments received will be addressed in a subsequent final rule on this action.

DATES: Comments on this proposed rule must be received by the Agency or carry a postmark or equivalent no later than September 4, 2007.

ADDRESSES: Submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Utilities Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RUS–07–Telecom–0008 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Acting Deputy Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room 5159, 1400 Independence Avenue, Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS–07–Telecom–0008.

Other Information: Additional information about Rural Development and its programs is available at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Kenneth Kuchno, Director, Broadband Division, USDA Rural Development Utilities Program, STOP 1599, 1400 Independence Avenue, SW., Washington, DC 20250–1599, Telephone (202) 690–4673, Facsimile (202) 690–4389. E-mail address: *kenneth.kuchno@usda.gov.*

SUPPLEMENTARY INFORMATION: For applicable supplementary information on this action, see the **SUPPLEMENTARY INFORMATION** provided in the direct final rule located in the Rules and Regulations section of this **Federal Register**.

Dated: July 19, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E7–15108 Filed 8–2–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28853; Directorate Identifier 2006–NM–218–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 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:

> At some locations, the new calculated fatigue life [for the wing to center box assembly] falls below the aircraft Design Service Goal.
>
> The aim of this Airworthiness Directive (AD) is * * * to ensure detection of cracks on the panels and stiffeners at rib No. 1. This situation, if left uncorrected, could affect the structural integrity of the area.

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 September 4, 2007.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: 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–2007–28853; Directorate Identifier 2006–NM–218–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0257, dated August 24, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During installation of the wing to the centre box junction on the Final Assembly Line, some ''taperlocks'' fasteners were found non compliant with the specification.
>
> Fatigue tests on samples and calculation performed on non-conform fasteners demonstrated that this defect could lead to decrease the fatigue lift of the wing to centre wing box assembly.
>
> At some locations, the new calculated fatigue life falls below the aircraft Design Service Goal.
>
> The aim of this Airworthiness Directive (AD) is to mandate repetitive inspections to ensure detection of cracks on the panels and stiffeners at rib No. 1. This situation, if left uncorrected, could affect the structural integrity of the area.

The corrective action includes contacting Airbus for repair instructions in the event of crack finding. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A300–53–6154, including Appendix 01, dated June 20, 2006, and A300–600 Airworthiness Limitations Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 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 Unitejd 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 7 products of U.S. registry. We also estimate that it would take about 79 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $44,240, or $6,320 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 the4 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–2007–28853; Directorate Identifier 2006–NM–218–AD.

Comments Due Date

(a) We must receive comments by September 4, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300–600 series airplanes, manufacturing serial number (MSN) 0815 up to MSN 0821 inclusive, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

During installation of the wing to the centre box junction on the Final Assembly Line, some ''taperlocks'' fasteners were found non compliant with the specification.

Fatigue tests on samples and calculation performed on non-conform fasteners demonstrated that this defect could lead to decrease the fatigue life of the wing to centre wing box assembly.

At some locations, the new calculated fatigue life falls below the aircraft Design Service Goal.

The aim of this Airworthiness Directive (AD) is to mandate repetitive inspections to ensure detection of cracks on the panels and stiffeners at rib No. 1 This situation, if left uncorrected, could affect the structural integrity of the area.

The corrective action includes contacting Airbus for repair instructions in the event of crack finding.

Actions and Compliance

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

(1) Action No. 1, for the center wing box:

(i) At the later of the times in paragraphs (f)(1)(i)(A) and (f)(1)(i)(B): Do an external ultrasonic inspection for cracking of the taperlocks fasteners of the center wing box, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, including appendix 01, dated June 20, 2006. If any crack is detected: Before further flight, contact Airbus for repair instructions, and repair.

(A) Before the accumulation of 19,800 total flight cycles or 41,200 flight hours, whichever occurs first.

(B) Within 3 months after the effective date of this AD.

(ii) Repeat the inspection thereafter at intervals not to exceed 3,300 flight cycles or 6,900 flight hours, whichever occurs first, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, including Appendix 01, dated June 20, 2006.

(iii) The repetitive interval specified in paragraph (f)(1)(ii) of this AD is valid until the threshold of Airbus A300–600 Airworthiness Limitation Items (ALI) Task 571006–02–1 is reached. After reaching this threshold, the ultrasonic inspection is to be done according to Task 571006–02–1, ''Special detailed inspection (Ultrasonic) of wing junction at rib 1 horizontal flange of lower T section, between FR40 and FR47 inboard side, LH/RH,'' of Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006.

(2) Action No. 2, for the outer wing box:

(i) At the later of the times in paragraphs (f)(2)(i)(A) and (f)(2)(i)(B): Do an external ultrasonic inspection for cracking of the taperlocks fasteners of the outer wing box, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, including Appendix 01, dated June 20, 2006. If any crack is detected: Before further flight, contact Airbus for repair instructions, and repair.

(A) Before the accumulation of 15,200 total flight cycles or 31,700 flight hours, whichever occurs first.

(B) Within 3 months after the effective date of this AD.

(ii) Repeat the inspection thereafter at intervals not to exceed 3,700 flight cycles or 7,700 flight hours, whichever occurs first, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, including Appendix 01, dated June 20, 2006.

(iii) The repetitive interval specified in paragraph (f)(2)(ii) of this AD is valid until reaching the threshold of Airbus A300–600 Airworthiness Limitation Items (ALI) Task 571022–01–2, ''Special detailed inspection (Ultrasonic) of wing-fuselage lower skin splice at rib 1 (wing side).'' After reaching this threshold, the ultrasonic inspection is to be done according to Task 571022–01–2 of Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006.

(3) Action No. 3, for the outer wing box:

(i) At the later of the times in paragraphs (f)(3)(i)(A) and (f)(3)(i)(B): Do an internal x-ray inspection for cracking of the taperlocks fasteners of the outer wing box, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, including Appendix 01, dated June 20, 2006. If any crack is detected: Before further flight, contact Airbus for repair instructions, and repair.

(A) Before the accumulation of 20,900 total flight cycles or 43,400 flight hours, whichever occurs first.

(B) Within 3 months after the effective date of this AD.

(ii) Repeat the inspection thereafter at intervals not to exceed 1,800 flight cycles or 3,700 flight hours, whichever occurs first, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6154, including Appendix 01, dated June 20, 2006.

(iii) The repetitive interval specified in paragraph (f)(3)(ii) of this AD is valid until reaching the threshold of Airbus A300–600 Airworthiness Limitation Items (ALI) Task 571022–02–2, ''Special detailed inspection (x-ray) of wing-fuselage lower skin splice at rib 1 (wing side).'' After reaching this threshold, the x-ray inspection is to be done according to Task 5710022–02–2 of Airbus A300–60 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, Transport Airplane Directorate, 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 MCAIEASA Airworthiness Directive 2006–0257, dated August 24, 2006; Airbus Service Bulletin A300–53–6154, including Appendix 01, dated June 20, 2006; and Airbus A300–600 Airworthiness Limitations Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006; for related information.

Issued in Renton, Washington, on July 25, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 07–3774 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2007–0040]

20 CFR Part 404

RIN 0960–AG50

Sixty-Month Period of Employment Requirement for Government Pension Offset Exemption

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: To implement section 418 of the Social Security Protection Act of 2004 (SSPA), we propose to revise our regulations to explain that a State or local government worker will be subject to the Government Pension Offset (GPO) provision under title II of the Social Security Act (the Act), if any part of the last 60 months of government service was not covered by Social Security. We also propose to replace the words ''receiving'' and ''received'' with the word ''payable'' when referring to the eligibility to or payout from a government pension. This wording change will make the regulatory and statutory language consistent and help clarify when the GPO is applicable. In addition, we propose to revise our regulations to reflect a separate 60-month requirement that was made applicable to Federal employees by a 1987 law.

DATES: To be sure that we consider your comments, we must receive them by October 2, 2007.

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

FOR FURTHER INFORMATION CONTACT: Ines Riley, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, RRCC #126, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–4138. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

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

Background

If you receive a pension from a Federal, State or local government that is based on work that was not covered by Social Security, then the GPO may reduce certain kinds of Social Security benefits that you might also be eligible to receive. The GPO applies to Social Security wife's, husband's, widow's, widower's, mother's or father's, and divorced or surviving divorced spouse's benefits. For the sake of simplicity, these benefits are often referred to as spouse's benefits, even though other benefits, as described in the previous sentence, are affected. These benefits may be reduced, to zero if necessary, by two-thirds of the amount of your government pension from noncovered work. See section 202(k)(5) of the Act, codified at 42 U.S.C. 402(k)(5). The GPO does not apply to Social Security retirement or disability benefits that you earned through your own covered employment.

The GPO was enacted in 1977 to reduce the Social Security spouse's benefit of workers who have a government pension based on noncovered employment. Congress believed that persons who received a government pension based on their own noncovered work would receive a ''windfall'' if they also could receive unreduced Social Security spouse's benefits, regardless of their dependency on the insured spouse. (See S. Rep. No. 95–572, 95th Cong., 1st Sess., at 28.) The GPO treats these government workers similar to workers in jobs covered by Social Security. Workers who earn their own Social Security retirement benefit, and who are eligible to receive a spouse's benefit, have the spouse's benefit, in effect, offset by their retirement benefit. They receive the larger of the two benefits. They do not receive both their own Social Security retirement benefit and a spouse's benefit. Therefore, the GPO prevents individuals who receive a government pension based on noncovered earnings from receiving more in combined pension and Social Security spouse's benefits than individuals who worked in covered employment and also were eligible for spouse's benefits. The GPO adjusts the spouse's benefit of a government worker to prevent a ''windfall.'' (See H. Rep. No. 100–391(I), 100th Cong., 2nd Sess., at 2313–466.)

Before enactment of the SSPA, Public Law 108–203, on March 2, 2004, the law allowed an exception to the application of the GPO, referred to as the ''last day'' exception. Under this exception, State or local government workers could avoid application of the GPO by working 1 day in Social Security covered employment at the end of their career.

Section 418 of the SSPA phases out the ''last day'' exception. Applications for spouse's benefits filed on or after April 1, 2004 will be subject to the GPO unless the individual's last 60 months of government employment are covered by Social Security. Therefore, if there is any noncovered government employment during the last 60 months of government service on which a pension is based, the GPO will apply. State or local government workers who filed an application for spouse's benefits before April 1, 2004, or whose last day of government employment was before July 1, 2004, are exempt from the GPO if they worked in covered employment on the last day of the government service on which their pension is based.

The last 60-month requirement established by section 418 of the SSPA is similar to a requirement established by the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987), Public Law 100–203, section 9007. That law specified that Federal employees who transfer from the Civil Service Retirement System to the new Federal Employees Retirement System must work for at least 60 months in the aggregate in covered employment in order to avoid application of the GPO.

For workers whose last day of State or local government employment occurs within 5 years after the date of

enactment (that is, between March 2, 2004 and March 1, 2009), the 60-month requirement will be reduced (but not to less than 1 month) by the total number of months that the worker served in covered employment on or before March 2, 2004. The remaining month(s) of service needed to fulfill this 60-month requirement must be performed after March 2, 2004. Therefore, even if a worker had 60 or more months of covered government service on or before March 2, 2004, that worker would still have to work his or her last month of covered government service after March 2, 2004.

Explanation of Proposed Changes

We propose to revise the regulations in 20 CFR 404.408a as described below to reflect the changes enacted under section 418 of the SSPA and section 9007 of OBRA 1987.

Section 404.408a(a) When reduction is required. This paragraph describes the conditions under which we will apply the GPO. This paragraph also explains how we will determine what the monthly pension amount is if the pension is not paid monthly or is paid in a lump sum. We propose to revise this paragraph to explain that we will apply the GPO:

1. To the monthly Social Security wife's, husband's, widow's, widower's, mother's or father's, or divorced or surviving divorced spouse's benefit for each month a monthly pension from the Federal government based on noncovered employment is payable, unless the individual meets one of the exceptions in paragraph (b) of this section;

2. To the monthly Social Security wife's, husband's, widow's, widower's, mother's or father's, or divorced or surviving divorced spouse's benefit if the State or local government employee's application for benefits was filed before April 1, 2004, or his or her last day of employment was worked before July 1, 2004, and the last day was not covered by Social Security; and

3. To the monthly Social Security wife's, husband's, widow's, widower's, mother's or father's, or divorced or surviving divorced spouse's benefit if the State or local government employee's application for benefits was filed on or after April 1, 2004 and any portion of the last 60 months of government service was not covered by Social Security. However, if the individual files an application for benefits on or after April 1, 2004 and the individual's last day of service occurs after June 30, 2004 and before March 2, 2009, we propose to reduce the 60-month requirement (but not to less than 1 month) by the total number of months of Social Security covered employment under the State or local retirement system worked on or before March 2, 2004. We also propose to revise this paragraph to explain that, for the purposes of this transitional rule, we will count as a month of employment any month in which the individual worked in covered government employment for at least one day.

We also propose to revise this paragraph to explain that if an individual's Social Security benefit is reduced because of GPO and he or she later returns to work for a government agency, his or her Social Security benefit will continue to be reduced unless he or she works at least 60 months in covered employment for the same employer or in the same pension plan. We are proposing this revision to clarify that a person who worked for one government agency could not return to work for another agency and earn an exemption from the GPO unless the work was covered by the same pension plan.

We also propose to revise this paragraph to better explain how we treat government pensions that are not paid monthly or in a lump sum and how this information is obtained.

Section 404.408a(b) Exceptions. This paragraph describes the conditions under which the GPO does not apply. We propose to revise this paragraph to include an exception for 60 months or more of Federal government employment covered under Social Security as provided by section 9007 of OBRA 1987. This new exception would follow the existing five exceptions and be designated as paragraph (b)(6).

Section 404.408a(d) Amount and priority of reduction. This paragraph describes the amount of the GPO reduction and the order in which the GPO reduction will be made in relation to reductions for age and simultaneous entitlement to other Social Security benefits. We propose to add an explanation that if a person's pension is based on both government employment and private sector employment, the GPO will apply to the part of the pension based on noncovered governmental work. It will not apply to the part of the pension that is attributable to earnings from a nongovernmental entity. Because the GPO was designed to offset the Social Security spouse's benefit by the amount of the pension that was based on noncovered government employment, the offset should apply only to the governmental part of the pension. Some individuals work for school systems that have a public pension plan that also credits work for private schools. Thus, a teacher may work for 25 years in a public school and 5 years in a private school and both jobs participate in the same pension plan. However, because the GPO applies only to public employment, the portion of the pension attributable to work in the private sector is not subject to the GPO. In addition, the ''last day'' GPO exception, as well as the new 60-month exception, applies only to public employment. Therefore, a teacher whose last day of employment, or last 60 months, is with a private school is not exempt from GPO for that part of his or her pension that is based on noncovered government service.

Clarity of These Rules

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866, as Amended

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended. Thus, they were subject to OMB review.

Administrative costs attributable to the publication of this regulation are estimated to be negligible (i.e., less than 25 work years and $2 million). At the time of enactment of the SSPA, we estimated that this change would result in a reduction in the Old-Age, Survivors and Disability Insurance (OASDI) benefits of $5 million over the first 5 years, and $39 million over the first 10 years. We estimate that the effect of this change will be small initially, but will grow during the projection period such that in the 10th year there will be about 1,500 beneficiaries with GPO offset because of this change, with a decrease

in benefits during that year of about $10 million. The year-by-year estimates of these benefit payment reductions are presented in the table below.

Fiscal year	Reduction in OASDI benefits (in millions)
2004	(1/)
2005	(1/)
2006	$1
2007	1
2008	2
2009	4
2010	5
2011	7
2012	8
2013	10
Totals:	
2004–08	5
2004–13	39

1/ Reduction in benefit payments of less than $500,000.

Regulatory Flexibility Act

We certify that these proposed rules, when published in final, would not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations would impose no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

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

Dated: May 30, 2007.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart E of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

Subpart E—[Amended]

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 222(c), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 422(c), 423(e), 424a, 425, 902(a)(5), and 1320a–8a and 48 U.S.C. 1801.

2. Amend § 404.408a by revising paragraph (a), adding paragraph (b)(6) and revising paragraph (d)(1) to read as follows:

§ 404.408a Reduction where spouse is receiving a Government pension.

(a) *When reduction is required.* For the purposes of this section, we use the term ''Government pension'' to mean a monthly pension from a Federal, State, or local government agency for which you were employed in work not covered by Social Security.

(1) Unless you meet one of the exceptions in paragraph (b) of this section, your monthly Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse will be reduced each month that a periodic benefit is payable to you from the Federal government for work you performed that was not covered by Social Security.

(2) If you filed an application for Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse before April 1, 2004, or your work with a State or local government ended before July 1, 2004, your benefits will be reduced each month a periodic benefit from a State or local government pension plan is payable to you, if the pension is based on work that was not covered by Social Security on the last day of employment unless you meet one of the exceptions in paragraph (b) of this section.

(3)(i) If you file an application for Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse on or after April 1, 2004, and your work with a State or local government ended July 1, 2004 or later, your benefits will be reduced each month that a periodic benefit is payable to you from a State or local government pension plan for which you were employed in work not covered by Social Security during any portion of your last 60 months of such service that ends with your last day of employment, unless you meet one of the exceptions in paragraph (b) of this section.

(ii) If the last day of your State or local government service occurs after June 30, 2004 and before March 2, 2009, we may reduce the requirement that you must work your last 60 months in covered employment. You still must work 60 months altogether in covered employment. We will reduce the last 60-month requirement (but not to less than 1 month) by the total number of months you performed in Social Security covered employment, under the same State or local retirement system, on or before March 2, 2004. The months do not have to be consecutive. You must work the remaining number of months needed to total 60 months of covered government employment after March 2, 2004. Therefore, even if you have 60 or more months of covered government employment on or before March 2, 2004, you must work your last month of covered government employment after March 2, 2004. We consider employment of at least 1 day in a given month to be a month of employment.

(4) If you receive a Government pension based on noncovered employment and later return to work for a government agency, your monthly Social Security benefit as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse will always be reduced because of your Government pension, unless the later work is covered by Social Security and you work at least 60 months in covered employment for the same employer or in the same pension plan. For purposes of this section, Federal Government employees performing work that is covered by Medicare, but not otherwise covered by Social Security, are not considered to be performing work covered by Social Security.

(5)(i) If the Government pension is not paid monthly or is paid in a lump-sum, we will allocate it on a basis equivalent to a monthly benefit and then reduce the monthly Social Security benefit accordingly.

(ii) We will generally obtain information about the number of years covered by a lump-sum payment from the pension plan.

(iii) If one of the alternatives to a lump-sum payment is a life annuity, and the amount of the monthly or other periodic payment can be determined, we will base the reduction on that amount.

(iv) Where the period or the equivalent monthly pension benefit is not clear, it may be necessary for us to determine the reduction period on an individual basis.

(b) * * *

(6) If you receive a pension for Federal Government employment and that employment was covered under Social Security for 60 months or more in the aggregate during the period beginning January 1, 1988 and ending with the first month of entitlement to

Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse.

* * * * *

(d) * * *

(1)(i) If you became eligible for a Government pension based on noncovered service after June 1983, we will reduce (to zero, if necessary) your monthly Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse by two-thirds the amount of your monthly pension.

(ii) If your Government pension is based in part on earnings from a nongovernmental entity, we will base the amount of the reduction on only the portion of the pension that is based on noncovered government service. We will not consider that portion of the pension that is attributable to the nongovernmental earnings in determining the amount of the reduction.

(iii) If the reduction is not a multiple of 10 cents, we will round it to the next higher multiple of 10 cents.

* * * * *

[FR Doc. E7–15057 Filed 8–2–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP Docket No. 1145]

RIN 1120–AB45

Civil Commitment of a Sexually Dangerous Person

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this proposed rule, the Bureau of Prisons (Bureau) provides definitions and standards relating to the certification of persons as sexually dangerous for the purpose of civil commitment, as authorized by The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248) (Walsh Act), enacted July 27, 2006, which amended title 18 of the United States Code, Chapter 313.

DATES: Comments are due by October 2, 2007.

ADDRESSES: Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at *http://www.regulations.gov*. You may also comment via the Internet to the Bureau at *BOPRULES@BOP.GOV* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov*.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

This proposed rule provides definitions and standards for review by the Bureau of persons in its custody for certification to federal district courts as ''sexually dangerous persons,'' as authorized by title 18 U.S.C. Chapter 313. The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248) (Walsh Act), enacted July 27, 2006, amended title 18 of the United States Code, Chapter 313, to add a new section 4248. Section 4248 authorizes the Bureau to certify to federal district courts that certain persons are ''sexually dangerous persons'' for whom civil commitment is required. Certification stays the release of the person and initiates district court proceedings pursuant to 18 U.S.C. 4248(a), (b), (c), and (d).

The filing of the certificate by the Bureau stays the release of the person; however, the final determination that a person is ''a sexually dangerous person'' subject to civil commitment is made by the court after proceedings held pursuant to 18 U.S.C. 4248(b) and (c), which make applicable the procedures set forth in 18 U.S.C. 4247(b), (c), and (d). As provided in § 4248(b), the court may order that a psychiatric or psychological examination of the person be conducted, and that a psychiatric or psychological report be filed with the court. Pursuant to § 4248(c), a hearing shall be conducted in which the person shall be represented by counsel, and be afforded an opportunity to testify, present evidence, subpoena witnesses on his or her behalf, and confront and cross-examine witnesses who appear at the hearing. If the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit him/her to the custody of the Attorney General as detailed in § 4248(d).

The Walsh Act also amended 18 U.S.C. 4247 to include a definition of ''sexually dangerous person.'' The amended statute defines ''sexually dangerous person'' as ''a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.'' The amended statute defines ''sexually dangerous to others'' to mean that a person ''suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.''

The statute does not define the terms ''sexually violent conduct'' or ''child molestation'' and the Bureau proposes these regulations to interpret them. Although the Bureau has, in part, looked to federal criminal statutes for language to assist in defining these terms, we do not rely upon the provisions themselves, case law interpretations of them, or other related statutory history. Rather, the Bureau's

primary intent is to create definitions of terms that are comprehensive, easily understood, familiar to the general public, and readily applicable by Bureau staff.

In addition to providing definitions for ''sexually violent conduct'' and ''child molestation,'' these regulations clarify the process by which the Bureau will determine whether a person in its custody has engaged or attempted to engage in sexually violent conduct or child molestation, and how the Bureau will assess whether such a person would be sexually dangerous to others if released.

Section 549.70 Purpose and Application

This section explains that the subpart provides definitions and standards for Bureau review of persons for certification to federal district courts as ''sexually dangerous persons,'' as authorized by title 18 U.S.C. Chapter 313.

The section further provides that the subpart applies to persons in Bureau custody, including those: (1) Under a term of imprisonment; (2) for whom all criminal charges have been dismissed solely for reasons relating to the person's mental condition; or (3) in Bureau custody pursuant to 18 U.S.C. 4241(d).

The Bureau accordingly may consider whether any person in its custody should be certified as a sexually dangerous person. Persons the Bureau will review for this purpose include those under a term of imprisonment. Because these persons have been serving sentences in Bureau custody, staff will have documentation including, but not limited to, records and information generated in criminal or civil proceedings, information provided by the United States Attorneys' offices or other federal or non-federal authorities, any statements or admissions by the person, and any available medical records. Additionally, the Bureau will have had the opportunity to provide mental health assessments, care, and treatment as indicated.

The Bureau will also review for certification persons in our custody for whom all criminal charges have been dismissed solely for reasons relating to the person's mental condition, or pursuant to 18 U.S.C. 4241(d). For these persons, Bureau staff will have had the opportunity to provide forensic mental health studies, hospitalization, and care and treatment pursuant to other provisions in 18 U.S.C. Chapter 313. Additionally, Bureau staff will have had the opportunity to work closely with the U.S. Attorneys' offices who can provide evidence of conduct necessary for certification.

The final paragraph of this section states that the Bureau may certify that a person is a sexually dangerous person when review under this subpart establishes reasonable cause to believe that the person is a sexually dangerous person. This specifies the degree of informational or evidentiary support required for the Bureau to conclude that a person is a sexually dangerous person, and hence that civil commitment proceedings should be initiated under 18 U.S.C. 4248. The required support for such a certification by the Bureau is information sufficient to provide reasonable cause to believe that the person satisfies the relevant statutory criteria as set forth in 18 U.S.C. 4247(a)(5)–(6). The Bureau will consider any available information in its possession in determining whether there is a sufficient basis for a sexually dangerous person certification, and may transfer the person to a suitable facility for psychological examination in order to obtain information for this purpose.

Section 549.71 Definition of ''Sexually Dangerous Person''

The Bureau defines this term as a person who has engaged or attempted to engage in sexually violent conduct or child molestation and has been assessed as sexually dangerous to others by a Bureau, or Bureau-contracted, mental health professional. This definition derives from 18 U.S.C. 4247(a)(5), as amended by the Walsh Act, which states that the term '' 'sexually dangerous person' means a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.''

Thus, the Bureau's regulations contemplate a two-step analysis to determine whether a person is sexually dangerous. The first step involves a review of the person's prior and current conduct to determine whether there is evidence of sexually violent conduct or child molestation. Relevant conduct may be any conduct of the person for which evidence or information is available, and is not limited to offenses for which he/she has been convicted or is presently incarcerated, or for which he/she presently faces charges. The Bureau will derive information regarding the person's conduct from his/her Pre-Sentence Investigative Report, Statement of Reasons, Criminal Judgment, and any other available source, as indicated in § 549.70(c). This may include (but is not limited to) records and information generated in criminal or civil proceedings, information provided by the United States Attorneys' offices or other federal or non-federal authorities, any statements or admissions by the person, and any available medical records.

The second step of consideration involves an assessment by Bureau, or Bureau-contracted, mental health professionals whether the person will be sexually dangerous to others. This involves a psychiatric or psychological analysis of the person to assess whether he/she suffers from a serious mental illness, abnormality, or disorder as a result of which he/she would have serious difficulty in refraining from sexually violent conduct or child molestation if released. In this assessment as well, the Bureau will consider any available information in its possession, as indicated in §§ 549.75 and 549.70(c). Documents to be reviewed may include (but are not limited to) records and information generated in criminal or civil proceedings, information provided by the United States Attorneys' offices or other federal or non-federal authorities, any statements or admissions by the person, and any available medical records.

Whereas the first step of analysis is a review of the person's conduct, the second step is an assessment of whether a mental condition exists, and if so, how it will affect the person's ability to refrain from sexually violent conduct or child molestation if released. If the criteria for both steps are met, the person qualifies for certification as a sexually dangerous person under the provisions of § 4248(a).

Section 549.72 Definition of ''Sexually Violent Conduct''

The Bureau defines this term as any unlawful conduct of a sexual nature with another person (''the victim'') that involved the following (for each provision, we note the statutory derivation):

- The use or threatened use of force against the victim;
- Threatening or placing the victim in fear that the victim, or any other person, will be harmed. This, and the previous bulleted item's, language derive from 18 U.S.C. 2241(a) and 2242(1);
- Rendering the victim unconscious and thereby engaging in conduct of a sexual nature with the victim. This language derives from 18 U.S.C. 2241(b)(1);
- Administering to the victim, by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance, and thereby substantially

impairing the ability of the victim to appraise or control conduct. This language derives from 18 U.S.C. 2241(b)(2)(A); or

• Engaging in such conduct with a victim who is incapable of appraising the nature of the conduct, or physically or mentally incapable of declining participation in, or communicating unwillingness to engage in, that conduct. This language derives from 18 U.S.C. 2242(2).

Sexually violent conduct also includes engaging in any conduct of a sexual nature with another person with knowledge of having tested positive for the human immunodeficiency virus (HIV), or other potentially life-threatening sexually-transmissible disease, without the informed consent of the other person to be potentially exposed to that sexually transmissible disease. This language acknowledges the growing concerns surrounding potential transmission of sexual diseases that have the potential to cause significant harm to the victim's health or even endanger life. Several states have enacted laws which criminalize such conduct, including Arkansas, California, Florida, Georgia, Idaho, Illinois, Iowa, Louisiana, Michigan, Missouri, Nevada, New Jersey, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, and Washington. The Bureau, therefore, treats exposing another to a potentially life-threatening sexually transmissible disease without his or her informed consent as sexually dangerous. Such conduct is similar in nature to the conduct of a poisoner, who uses no overt force or threat against the victim, but is properly regarded as a violent offender, in that he surreptitiously introduces an injurious substance into another 's body.

The regulation does not require that the person be convicted of or presently charged with the conduct in question. As provided in § 549.70(c), all available evidence and information in Bureau possession may be used in determining whether the person has engaged in such conduct. For example, if a person is serving a term of imprisonment for an offense under chapter 109A, 110, or 117 or § 1591 of title 18 of the United States Code, it may be clear from the definition of the offense of conviction that he/she engaged or attempted to engage in sexually violent conduct or child molestation. But even if the offense for which the person is incarcerated is not facially sexual in nature, the available evidence or information, such as records and information generated in criminal or civil proceedings, information provided by the United States Attorneys' offices or other federal or non-federal authorities, any statements or admissions by the person, and any available medical records, may show that he/she in fact engaged in such conduct.

Moreover, even if no actual or attempted sexually violent conduct or child molestation was involved in the offense for which the person is presently incarcerated, there may be evidence or information indicating that he/she engaged in such conduct in the past, such as records or information generated in state criminal proceedings or civil commitment proceedings, information provided by the United States Attorneys' offices or other federal or non-federal authorities, any statements or admissions by the person, and any available medical records.

Likewise, for a person in the custody of the Bureau for reasons other than serving a term of imprisonment, for whom charges were dismissed based on his/her mental condition, or committed under 18 U.S.C. 4241(d) for incompetency to stand trial or undergo post-release proceedings, information may be available from the U.S. Attorney's office concerning pending or dismissed charges, which shows that the person engaged or attempted to engage in sexually violent conduct or child molestation, or information may be available that he/she engaged or attempted to engage in such conduct at some time in the past.

Regardless of the source, any evidence of sexually violent conduct or child molestation in which the person engaged or attempted to engage may be considered—whether or not a conviction resulted, and whether or not the person's present custody is based on the conduct in question—and all available evidence and information may be taken into account in determining whether the person engaged or attempted to engage in such conduct.

In addition to being part of what must be found to have occurred in the past—that the person engaged or attempted to engage in ''sexually violent conduct'' or ''child molestation''—these terms figure into the required assessment that the person is sexually dangerous to others, since that is defined to mean that the person suffers from a serious mental illness, abnormality, or disorder as a result of which he or she would have ''serious difficulty in refraining from sexually violent conduct or child molestation if released.'' 18 U.S.C. 4247(a)(6). The same definitions of ''sexually violent conduct'' and ''child molestation'' apply in the assessment of the person's ability to refrain from such conduct if released.

Section 549.73 Definition of ''Child Molestation''

The Bureau defines this term as any unlawful conduct of a sexual nature with, or sexual exploitation of, a person under the age of 18 years.

As with ''sexually violent conduct,'' a determination that a person has engaged or attempted to engage in ''child molestation'' does not require that the person be convicted of or presently charged with the conduct in question, and all available evidence and information may be used in determining whether the person has engaged or attempted to engage in such conduct. The discussion above of § 549.72 provides more detailed discussion of these matters, and applies as well in relation to ''child molestation.''

Section 549.74 Definition of ''Sexually Dangerous to Others''

The Bureau defines this term to mean that a person suffers from a serious mental illness, abnormality, or disorder as a result of which he or she would have serious difficulty in refraining from sexually violent conduct or child molestation if released. This language derives from 18 U.S.C. 4247(a)(6).

As provided in § 549.70(c), the Bureau, or Bureau-contracted mental health professionals, may use all available information about conduct and mental condition to determine a person's sexual dangerousness to others. For example, it is not necessary that the person have been charged with or convicted of any criminal act related to the conduct being considered—a limitation that could prevent a mental health professional from considering probative and relevant evidence such as long-established patterns of behavior, admissions of criminal activity previously undetected by authorities, and statements of intent to commit future sexually violent crimes or acts of child molestation. By considering all conduct and other relevant information, a mental health professional can conduct a full assessment of a person's difficulty in refraining from committing a future sexually violent crime or child molestation.

Section 549.75 Determining ''Serious Difficulty in Refraining From Sexually Violent Conduct or Child Molestation if Released''

This section explains that, when assessing a person's ''serious difficulty in refraining from sexually violent conduct or child molestation if released,'' Bureau, or Bureau-contracted, mental health professionals may consider, but are not limited to, any evidence:

• Of the person's repeated contact, or attempted contact, with one or more victims;

• Of the person's denial of or inability to appreciate the wrongfulness, harmfulness, or likely consequences of engaging in sexually violent conduct or child molestation;

• Established through interviewing and testing of the person, or other risk assessment tools, that are relied upon by mental health professionals;

• Established by forensic indicators of inability to control conduct, such as:

(1) Offending while under supervision,

(2) Engaging in offense(s) when likely to get caught,

(3) Statement(s) of intent to re-offend, or

(4) Admission of inability or difficulty to control behavior; or

• Indicating successful completion of, or failure to successfully complete, a sex offender treatment program.

These criteria are not meant to be an exhaustive list, but rather are illustrative of practical, probative, and relevant evidence used by mental health professionals when assessing patient risk.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of avoiding confusion caused by the statutory change, while allowing the Bureau to operate under the definitions stated in the regulations. There will be no new costs associated with this rulemaking.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 549

Prisoners.

Dated: July 24, 2007.

Harley G. Lappin,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 549 as set forth below.

Subchapter C—Institutional Management

PART 549—MEDICAL SERVICES

1. Revise the authority citation for 28 CFR part 549 to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 876b; 18 U.S.C. 3621, 3622, 3524, 4001, 4005, 4042, 4045, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4248, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Add a new subpart F, to read as follows:

Subpart F—Civil Commitment of a Sexually Dangerous Person

Sec.

549.70 Purpose and application.
549.71 Definition of ''sexually dangerous person.''
549.72 Definition of ''sexually violent conduct.''
549.73 Definition of ''child molestation.''
549.74 Definition of ''sexually dangerous to others.''
549.75 Determining ''serious difficulty in refraining from sexually violent conduct or child molestation if released.''

Subpart F—Civil Commitment of a Sexually Dangerous Person

§ 549.70 Purpose and application.

(a) This subpart provides definitions and standards for review of persons for certification to federal district courts as sexually dangerous persons, as authorized by title 18 U.S.C. Chapter 313, by Bureau of Prisons (Bureau), or Bureau-contracted, staff.

(b) This subpart applies to persons in Bureau custody, including those:

(1) Under a term of imprisonment;

(2) For whom all criminal charges have been dismissed solely for reasons relating to the person's mental condition; or

(3) In Bureau custody pursuant to 18 U.S.C. 4241(d).

(c) The Bureau may certify that a person in Bureau custody is a sexually dangerous person when review under this subpart provides reasonable cause to believe that the person is a sexually dangerous person. In determining whether a person is a sexually dangerous person and should be so certified, the Bureau, or Bureau-contracted staff, will consider any available information in its possession, and may transfer the person to a suitable facility for psychological examination in order to obtain information for this purpose.

§ 549.71 Definition of ''sexually dangerous person.''

For purposes of this subpart, a ''sexually dangerous person'' is a person:

(a) Who has engaged or attempted to engage in:

(1) Sexually violent conduct; or

(2) Child molestation; and

(b) Has been assessed as sexually dangerous to others by a Bureau, or Bureau-contracted, mental health professional.

§ 549.72 Definition of ''sexually violent conduct.''

For purposes of this subpart, ''sexually violent conduct'' includes:

(a) Any unlawful conduct of a sexual nature with another person (''the victim'') that involves:

(1) The use or threatened use of force against the victim;

(2) Threatening or placing the victim in fear that the victim, or any other person, will be harmed;

(3) Rendering the victim unconscious and thereby engaging in conduct of a sexual nature with the victim;

(4) Administering to the victim, by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance, and thereby substantially impairing the ability of the victim to appraise or control conduct;

(5) Engaging in such conduct with a victim who is incapable of appraising the nature of the conduct, or physically or mentally incapable of declining participation in, or communicating unwillingness to engage in, that conduct; or

(b) Engaging in any conduct of a sexual nature with another person with knowledge of having tested positive for the human immunodeficiency virus (HIV), or other potentially life-threatening sexually-transmissible disease, without the informed consent of the other person to be potentially exposed to that sexually transmissible disease.

§ 549.73 Definition of ''child molestation.''

For purposes of this subpart, ''child molestation'' includes any unlawful conduct of a sexual nature with, or sexual exploitation of, a person under the age of 18 years.

§ 549.74 Definition of ''sexually dangerous to others.''

For purposes of this subpart, ''sexually dangerous to others'' means that a person suffers from a serious mental illness, abnormality, or disorder as a result of which he or she would have serious difficulty in refraining from sexually violent conduct or child molestation if released.

§ 549.75 Determining ''serious difficulty in refraining from sexually violent conduct or child molestation if released.''

In determining whether a person will have ''serious difficulty in refraining from sexually violent conduct or child molestation if released,'' Bureau, or Bureau-contracted, mental health professionals may consider, but are not limited to, evidence:

(a) Of the person's repeated contact, or attempted contact, with one or more victims;

(b) Of the person's denial of or inability to appreciate the wrongfulness, harmfulness, or likely consequences of engaging or attempting to engage in sexually violent conduct or child molestation;

(c) Established through interviewing and testing of the person, or other risk assessment tools, that are relied upon by mental health professionals;

(d) Established by forensic indicators of inability to control conduct, such as:

(1) Offending while under supervision;

(2) Engaging in offense(s) when likely to get caught;

(3) Statement(s) of intent to re-offend; or

(4) Admission of inability to control behavior; or

(e) Indicating successful completion of, or failure to successfully complete, a sex offender treatment program.

[FR Doc. E7–14943 Filed 8–2–07; 8:45 am]

BILLING CODE 4410–05–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1401

RIN 3076–AA06

Freedom of Information Act Regulations

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) proposes to amend its rules under the Freedom of Information Act (FOIA) primarily to effectuate various provisions under the 1996 Electronic FOIA Amendments. Previously, FMCS had issued a proposed rule on November 3, 1999. 64 FR 59697, Nov. 3, 1999. FMCS received no comments when the proposed rule was published in 1999. FMCS is now withdrawing that proposed rule and issuing a new revised proposed rule. The proposed revisions include a new response time for FOIA requests, procedures for requesting expedited processing, the availability of certain public information on FMCS's Web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, FMCS's proposed amendments would update its fee schedule. FMCS is also updating the names and addresses of the various offices within the agency responsible for FOIA related activities.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 2, 2007.

ADDRESSES: Send comments to Michael J. Bartlett, Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Michael J. Bartlett, (202) 606–3737.

SUPPLEMENTARY INFORMATION: In this rulemaking, FMCS proposes to amend its regulations at 29 CFR part 1401, subpart B under FOIA, 5 U.S.C. 552. The primary focus of these proposed amendments is to effectuate for this Agency various provisions under the 1996 Electronic FOIA Amendments, Public Law No. 104–231. Significant new provisions implementing the amendments are found at § 1401.21(a) (electronic reading room), (d) (pamphlets distribution), (e) (records disposition), § 1401.22 (deletion marking), § 1401.34(a), (b), (c), (d) (timing of responses), § 1401.34(d) (volume estimation), § 1401.36 (a) (definitions), (b) (fee schedules, lack of fees, fee waivers).

Proposed revisions to the FMCS fee schedule can be found at § 1401.36(b)(1)(i), (ii), (iv), (3)(v). The duplication charge will remain the same at twenty cents per page, while document search and review charges will increase to $4.00 per each quarter hour or portion thereof for clerical time and $10.00 per each quarter hour or portion thereof for professional time. The amount at or below which the Service will not charge a fee will decrease from $50.00 to $14.00.

Sections such as § 1401.32, § 1401.34(d), § 1401.35, § 1401.36(b)(2)(ii) are being revised to reflect minor language or organizational name changes within FMCS. Sections 1401.24 and 1401.37 are being removed because they are neither required by Law nor necessary to interpret the law.

List of Subjects in 29 CFR Part 1401, Subpart B

Administrative practice and procedure, Freedom of information.

For the reasons stated in the preamble, FMCS proposes to amend 29 CFR part 1401, Subpart B as follows:

PART 1401—PUBLIC INFORMATION

1. The authority citation for part 1401, Subpart B continues to read as follows:

Authority: Sec. 202, 61 Stat. 136, as amended; 5 U.S.C. 552.

2. Revise § 1401.20 to read as follows:

§ 1401.20 Purpose and scope.

This subpart contains the regulations of the Federal Mediation and Conciliation Service providing for public access to information under the Freedom of Information Act, 5 U.S.C. 552. It is the policy of the FMCS to disseminate information on matters of interest to the public and to disclose upon request information contained in

agency records insofar as such disclosure is compatible with the discharge of its responsibilities and the principle of confidentiality and neutrality of dispute resolution by third party neutrals.

3. Amend § 1401.21 by revising paragraphs (c), (d) and (e) to read as follows:

§ 1401.21 Information policy.

* * * * *

(c) FMCS maintains a public reading room that contains the records required by the FOIA to be made readily available for public inspection and copying. FMCS shall maintain and make available for public inspection and copying a current subject-matter index of its reading room records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. FMCS shall also make reading room records created on or after November 1, 1996, available electronically through FMCS's World Wide Web Site (which can be found at *http://www.fmcs.gov*).

(d) Records or documents prepared by FMCS for routine public distribution, e.g., pamphlets and brochures, will be furnished upon request to Office of the Director of Public Affairs, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, as long as the supply lasts. The provisions of § 1401.36 (fees) are not applicable to such requests except when the supply of such material is exhausted and it is necessary to reproduce individual copies upon specific request.

(e) All existing FMCS records are subject to disposition according to agency record retention schedules and General Records Schedules promulgated by the National Archives and Records Administration.

4. Revise § 1401.22 to read as follows:

§ 1401.22 Partial disclosure of records.

(a) If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not possible to separate them.

(b) Records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted and the applicable exemption.

§ 1401.24 [Removed]

5. Remove § 1401.24

6. Revise § 1401.31 as follows:

§ 1401.31 Filing a request for records.

(a) Any person who desires to inspect or copy an Agency record should submit a written request to the Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. The envelope [or cover sheet] should be marked ''Freedom of Information Act request.'' Electronic mail requests should be sent to *foia@fmcs.gov.*

(b) Each request should reasonably describe the records being sought, so that the records requested may be located and identified. If the description is insufficient to locate the requested records, the officer processing the request will notify the requester and ask for additional information.

§ 1401.32 [Amended]

7. Amend § 1401.32 by removing the words ''Legal Services Office'' in paragraphs (a) and (b) and by adding in their place the words ''Office of the General Counsel.''

8. Amend § 1401.34 as follows:

A. Revise paragraph (a) and paragraph (b) introductory text.

B. Remove paragraphs (b)(3) and (4).

C. Revise paragraph (c).

D. Remove the paragraph designation (b) in the last paragraph of the section and redesignate that paragraph as paragraph (d).

E. Amend newly redesignated paragraph (d) by Removing the term ''Deputy Director'' and adding the term ''Chief of Staff'' in its place.

F. Add paragraphs (e) and (f) to read as follows:

§ 1401.34 Time for processing requests.

(a) All time limitations established pursuant to this section shall begin as of the time a request for records is received by the Office of the General Counsel.

(b) The officer or employee responsible for responding to the request shall, within twenty (20) working days following receipt of the request, respond in writing to the requester, determining whether, or the extent to which, the Agency shall comply with the request.

(1) * * *

(2) * * *

(c) Where the time limits for processing a request cannot be met because of unusual circumstances and FMCS determines to extend the time limit on that basis, FMCS will, as soon as practicable, notify the requester in writing of the unusual circumstances and the date by which the processing can be expected to be completed. Where the extension is for more than 10 working days, FMCS will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period for processing the request or a modified request. If FMCS reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated.

(d) If any request for records is denied in whole or in part, the response required by paragraph (b) of this section shall notify the requester of the denial. Such denial shall specify the reason and also advise that the denial may be appealed to the Office of the Chief of Staff of the Agency as specified in § 1401.35. In addition, such denial shall include an estimate of the volume of records or information withheld, in numbers of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable estimation.

(e) FMCS offices may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and or time needed to process the request. A person making a request that does not qualify for the fastest multitrack processing should be given an opportunity to limit the scope of the request in order to qualify for faster processing.

(f) Requests and appeals will be taken out of order and given expedited processing in cases where the requester demonstrates a compelling need.

(1) *Compelling need* means:

(i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information.

(2) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

(3) Within 10 calendar days of its receipt of a request for expedited processing, FMCS will notify the

requester of its decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1401.35 [Amended].

9. Amend § 1401.35 by removing the term ''Deputy Director'' wherever it appears in paragraphs (a), (b), and (c) and by adding the term ''Chief of Staff'' in its place.

10. Amend § 1401.36 as follows:

A. Remove the word ''the'' between ''forgoing'' and ''scheduling'' and add the words ''other than those related to arbitration'' between ''services'' and ''which'' in § 1401.36(b)(2)(i).

B. Revise paragraphs (a)(2), (3) and (4), (b)(1)(i), (ii), (iv), (b)(2)(ii), (b)(3)(v) and (b)(4) as follows:

§ 1401.36 Freedom of Information Act fee schedules.

(a) * * *

(2) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Copies may be in various forms including machine-readable documentation (*e.g.* magnetic tape or disk) among others. A requester's specified preference of form or format of disclosure will be honored if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) *Review* refers to the process of examining documents located in response to a request that is for commercial use, to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure to the requester, *e.g.*, doing all that is necessary to excise them or otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the applicability of particular exemptions or reviewing on appeal exemptions that are applied. However, records or portions withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

* * * * *

(b) Fee schedules and waivers.

* * * * *

(1) * * *

(i) *Clerical time.* For each one-quarter hour or portion thereof of clerical time, $4.00.

(ii) *Professional time.* For each one-quarter hour or portion thereof of profession time, $10.00.

(iii) * * *

(iv) *Computer time.* For computer searches of records, requestors will be charged the direct costs of conducting the search (as provided in paragraph (b)(3)(i)), although certain requestors will be charged no search fee (as provided in paragraph (b)(3)(ii) and (iii)), and certain other requestors will be entitled to the cost equivalent of two hours of manual search time without charge (as provided in paragraph (b)(3)(iv)). These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to the searching for responsive records, as well as the costs of operator/programmer salary attributable to the search. Computer time expressed in fractions of minutes will be rounded to the next whole minute.

* * * * *

(2) * * *

(ii) For those matters coming within the scope of this regulation, the FMCS will look to the provisions of the guidance published by in the Office of Management and Budget's Uniform Fee Schedule and Guidelines (available at *http://www.whitehouse.gov/omb/inforeg/infopoltech.html*) and the Department of Justice Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act (available at *http://www.usdoj.gov/04foia/04_7.html*) for making such interpretations as necessary.

(3) * * *

(v) In no event shall fees be charged when the total charges are less than $14.00, which is the Agency cost of collecting and processing the fee itself. If the request is expected to involve an assessed fee in excess of $14.00, the response shall specify or estimate the fee involved before the records are made available.

(4) *Waiver or reduction of charge.* A fee waiver must be requested at the same time that a request for records is made. The requester should provide an explanation of why the waiver is appropriate. If the request for a waiver or reduction is denied, the denial may be appealed to FMCS' Chief of Staff. In the appeal letter, the requester should discuss whatever reasons are given in the denial letter. Documents may be furnished without charge or at reduced levels if FMCS determines that disclosure of the information is in the public interest; that is, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

* * * * *

§ 1401.37 [Removed]

11. Remove § 1401.37.

Dated: July 26, 2007.

Michael J. Bartlett,

Deputy General Counsel.

[FR Doc. E7–14818 Filed 8–2–07; 8:45 am]

BILLING CODE 6732–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1193 and 1194

Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a Telecommunications and Electronic and Information Technology Advisory Committee (Committee) to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. This notice announces the dates, times, and location of two upcoming conference calls.

DATES: The conference calls are scheduled for August 21 and August 28, 2007 (beginning at 1 p.m. and ending at 3 p.m. Eastern time each day).

ADDRESSES: Individuals can participate in the conference calls by dialing into the teleconference numbers which will be posted on the Access Board's Web site at: *http://www.access-board.gov/sec508/update-index.htm.* Individuals may also participate in the conference calls at the Access Board's offices at 1331 F Street, NW., suite 1000, Washington, DC 20004–1111.

FOR FURTHER INFORMATION CONTACT: Timothy Creagan, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0016 (Voice); 202–272–0082 (TTY). Electronic mail address: *creagan@access-board.gov.*

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established the Telecommunications and Electronic and Information Technology Advisory Committee (Committee) to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. The next committee meetings will take place on August 21 and August 28, 2007 (both meetings will be from 1 p.m. to 3 p.m. Eastern time) by teleconference. The meeting on August 21 will focus on reports and recommendations from the Documentation and Technical Support subcommittee. The meeting on August 28 will focus on reports and recommendations from the Audio-Video subcommittee. The agendas, instructions (including information on captioning), and dial in telephone numbers for the teleconferences are available at *http://www.access-board.gov/sec508/update-index.htm.* Notices of future meetings will be published in the **Federal Register**.

The conference calls are open to the public and interested persons can dial into the teleconferences and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them and the committee during public comment periods scheduled during each conference call.

Participants may call into the teleconferences from any location of their choosing. However, all participants must pre-register for each call. This will allow the Access Board to better manage the teleconferences and to provide additional information as needed. Any persons intending to participate must notify Timothy Creagan at *creagan@access-board.gov* by August 15 of their intent to attend the August 21 teleconference and by August 22 of their intent to attend the August 28 teleconference. The Access Board has very limited space at its office which will be available during the conference calls. Anyone wishing to participate on the call at the Access Board must contact Timothy Creagan by these dates to pre-register. Sign language interpreters, an assistive listening system, and real-time captioning will be provided at the Access Board's offices during the teleconferences. For the comfort of other participants, persons attending the teleconferences at the Access Board's offices are requested to refrain from using perfume, cologne, and other fragrances.

James J. Raggio,

General Counsel.

[FR Doc. E7–15062 Filed 8–2–07; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 3

[EPA–HQ–OEI–2003–0001; FRL–8449–9]

RIN 2025–AA07

Extension of Cross-Media Electronic Reporting Rule Deadline for Authorized Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Final Cross-Media Electronic Reporting Rule (CROMERR) deadline for authorized programs (states, tribes, or local governments) with existing electronic document receiving systems to submit an application for EPA approval to revise or modify their authorized programs. This action proposes to extend the current October 13, 2007, deadline until October 13, 2008. Additionally, in the ''Rules and Regulations'' section of this **Federal Register**, EPA is making this revision as a direct final rule without a prior proposed rule. If the Agency receives no relevant adverse comment, EPA will not take further action on this proposed rule.

DATES: Written comments must be received by September 4, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2003–0001,by mail to CROMERR Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1697; *huffer.evi@epa.gov,* or David Schwarz, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1704; *schwarz.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Does This Rule Do?

This rule proposes to provide temporary regulatory relief to states, tribes, and local governments with ''authorized programs'' as defined in 40 Code of Federal Regulations (CFR) § 3.3. Any such authorized program that operates an ''existing electronic document receiving system'' as defined in 40 CFR 3.3 will have an additional year to submit an application to revise or modify its authorized program to meet the requirements of 40 CFR part 3. Specifically, this rule proposes to amend 40 CFR 3.1000(a)(3) by extending the October 13, 2007, deadline to October 13, 2008.

II. Why Is EPA Issuing This Proposed Rule?

EPA proposes to extend the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements beyond those imposed by the underlying final rule (70 FR 59848, October 13, 2007). EPA has published a direct final rule in the ''Rules and Regulations'' section of this **Federal Register** because EPA views this as a noncontroversial action and anticipates no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If EPA receives no adverse comment, the Agency will not take further action on this proposed rule. If EPA receives adverse comment, the Agency will withdraw the direct final rule and it will not take effect. EPA will address all relevant public comments in any subsequent final rule based on this proposed rule.

EPA will not institute a second comment period on this action. Any parties interested in commenting on this proposed rule or the direct final rule listed elsewhere in today's **Federal Register** must do so at this time. For further information about commenting, please see the **ADDRESSES** section of this document.

III. Does This Action Apply to Me?

This action will affect states, tribes, and local governments that have an authorized program as defined in 40 CFR 3.3 and also have an existing electronic document receiving system, as defined in 40 CFR 3.3. For purposes of this rulemaking, the term ''state'' includes the District of Columbia and the United States territories, as specified in the applicable statutes. That is, the term ''state'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Marina Islands, and the Trust Territory of the Pacific Islands, depending on the statute.

Category	Examples of affected entities
Local government	Publicly owned treatment works, owners and operators of treatment works treating domestic sewage, local and regional air boards, local and regional waste management authorities, and municipal and other drinking water authorities.
Tribe and State governments	States, tribes or territories that administer any federal environmental programs delegated, authorized, or approved by EPA under Title 40 of the CFR.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

IV. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

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

V. Summary of Rule

This proposed rule would amend 40 CFR 3.1000(a)(3) by extending the current October 13, 2007 deadline for authorized programs with existing electronic document receiving systems to submit applications to October 13, 2008.

For additional discussion of the proposed rule change, see the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register**. This proposal incorporates by reference all the reasoning, explanation, and regulatory text from the direct final rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. This proposed rule merely extends the regulatory schedule for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems. There are no costs associated with this rule.

B. Paperwork Reduction Act

This action does not impose any information collection burden. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 3) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2025–0003, EPA ICR number 2002.03. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672. The ICR is also available electronically in *www.regulations.gov.*

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any

other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business that meets the definition for small businesses based on SBA size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000 (Under the RFA definition, States and tribal governments are not considered small governmental jurisdictions.); and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the possibility of economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are small governmental jurisdictions. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems. EPA has therefore concluded that today's action will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, tribe, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, tribe, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribes, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, tribe, or local governments or the private sector. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for states, tribes, and local governments, in the aggregate, or the private sector in any one year. Thus, today's action is not subject to the requirements in Sections 202 and 205 of UMRA.

EPA has also determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments, as described in the UMRA, and thus this rule is not subject to the requirements in Section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

EPA has concluded that this proposed rule does not have tribal implications. It will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically

significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant action as defined by Executive Order 12866 and it does not establish an environmental standard intended to mitigate health or safety risks. This action merely extends the current due date for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems, and imposes no additional requirements.

H. Executive Order 13211: Energy Effects

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. EPA's compliance with 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113, 12(d) (15 U.S.C. 272 note)) has been addressed in the preamble of the underlying final rule [70 FR 59848, October 13, 2007].

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule merely extends the current regulatory schedule for submitting applications under CROMERR for authorized programs with existing electronic document receiving systems.

List of Subjects in 40 CFR Part 3

Environmental protection, Conflict of interests, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

Dated: July 26, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–15014 Filed 8–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0541; FRL–8449–7]

Approval and Promulgation of Air Quality Implementation Plans; MI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving a request submitted by the Michigan Department of Environmental Management (MDEQ) on March 31, 2006, to revise the Michigan State Implementation Plan (SIP) to amend R336.1627 and R336.2005, and adopt R336.2004. These changes take place within Part 6, Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions; Delivery Vessels; Vapor Collection Systems; and Part 10, Intermittent Testing and Sampling, respectively.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to these direct final and proposed rules, we do not contemplate taking any further action in relation to this proposed rule. If EPA receives adverse comments, we will withdraw the direct final rule and will respond to all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before September 4, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0541 by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Steve Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard,

Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

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

Dated: July 24, 2007.

Walter W Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E7–15012 Filed 8–2–07; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 302–3, 302–5, 302–7, 302–12, and 302–16

[FTR Case 2007–304; Docket 2007-0002, Sequence 1]

RIN 3090–AI37

Federal Travel Regulation; FTR Case 2007–304, Relocation Allowances–Governmentwide Relocation Advisory Board

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA), Office of Governmentwide Policy (OGP), continually reviews and adjusts policies as a part of its ongoing mission to provide policy assistance to the Government agencies subject to the Federal Travel Regulation (FTR). Accordingly, GSA created the Governmentwide Relocation Advisory Board (GRAB), consisting of Government and private industry relocation experts, to examine Government relocation policy. To allow for the use of private industry expertise in the rulemaking and possible legislative actions, the GRAB was chartered through the Federal Advisory Committee Act on July 9, 2004. The GRAB submitted a final report of its findings on September 15, 2005. If implemented, the 100 plus recommendations of the GRAB would keep Government relocation practices aligned with private sector best practices, as well as improve the overall management of Government relocation programs and reduce costs. This proposed rule transforms many of the GRAB's recommendations into FTR policy. The GRAB Findings and Recommendations and corresponding documents may be accessed at GSA's Web site at *http://www.gsa.gov/grab.*

DATES: Interested parties should submit comments in writing on or before October 2, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FTR case 2007–304 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Search for any document by first selecting the proper document types and selecting ''General Services Administration - All'' as the agency of choice. At the ''Keyword'' prompt, type in the FTR case number (for example, FTR Case 2007–304) and click on the ''Submit'' button. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''General Services Administration - All'', and typing the FTR case number in the keyword field. Select the ''Submit'' button.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FTR case 2007–304 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Davis, Office of Travel, Transportation and Asset Management (MT), General Services Administration at (202) 208–7638 or e-mail at *ed.davis@gsa.gov*for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FTR case 2007–304.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA), Office of Governmentwide Policy (OGP), reviews the regulations under its purview to address current Government relocation needs and incorporates private industry policies and best practices, where appropriate. The relocation services industry is complex and changes frequently. Changes in relocation policy need to be made to comport with industry best practices.

With the exception of the Relocation Income Tax Allowance (RITA), which will be addressed in a subsequent proposed rule, most of the cost of a relocation is related to the residence transactions. The Federal Government has traditionally reimbursed up to 10 percent of the selling price of the previous residence and 5 percent of the purchase price of the new home (this is known as direct reimbursement). Currently, the tax implications of this transaction are handled through a two-year RITA process, and there are long delays in getting equity into the hands of the employee so that a new residence can be purchased. Through a homesale program, directed by a contracted vendor, these two issues can be solved for the benefit of both the agency and employee. The result is that the employee receives equity when selling to the contracted vendor, and this transaction if accomplished through a vendor, is not taxable to the employee.

For smaller relocation expenses such as the Miscellaneous Expense Allowance (MEA), much of private industry uses lump-sum payments. These payments have a small one-time administrative cost and do not need to be reconciled in a post-payment audit. The administrative savings and efficiency improvements of such systems are clear because far less staff time is needed to administer, monitor, and audit payments in a lump-sum scenario.

Private industry spends less time on its relocation packages because they are tiered and handle special circumstances more flexibly. Also, in private industry, payment or reimbursement of relocation expenses to the employee or third party vendor rarely extends beyond one year because there are few extensions. The focus is on getting the transferee settled at the new location in permanent quarters as quickly as possible. The main lesson that the Government can

learn from benchmarking against private industry is that efficiency is important.

OGP has examined the issues facing agencies and their relocating employees. Through GRAB recommendations, internal GSA discussions, consideration of Governmentwide policy interests, and comments added by the Executive Relocation Steering Committee, this proposed rule emerged.

B. Proposed Rule

This proposed rule implements some of the GRAB's recommendations. The changes in part 302 will necessitate the addition of the following definitions to part 300–3: amended value sale, appraised value sale, buyer's value option (BVO), fair market value, and relocation services company (RSC).

The proposed changes to 41 CFR Chapter 302 are designed to:

Reinforce the difference between mandatory and discretionary relocation allowances and clarify the tables in part 302–3- The GRAB wanted to ensure that the FTR highlights which relocation benefits are mandatory and which are discretionary. To do this, several errors need to be corrected in the tables outlining benefits.

Use the standard continental United States (CONUS) per diem for calculating actual expense per diems for househunting trips (HHTs) and the locality rate per diem for calculating lump-sum HHT benefits in part 302–5 - The GRAB final report explains this issue well:

''. . . , the implementing regulations for FETRA [Federal Employee Travel Reform Act]. . . created an unfortunate inconsistency between HHT and TQSE [temporary quarters subsistence expense] benefits. From that time and continuing today, the traditional method for claiming HHT expenses is linked to the locality rate (FTR Part[sic] 302–5.13 and Part [sic] 301–11.100), while the traditional method for claiming TQSE expenses is linked to the CONUS rate (FTR Part [sic] 302–6.102). Not only is this inconsistent from a practical and logical point of view, it creates an unintended constraint on encouraging the use of a more cost-effective lump-sum HHT reimbursement method: Why should any transferee use the lump-sum benefit granting 5 days' worth of the locality rate *[actually, the lump-sum method uses a multiplier of 6.25 days for both going on the trip or a multiplier of 5 days for only one person going on the HHT],* when they could use the traditional method and receive up to 10 days'' worth of the locality rate? Simply saving the trouble of submitting receipts is not a sufficient motivator to forego 5 days' worth of the locality rate. Even if transferees found that the ease of paperwork and the benefit of having their reimbursement paid up-front convinced them to use the lump-sum benefit anyway, the fact that the FTR contains this inconsistency is reason enough to make the change.''

GSA originally intended for the househunting regulation to mirror the TQSE process, where the agency either reimburses actual expenses for up to 120 days at the lower standard CONUS rate or calculates a lump-sum reimbursement for up to 30 days, with the higher locality rate as the multiplier. This would give the agencies and transferred employees a real chance to use the incentives of higher payments for a shorter timeframe to get the employees to move into permanent quarters faster. People do actually choose the lump sum for TQSE, but they do not use the lump sum for HHTs because the error removed the intended economic incentive. Agencies report that because of the error, the lump-sum househunting trips are underutilized, while the lump sum for TQSE is frequently utilized.

By emulating the TQSE regulations and correcting the error that GSA made in creating the existing househunting regulation, real economic incentives will help work towards employees managing their househunting trips more economically. Just as with the TQSE, the use of the higher locality rate for the lump-sum payment versus the lower standard CONUS rate for actual expense reimbursement will incentivize faster househunting trips managed more carefully by an employee who has economic reasons to do so.

Changing the storage allowance for the temporary storage of Household Goods by amending section 302–7.8 - The GRAB recommended that, instead of allowing for temporary storage for 90 days with one possible 90–day extension, as the FTR does today, the temporary storage benefit should be more logically planned and utilized. The GRAB's recommendation for temporary storage for CONUS to CONUS transfers is that temporary storage would be limited to 60 days, with no extensions possible. Federal agencies strongly oppose the loss of any possible extension because of the inflexibility this imposes on legitimate cases.

In consideration of the Federal agencies' need for flexibility, we are proposing that CONUS to CONUS moves will have their storage reduced to 60 days with a 30–day extension. This is in line with private industry, which rarely stores household goods for very long. However, since transfers to or from Outside the Continental United States (OCONUS) locations present greater, inherent problems, we are proposing to continue to allow for 90 days with a possible 90–day extension for any shipment that has an OCONUS origin or destination.

It is also important for agencies to have a management plan for deciding how and when they will grant temporary storage extensions. This must be based on genuine relocation criteria and not an automatic benefit. Extensions should only be granted for legitimate, unanticipated reasons, not for anything that is the result of poor planning by the employee.

Require employees to limit the asking price to 105% of the appraised value estimate of their home value and to attend residence transaction counseling sessions by changing section 302–12.3 - The GRAB recommendation allows for having two 30–day periods in the marketing of a home in the homesale program, with the latter period limited to 105% of the appraised value or broker's estimate. This regulation, in line with the current real estate market, where houses sit for much longer than they did when the GRAB was meeting, sets the time for marketing under the broker price at 60 days. This is fair to the home owner, who would have 30 days to let the market justify a belief in a higher price, and it is fair to the RSC, who would then have 30 days to market the house with the price they saw as more in line with its value.

With mandatory counseling sessions, agencies ensure that the employees who are relocating understand the different transactions involved in a home sale or purchase. This is an important part of any comprehensive program because unless the employee understands the process, problems regarding implementation may occur.

Require homes to be listed for 60 days prior to accepting an appraised value sale under section 302–12.3(c) - As was mentioned in the explanation directly above, of the three major homesale programs used by private industry, the appraised value option is the most costly of the three, even though it is a valuable tool when compared to direct reimbursement. The GRAB Report states that appraised value is used by the Government for 41% of homesale program transactions versus the 18% of private industry homesale transactions. The GRAB report strongly recommends that Government homesale programs drive the balance towards amended and BVO options.

By requiring that each agency contracting with an RSC employ a 60–day listing prior to accepting an appraised value sale, the number of appraised value sales will be reduced, and the Government will shift its mix of homesale programs to resemble that of private industry. According to the work of the Employee Relocation Council's auditor, Raffa and Associates, as shown

in the GRAB Findings and Recommendations, a shift into the same portfolio mix as private industry would save the Government $35.1 million per year.

A 60–day listing period may seem like a long time, but it allows for sales in a slower market. In a heated housing market, the listing will rarely get to 60 days.

Require employees to use the homesale marketing counseling services offered by the homesale contractor under section 302–12.3(e) - One of the problems inherent in homesale programs is the complexity of the various programs. Direct reimbursement by contrast can be easier to understand. If savings are going to be realized through the use of homesale programs, the employee must understand the options thoroughly. An easy way to do that is by having the employee receive counseling on the various options provided by the RSC. The counseling helps the agency, company, and employee because it clarifies what employees must do to participate in the program and what options the employee has to consider while dealing with the sale of one of his or her largest assets. The agency has a responsibility to monitor these counseling sessions and make sure that the materials and presentation are fair and useful to the employee. Requiring this counseling is useful to everyone.

Require that agencies examine and evaluate their relocation programs and determine whether or not a comprehensive homesale program should be part of their program under sections 302–12.105 and 302–12.106 - The Government has a major difference from private industry in their contracts with RSCs for administering homesale programs. The Government cannot legally assume title to the property from a homesale program, while most private sector companies can assume title. Therefore, the RSCs charge the Government slightly more than they charge private companies, to cover the additional risk that the RSC assumes on each property. This gives the appearance to agencies that RSC-managed homesale programs are more expensive than direct reimbursement for homesale costs, which is the most common practice among Federal agencies. Other factors also make the homesale programs appear more expensive to Government managers. As the GRAB final report states:

Most agencies that do not offer their transferees access to a home-sale program base the decision on a perception that reimbursements of direct home-sale costs are lower than the fees generally associated with a RMC [RSC] home-sale program (e.g., up to 10% of the home-sale price for direct reimbursement versus up to 23.5% for a RMC [RSC] home-sale program under [GSA Multiple Awards] Schedule 48). This perception ignores the fact that direct reimbursements are taxable income to the employee and, therefore, typically require added reimbursement from the Government to cover that tax liability, whereas properly structured RMC-[RSC-] assisted homesales are not.

The GRAB recommended that the FTR make it mandatory that each agency implement a comprehensive homesale program, including amended, appraised, and BVO's. Furthermore, the GRAB recommended that each agency try to tilt their mix of the three homesale programs away from the more expensive appraised value and towards the amended and BVO style programs, where actual offers determine the value of a residence. GSA is in strong support of this program but is not willing to mandate that all agencies implement a homesale program. GSA's position is that this would go against the philosophy that agencies are better managers of their own programs because they understand each agency's culture and mission better than GSA. However, use of a comprehensive homesale program through an RSC should be a first consideration for all agencies in designing and administering their residence transactions, because the economics of the relocation industry indicate that direct reimbursement is a tool that is best used only for cases where the property is difficult to sell (*i.e.*, houseboats, mobile homes, geodesic domes, houses with mold or artificial stucco, etc.). This proposed rule would make use of a homesale program the first consideration.

The other reason that GSA does not want to mandate homesale programs in lieu of direct reimbursement is that it believes market forces are clearly directing agencies towards doing this as a business decision. More and more agencies are contracting with RSCs for homesale services. GSA also does not want the regulation to require one method of residence transaction reimbursement, because this would possibly prevent evolution of or migration to another new method should one develop. Relocation is a quickly changing industry and the regulation must allow agencies flexibility.

Allow broader use of the Miscellaneous Expense Allowance (MEA) under part 302–16 - The FTR currently limits the MEA to expenses related to discontinuing or establishing a residence. The GRAB recommended that this limitation be removed, so that the transferee can use the MEA to cover any expenses that emerge in a relocation, whether they are prior to or after the residence transactions. Quoting from the GRAB final report:

''Currently, the FTR does not provide any reimbursement mechanism for expenses incurred by employees relating to pet care, child care, or adult care for aging parents who are dependents of the relocating employee. The employee typically incurs these costs while taking a househunting trip. Additionally, employees are ''challenged'' as the FTR does not provide for any reimbursement for children to accompany the employee on a househunting trip.''

Much like the lump-sum househunting payments mentioned above, the employee would be free to use his or her judgment to make sure the money is used wisely. In private industry, such payments are used to give transferees monies to handle their needs without having to voucher for reimbursement. This proposal also eliminates the need for the Government from having to specify what is covered by the MEA.

A standard payment for private industry is based on a month's salary. At this time, the MEA payment to Federal employees remains legally limited to one or two week's salary for a GS–13 step 10, depending on family status. GSA is planning to address this limitation in a legislative proposal.

C. Changes to Current FTR

This proposed rule—

- Adds definitions for amended value sale, appraised value sale, buyer's value option, fair market value and relocation services companies in section 300–3.1.
- Amends Table B, in section 302–3.2.
- Amends Table H, in section 302–3.101.
- Amends section 302–5.13 to make the standard CONUS rate the operative per diem for calculating actual expense househunting trips per diems and clarifies the availability and use of lump-sum reimbursements.
- Amends section 302–7.8 to limit household goods (HHG) storage to 60 days with a possible 30–day extension for CONUS to CONUS moves and keeps the 90 days with a possible 90–day extension for moves that have an authorized non-CONUS origin and/or destination.
- Amends section 302–12.3 to require that the employee's residence, if unsold after 30 days at a price set by the employee, be listed at a price no more than 105% of the appraised value for 30 days when an RSC is used and to require the employee to attend relocation counseling sessions.
- Amends sections 302–12.105 and 302–12.106 to require the agencies that

use a homesale program to administer it in a manner that will drive the programs towards the buyer value option and amended sales, and away from appraised value sales.

• Amends sections 302–16.1 and 302–16.2 to remove the connection between the miscellaneous expense allowance and the establishment and disestablishment of a residence and switches the order of the two sections to make a better logical point.

D. Executive Order 12866

This regulation is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

E. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553(a)(2); therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

F. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

G. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from congressional review prescribed under 5 U.S.C. 801 *et seq.*, since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 300–3, 302–3, 302–5, 302–7, 302–12, and 302–16

Government employees, Travel and transportation expenses.

Dated: June 19, 2007.

Kevin Messner,

Acting Associate Administrator.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA proposes to amend 41 CFR parts 300–3, 302–3, 302–5, 302–7, 302–12, and 302–16 as set forth below:

PART 300–3—GLOSSARY OF TERMS

1. The authority citation for 41 CFR part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741-5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609; 36 FR 13747; 3 CFR, 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.'' Revised May 22, 1992.

2. Amend § 300–3.1 by adding alphabetically the terms and definitions ''Amended Value Sale'', ''Appraised Value Sale'', ''Buyer's Value Option (BVO)'', ''Fair Market Value'' and ''Relocation Service Company (RSC)'' to read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Amended Value Sale–A residential sale where a bona fide outside offer to buy a residence is accepted by a relocation services company. This offer can be equal to or higher than the guaranteed offer. If the contract is acceptable, the RSC will sign the contract and amend its guaranteed offer to reflect the new value based on the higher sales price. The RSC will then disburse the transferee's equity (or remaining equity if a portion had been disbursed earlier) based upon this amended value, complete the acquisition of the property, and resell the home to the outside buyer. Amended value sales are often called ''amend from zero'' sales with the RSC guaranteed offer being the baseline from which the amendments are made.

Appraised Value Sale–A residential sale where two or more independent appraisers set the price for a guaranteed offer for the purchase of a residence. Under this option, once a transferee's home is placed in the homesale program, a relocation services company (RSC) makes a guaranteed offer for the transferee's home based on the fair market value established by independent appraisers. The offer is guaranteed for a contract specified number of calendar days. If the transferee accepts the guaranteed offer within the time period, the RSC purchases the home, takes the home into its inventory, and disburses the transferee's equity (or remaining equity if a portion had been disbursed earlier) based upon the offer. It is then the RSC's responsibility to sell the home, and the agency pays the RSC a fee that covers the closing costs, other expenses, and the risk that the RSC may lose money on the resale of the home.

* * * * *

Buyer Value Option (BVO)–A residential sale in which a transferee in consultation with a broker sets the initial asking price and sells through the relocation services company (RSC) for an acceptable outside offer. If the transferee receives an offer from an outside buyer acceptable to the RSC, the RSC buys the home from the transferee at that price, disburses the equity (or remaining equity if a portion had been disbursed earlier) and then immediately re-sells it to the outside buyer; the agency pays the RSC a fee that covers the closing costs and other RSC expenses. If, on the other hand, the transferee does not receive an acceptable offer within, for example, 30 days, then the home is placed in the homesale program and the RSC proceeds with the appraised value option.

* * * * *

Fair Market Value–The price at which a property would most likely sell if placed on the market for a reasonable period of time. It is the most likely price that a well-informed buyer would pay and a well-informed seller would agree to accept for a given property if the property were placed on the market for a reasonable period of time.

* * * * *

Relocation Service Company (RSC)–A third party vendor under contract with an agency to assist a transferred employee in relocating to the new official station. Examples of the assistance include, but are not limited to: homesale programs, home marketing assistance, home finding assistance, and property management services.

* * * * *

PART 302–3—RELOCATION ALLOWANCE BY SPECIFIC TYPE

3. The authority citation for 41 CFR part 302–3 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

§ 302–3.2 [Amended]

4. Amend § 302–3.2, Table B, Column 2, by removing entries ''3'' and ''4''.

§ 302–3.101 [Amended]

5. Amend § 302–3.101, Table H, by redesignating entry ''5'' in Column 1 as new entry ''3'' in Column 2; and in Column 1, redesignating entry ''6'' and entry ''7'' as new entry ''5'' and new entry ''6'' respectively.

PART 302–5—ALLOWANCE FOR HOUSEHUNTING TRIP EXPENSES

6. The authority citation for 41 CFR part 302–5 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

7. Amend § 302–5.13 by revising the table to read as follows:

§ 302–5.13 What methods may my agency use to reimburse me for househunting trip expenses?

* * * * *

For	You are reimbursed
You and/or your spouse's transportation expenses.	Your actual transportation costs.
You and/or your spouse's subsistence expenses.	(a) A per diem allowance at the standard CONUS rate (see *http://www.gsa.gov/perdiem*), for you and/or your spouse (*i.e.*, if you both go together; or if you go separately, the standard CONUS rate multiplied by 2), for the 10 days or less that your agency authorizes for you; or (b) Only if offered by your agency and chosen by you, a lump sum, which is dependent upon spousal participation, as follows: (1) If you go and your spouse does not, or if your spouse goes and you do not, multiply the applicable locality per diem rate by 5.00 (see *http://www.gsa.gov/perdiem*). (2) If you and your spouse both go, together or separately, multiply the applicable locality per diem rate by 6.25 (see *http://www.gsa.gov/perdiem*).

Part 302–7—TRANSPORTATION AND TEMPORARY STORAGE OF HOUSEHOLD GOODS AND PROFESSIONAL BOOKS, PAPER, AND EQUIPMENT (PBP&E)

8. The authority citation for 41 CFR part 302–7 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p.586.

9. Revise § 302–7.8 to read as follows:

§ 302–7.8 What are the time limits for the temporary storage of authorized HHG shipments?

(a) *For CONUS to CONUS shipments*, the initial period of temporary storage at Government expense may not exceed 60 days. You may request additional time, up to a maximum of 30 days; such a request must be approved by the agency official designated for such requests. Under no circumstances may temporary storage at Government expense for CONUS to CONUS shipments exceed a total of 90 days.

(b) *For shipments that include an OCONUS origin or destination*, the initial period of temporary storage at Government expense may not exceed 90 days. You may request additional time, up to a maximum of 90 days; such a request must be approved by the agency official designated for such requests. Under no circumstances may temporary storage for shipments at Government expense that include an OCONUS origin or destination exceed a total of 180 days.

(c) For all shipments, your HHG may be placed in temporary storage at origin, in transit, at destination, or any combination of these, so long as storage at Government expense does not exceed the applicable time limit.

PART 302–12—USE OF A RELOCATION SERVICES COMPANY

10. The authority citation for 41 CFR part 302–12 continues to read as follows:

Authority: 5 U.S.C. 5738 and 20 U.S.C. 905(c).

11. Amend § 302–12.3 by removing ''and'' in paragraph (b), redesignating paragraph (c) as paragraph (f), and adding new paragraphs (c), (d), and (e) to read as follows:

§ 302–12.3 Under what conditions may I use a relocation services company?

* * * * *

(c) Agree that once an RSC presents a guaranteed offer through a home buyout program, you must list your residence on the market to the public for 30 days, at a price of no more than 105% of the guaranteed offer;

(d) Agree that if you receive a bona fide offer from an outside buyer that is at or above the guaranteed offer and acceptable to the RSC, you may take the Amended Value sale option;

(e) Attend homesale marketing counseling sessions provided by the chosen RSC; and

* * * * *

12. Revise § 302–12.105 to read as follows:

§ 302–12.105 How must we administer a relocation services contract?

If you have a relocation services contract you must:

(a) Administer your homesale program to give first consideration towards the use of the buyer's value option (BVO).

(b) Administer your homesale program to give second consideration to amended value sales.

(c) Monitor costs and make adjustments as necessary to ensure that your homesale program continues to provide the best possible value to the Government, considering costs, employee morale and mobility, and other relevant considerations.

13. Amend § 302–12.106, by removing ''and'' in paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 302–12.106 What policies must we establish when offering our employees the services of a relocation services company?

* * * * *

(d) How you monitor and balance between the three kinds of homesale programs (appraised value, buyer's value option, and amended value); and

* * * * *

PART 302–16—ALLOWANCE FOR MISCELLANEOUS EXPENSES

14. The authority citation for 41 CFR part 302–16 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§§ 302–16.1 and 302–16.2 [Redesignated as §§ 302–16.2 and 302–16.1]

15. Redesignate §§ 302–16.1 and 302–16.2 as §§ 302–16.2 and 302–16.1 respectively; and revise newly redesignated §§ 302–16.1 and 302–16.2 to read as follows:

§ 302–16.1 What is the purpose of the miscellaneous expenses allowance (MEA)?

The miscellaneous expenses allowance (MEA) is to help defray some of the costs incurred due to relocating. (See part 302–10 of this chapter for

specific costs normally associated with relocation of a mobile home dwelling that are covered under transportation expenses.)

§ 302–16.2 What are miscellaneous expenses?

Miscellaneous expenses are:

(a) Costs associated with relocating that are not covered by other relocation benefits of chapter 302.

(b) Expenses allowable under this section including, but not limited to the following:

General Expenses	Fees/Deposits	Losses
Appliances	Fees for disconnecting/connecting appliances, equipment, or conversion of appliances for operation on available utilities.	
Rugs, draperies, and curtains	Fees for cutting and fitting such items when they are moved from one residence quarters to another.	
Utilities (For mobile homes, see § 302-10.204)	Deposits or fees not offset by eventual refunds.	
Medical, dental, and food locker contracts		Losses that cannot be recovered by transfer or refund and are due to early termination of a contract.
Private Institutional care contracts (such as that provided for handicapped or invalid dependents only)		Losses that cannot be recovered by transfer or refund and are due to early termination of a contract.
Privately-owned vehicles	Registration, Driver's license, and use taxes imposed when bringing into certain jurisdictions.	
Transportation of pets	The only costs included are those normally associated with transportation and handling of dogs, cats, and other house pets, as well as costs due to stringent air carrier rules. Inoculations, examinations, and boarding quarantine costs are excluded. Also excluded are costs associated with large or exotic animals, costs associated with host country restrictions, and costs arising from special handling difficulties.	

[FR Doc. E7–15156 Filed 8–2–07; 8:45 am]

BILLING CODE 6820–14–S

Notices

Federal Register
Vol. 72, No. 149
Friday, August 3, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–085–5]

Contact Information for Alfalfa Producers To Determine Proximity to Roundup Ready Alfalfa Fields

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that on August 6, 2007, the Animal and Plant Health Inspection Service will begin operating a toll-free telephone number for use by conventional and organic alfalfa farmers and prospective alfalfa farmers to inquire about the proximity of their farms or fields to Roundup Ready alfalfa. This action is being taken in compliance with a judgment and order by the United States District Court for the Northern District of California in *Geertson Seed Farms, et al.* v. *Mike Johanns, Secretary of the United States Department of Agriculture, et al.*, Case No. 06–01075.

FOR FURTHER INFORMATION CONTACT: The toll-free number for alfalfa farmers to request field locations is (866) 724–6408. For all other information, contact Mr. Thomas Sim, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–7324.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests.

In a notice published in the **Federal Register** on June 27, 2005 (70 FR 36917–36919, Docket No. 04–085–3), the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, advised the public of its determination, effective June 14, 2005, that the Monsanto/Forage Genetics International (FGI) alfalfa events J101 and J163 were no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms.

On February 13, 2007, the United States District Court for the Northern District of California issued a ruling in a lawsuit filed by several nonprofit organizations and alfalfa growers challenging APHIS' decision to deregulate alfalfa events J101 and J163 (referred to in the lawsuit as Roundup Ready alfalfa). The lawsuit alleged violations of the National Environmental Policy Act (NEPA), the Endangered Species Act, and the Plant Protection Act. The court ruled that the deregulation may have significant environmental impacts that require the preparation of an environmental impact statement (EIS), and that APHIS violated NEPA by not preparing an EIS.

Subsequently, the court issued a preliminary injunction order in the case on March 12, 2007, a permanent injunction and judgment on May 3, 2007, and an amended judgment on July 23, 2007. Among other things, these orders prohibited all sales of Roundup Ready alfalfa seed and prohibited all future planting of Roundup Ready alfalfa beginning March 30, 2007. The May 3, 2007, injunction ordered defendant-interveners Monsanto and FGI to provide APHIS with GPS and plat locations of all Roundup Ready alfalfa production acreage, which APHIS in turn would be required to post on a Government Web site. However, the July 23, 2007, amended judgment altered that requirement and instead ordered that APHIS disclose Roundup Ready alfalfa locations to farmers and prospective farmers only, under a three-part disclosure mechanism. First, APHIS is to disclose to farmers the counties in 17 Western States in which Roundup Ready seed or hay fields are located; second, APHIS is to specify, both on its Web site and in a **Federal Register** notice, the toll-free number that farmers in or adjacent to those identified counties may use to request the distances from the nearest Roundup Ready alfalfa fields to their crops; and third, APHIS is to respond to requests from farmers through the toll-free number for the distances of up to five Roundup Ready alfalfa fields nearest to the requesting farmer's property within the county or adjacent county identified.

We are complying with the first condition, the disclosure of counties in 17 Western States in which Roundup Ready seed and hay fields are located, by providing a link on APHIS' Biotechnology Regulatory Services (BRS) homepage at *http://www.aphis.usda.gov/biotechnology/brs_main.shtml*. The listing, which also includes information that is available about Roundup Ready alfalfa fields in States other than the 17 Western States, can be accessed by a link at the Web site's bottom right side that reads ''I want to learn about the status of Roundup Ready alfalfa.''

In accordance with the second and third conditions of the court's order, on August 6, 2007, APHIS will begin operating a toll-free telephone number for use by alfalfa farmers and prospective alfalfa farmers to inquire about the proximity of their fields to Roundup Ready alfalfa. The number is (866) 724–6408. An operator will be available from 9 a.m. to 5 p.m. eastern time, Monday through Friday (except holidays).

Callers must comply with the following two requirements. First, they must be a person who either currently plants conventional or organic alfalfa or plans to do so. Second, they must be ready to provide the operator with either the latitude and longitude coordinates or the mailing address of their farm or field where the alfalfa is or will be grown. Other types of location information cannot be accepted, and only one location from each caller per phone call will be accepted.

Callers will be provided the distance from the property they identify to the nearest five fields in the same or adjacent counties that have been planted with Roundup Ready seed. The locations of Roundup Ready alfalfa fields were provided to APHIS by dealers, distributors, and producers of

seed under the same court orders referenced above. APHIS cannot verify the accuracy of the location information provided by industry. Currently, APHIS has only obtained complete location information for 17 Western States [1] where Roundup Ready seed or hay is grown. Conventional and organic alfalfa farmers in States other than the 17 Western States should not call the toll-free number until after APHIS has received complete location information from the industry. Please check the APHIS/BRS Web site after September 27, 2007, for a time line of when APHIS believes it will have complete location information for the other States.

The toll-free telephone number is for field location information only. For additional information on the Roundup Ready issue, please visit the following Web site: *http://www.aphis.usda.gov/biotechnology/alfalfa.shtml*.

Done in Washington, DC, this 30th day of July 2007.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–15120 Filed 8–2–07; 8:45 am]

BILLING CODE 3410–34–P

[1] These 17 Western States are Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

DEPARTMENT OF AGRICULTURE

Forest Service

Salmon-Challis National Forest, Idaho; Salmon-Challis National Forest Travel Management Plan and Off-highway Vehicle Designation

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement to designate a portion of the National Forest roads, trails, and areas open to public motor vehicle use on the Salmon-Challis National Forest (SCNF), and assign the type of use(s) and season of use allowed on each road and trail or portion thereof. Additionally, the Forest Service will designate some previously unauthorized (or user-created) routes for public motor vehicle use and assign the type of use(s) and season of use allowed on each route or portion thereof. Decisions regarding motorized travel do not include motorized travel over snow. A Motor Vehicle Use Map (MVUM) depicting those routes that will be open to public motorized travel on the SCNF will be the primary tool to determine compliance with, and enforcement of, motorized vehicle use designations on the ground. Existing routes and user-created routes not designated as open on the MVUM will be legally closed to motorized travel. The SCNF currently has 980,700 acres open to motorized cross-country travel. Those acres will be closed year-round to motorized cross country travel, excluding over-snow vehicles.

DATES: Written comments concerning the proposed action should be received by September 14, 2007. The draft environmental impact statement is expected to be released in March 2008 and the final environmental impact statement is expected in August 2008.

ADDRESSES: Send written comments to Salmon-Challis National Forest, ATTN: Travel Management Planning, 1206 South Challis Street, Salmon, ID 83467.

FOR FURTHER INFORMATION CONTACT: Karen Gallogly, Travel Planning Team Leader, Salmon-Challis National Forest, 1206 South Challis Street, Salmon, ID 83467. Telephone: (208) 756–5103.

SUPPLEMENTARY INFORMATION:

Purpose and Need

The purpose of this action is to designate a public motorized vehicle transportation system for the SCNF that addresses current and anticipated recreation needs, provides a variety of recreation access opportunities, considers management concerns (such as public safety, maintenance costs, and consistency with adjoining public lands), reduces impacts to forest resources, recognizes reserved or outstanding rights, and reduces conflicts between recreational uses.

The need for this action is to meet national direction published in the **Federal Register**, 36 CFR Parts 212, 251, 261, 295 *Travel Management: Designated Routes and Areas for Motor Vehicle Use*'' (**Federal Register** 2005: 70 FR 68264) (Travel Management Rule). This rule requires designation of those roads, trails, and areas open to motor vehicle use on Forest System Lands. The rule prohibits the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that are not consistent with the designation.

Proposed Action

The project area includes the approximate 3.0 million acres under the administration of the SCNF, excluding the approximate 1.3 million acre-Frank Church River of No Return Wilderness Area which is Congressionally mandated as non-motorized.

The proposed action is the Forest's initial description of designated roads, trails and areas which would be available for public motor vehicle use on the SCNF. The proposed action is based on existing travel plans for both the Salmon and Challis National Forests and input gathered from the public, cooperating agencies and organizations, and Forest Service specialists during meetings, workshops, and field trips held from summer 2006 through May 2007. This proposal is only one alternative that will be evaluated in the Environmental Impact Statement for the Salmon-Challis National Forest Travel Management Plan and Off-highway Vehicle Designation.

The proposed action identifies approximately 3,400 miles of roads designated for motorized public use and about 1,100 miles of motorized trails. This proposal would prohibit all motorized cross country travel and close all roads, trails, and routes not specifically designated for motorized public use. Off-route access would be permitted for 300 feet on either side of designated motorized routes, except the Salmon River Road (FR #30) to accommodate access to and from dispersed campsites only. Camping with the use of a motor vehicle (e.g. car, motor-home, truck and camp trailer, camper, off-highway vehicle, or motorcycle) is only allowed in designated dispersed camping areas and designated pull-outs along the Salmon River Road (FR #30). Day-use parking is allowed along the Salmon River Road. Motor vehicle use for big game retrieval off of designated roads or designated motorized trails would not be allowed. Motorized use beyond those limits would be subject to citations and fines by law enforcement.

The following uses would not be affected by this decision and are outside the scope of this project: (1) Over-snow vehicles; (2) aircraft; (3) watercraft; (4) non-motorized uses (e.g. hiking, equestrian, mountain bikes); (5) search and rescue operations; (6) law enforcement operations; (7) firefighting operations; (8) permitted uses (e.g. woodcutting, livestock herding/fence maintenance; (9) limited administrative access; (10) legal ingress and egress to private land; (11) new or non-national forest roads; and (12) use of roads with legally documented rights-of-way held by state, county or other public road authority.

Detailed maps and data tables displaying proposed designated roads and trails across the Forest, and designated dispersed camping areas and pull outs along the Salmon River Road

are posted on the SCNF Web site at: *http://www.fs.fed.us/r4/sc/*

Forest Plan Amendment

The Challis National Forest Land Resource Management Plan would be amended as part of the SCNF Forest Travel Management Plan project to include changes to the two sections outlined below.

Challis National Forest Plan Amendment #9: Forestwide Management Direction Standards and Guidelines.

Current Direction

Clause d. Proposed Wilderness.

Continue existing ORV closures or expand closures where needed to allow adverse impacts from ORV's to heal. May allow ORV use to continue on the following roads and/or trails:

a. Toolbox-Herd Peak Trail #051—Between the ridgetop at the head of Toolbox Canyon, to Herd Peak—on the two short segments of this trail which dip into the proposed wilderness area; two-wheeled motorized and mechanized vehicles only.

b. Wildhorse Road #136—From proposed wilderness boundary (¼ mile above Wildhorse Campground) to end of current road; no vehicle size restrictions.

c. Long Lost Creek Road #434—From proposed wilderness boundary to Trailhead for Long Lost Trail #194; no vehicle size restrictions.

d. Long Lost Trail #194—From Long Lost Creek Road #434 to end of trail; two wheel, motorized and mechanized vehicles only.

e. Swauger Lakes Trail #091—From Long Lost Creek Road #434 to Dry Creek Trail #240; two-wheel, motorized and mechanized vehicles only.

f. Long Lost-Wet Creek Trail #245—From Long Lost Trail #194 to Shadow Lakes; two wheel, motorized and mechanized vehicles only.

Amended Directon

Clause d. Proposed Wilderness; item d described above would be removed from the list.

Long Lost Trail #194 would not be a designated motorized route and would not be open for motorized public use.

Challis National Forest Plan Amendment #9:

Management Area Direction for Management Area #16 Borah Peak, Recreation, Management Area Direction.

Current Direction

Clause c. Swauger Lakes Trail #091—from Long Lost Creek Road #434 to Dry Creek Trail #240; two wheel, motorized and mechanized vehicles only.

Amended Direction

Clause c. Swauger Lakes Trail #091—from Long Lost Creek Road #434 to Dry Creek Trail #240; motorized and mechanized vehicles 50″ or less in width only.

Possible Alternatives

Alternatives to the proposed action will be considered and evaluated. The No Action alternative would adopt the existing systems of open roads and trails displayed on current travel plans for the Salmon National Forest and the Challis National Forest and designate those routes as open to public motorized travel.

Alternatives to the Proposed Action and No Action will depict differing combinations of routes to remain open to motorized travel. The Proposed Action and the alternative actions will provide a system of routes that differ from existing conditions and the No Action alternative.

Less restrictive alternatives would generally entail designating a greater number of miles of roads and trails to be open to motorized travel than the Proposed Action. Alternatives considered to be less restrictive could also include fewer constraints on season of use or vehicle types allowed on designated routes. Less restrictive alternatives would generally provide for more motorized recreational use opportunities.

More restrictive alternatives would generally entail designating fewer miles of roads and trails to be open for motorized travel than the Proposed Action or have more constraints on season of use and vehicles types using designated routes. More restrictive alternatives would provide motorized recreational opportunities, yet there may be greater emphasis on non-motorized recreation.

A consequence of designating routes open for motorized travel is that those routes not designated as open would be identified as closed to motorized travel. Road closure procedures that involve ground-disturbing activities would not be part of the Proposed Action or alternatives and would require separate and distinct site-specific NEPA decisions regarding the implementation aspects of road closures. The environmental effects of having roads closed to motorized travel will be evaluated in this analysis.

Identification of new routes that would meet the objectives for a motorized transportation system may be, as appropriate, part of this travel management planning. Separate, site-specific NEPA decisions would be required to implement ground-disturbing activities associated with new route construction.

Responsible Official

William A. Wood, Supervisor, Salmon-Challis National Forest, Headquarters Office, 1206 South Challis Street, Salmon, Idaho 83467, is the responsible official for making the decision and providing direction for the analysis.

Nature of Decision To Be Made

Based on the purpose and need for the proposal, the Forest Supervisor will evaluate the Proposed Action and other alternatives to decide which roads, trails and areas will be designated as open to the public for motorized use and the allowed season and/or type of use for those routes open to motorized travel.

Federal land managers are directed (Executive Order 11644, 36 CFR 212 and 43 CFR 8342.1 to ensure that the use of motorized vehicles and off-road vehicles will be controlled and directed so as to protect the resources of those lands, to promote the safety of users, minimize conflicts among the the various uses of federal lands, and to provide for public use of roads and trails designated as open.

Scoping Process

Preliminary public involvement was initiated in April 2006 to inform the public and stakeholders on the objectives of travel management. The public was also asked to provide input about specific routes they wanted to remain open and/or those routes that may be in conflict with other desired conditions sought by the public on Forest Service Lands. This initial comment period ended in March 2007. The SCNF received many comments on individual routes and numerous general comments about the area and travel management as a whole.

This initial public input was used to develop the preliminary route-by-route Proposed Action which will be now used as the Forest starts the more formal scoping process. The Forest will conduct the following series of public, open-house-style meetings across the Forest and in surrounding communities to discuss the Proposed Action with interested parties and those who may be affected by the proposal:

- Challis, Idaho—August 7, 2007, 4:30–8 p.m. Challis-Yankee Fork Ranger District Office, Highway 93 North.
- Mackay, Idaho—August 8, 2007, 4:30–8 p.m. Lost River Ranger Distrct Office, 716 West Custer Street.

• Salmon, Idaho—August 9, 2007, 4:30–8 p.m. Salmon, Idaho—Public Lands Center, 1206 South Challis Street.
• Idaho Falls, Idaho—August 15, 2007, 4:30–8 p.m. Caribou-Targhee National Forest, Supervisor's Office, 1405 Hollipark Drive.
• Blackfoot, Idaho—August 16, 2007, 4:30–8 p.m. Blackfoot City Council Room, Library Building, 157 No. Broadway.
• North Fork, Idaho—August 22, 2007, 4:30–8 p.m. North Fork Fire Station, Highway 93.
• Leadore, Idaho—August 28, 2007, 4:30–8 p.m. Leadore Community Center, Highway 28.

Notice of all meetings will be posted on the Forest's website and advertised in the Recorder Herald, Challis Messenger, Arco Advertiser, and Post Register newspapers.

Based on comments received as a result of this notice and after the Forest has conducted public meetings and afforded the public sufficient time to respond to the preliminary Proposed Action, the Forest will use the public scoping comments and concerns along with resource-related input from the interdisciplanary team and other agency resource specialists to identify a set of issues to carry forward into the environmental analysis.

Preliminary Issues

The Forest Service has received some indications of potential issues from the initial public involvement process. These potential issues include:

(1) Adverse resource impacts caused by inappropriate types of vehicle use and unrestricted season of use.

(2) Infringement on wildlife caused by roads in important or critical habitat, high density of roads in wildlife habitat areas, and disturbance of wildlife during critical lifecycle periods.

(3) Loss of recreational opportunity when existing routes are closed to motorized travel.

(4) Loss of semi-primitive and primitive recreational opportunity if more routes are open to motorized travel.

(5) Failure to accommodate the growing number of motorized users desiring to use federal lands for recreational riding of ATVs and motorcycles.

(6) Inconsistencies between adjoining public lands.

(7) Enforcement concerns centered on whether the agency has the ability to provide enforcement once decisions have been made on allowed routes and uses for motorized travel.

(8) Safety concerns on routes where multiple vehicle types (full-sized trucks and cars, ATVs, and motorcycles) are allowed.

(9) Conflicts with landowners when routes cross private lands to access federally managed lands.

The Forest Service recognizes that this list of issues may not be complete and issues will be further defined and refined as scoping continues. A comprehensive list of key issues will be determined before the range of alternatives is developed and the environmental analysis is started.

Comment Requested

This notice of intent begins the formal scoping process in the development of the environmental impact statement. All comments received during the initial comment period (April 2006–March 2007) will be brought forward into this formal scoping, and those who commented then need not comment again to have their comments considered, or to demonstrate their interest in this planning process. Any new or additional comments about the proposed action would be most useful if received by September 7, 2007. Persons and organizations commenting during the intitial scoping will be maintained on the mailing list for future information about Salmon-Challis National Forest Travel Management Planning.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency (EPA) publishes the notice of availability in the **Federal Register**. Written comments are preferred and should include the name and address of the commenter. Comments submitted for this proposed action will be considered part of the public record.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).*) Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: July 25, 2007.

William A. Wood,

Forest Supervisor.

[FR Doc. E7–14977 Filed 8–2–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pinaleño Ecosystem Restoration Project, Safford Ranger District, Coronado National Forest, Graham County, Arizona

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with the President's Council on Environmental Quality (CEQ) Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) of 1969, the U.S. Department of Agriculture, Forest Service, Coronado National Forest, announces its intent to prepare an

Environmental Impact Statement (EIS) to evaluate a proposed action to thin dense forests, remove standing dead trees and down woody debris, and use prescribed fire on approximately 3,705 acres in the Pinaleño Mountains in Graham County, Arizona, within Townships 8 and 9 South, Ranges 23 and 24 East, Gila and Salt River Meridian. These treatments would be carried out over a 10-year period for the purposes of restoring a fire-adapted ecosystem and aiding in the recovery of the Mount Graham red squirrel population and habitat.

DATES: Comments concerning the scope of the EIS analysis must be received by 30 days following the publication of this notice. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) in the spring of 2008. At that time, EPA will publish a Notice of Availability (NOA) of the Draft EIS in the **Federal Register,** which will begin a period of public review of the Draft EIS. The review period will comprise 45 days from the date of publication of the NOA in the **Federal Register**. The Final EIS is scheduled to be completed in the summer of 2008.

ADDRESSES: Written comments on this notice may be mailed to the Craig Wilcox, Forest Silviculturist, Coronado National Forest, Safford Ranger District, 711 S. 14th Ave., Suite D, Safford, AZ 85546. Written comments may also be sent by facsimile to Mr. Wilcox at (928) 428–2393. Comments may be submitted by electronic mail to *cpwilcox@fs.fed.us*. Envelopes and the subject line of electronic mail messages or faxes should be labeled ''Pinaleño Ecosystem Restoration Project EIS.''

FOR FURTHER INFORMATION CONTACT: For information on the Pinaleño Ecosystem Restoration Project, please contact Mr. Craig Wilcox, Forest Silviculturist, Coronado National Forest, at the above address, and telephone (928) 348–1961. Questions on the Forest Service NEPA process may be directed to Ms. Andrea Wargo Campbell, Forest NEPA Coordinator, at 300 W. Congress St., Tucson, AZ 85701, and telephone (520) 388–8352.

SUPPLEMENTARY INFORMATION:

Background

Over the past 100 years, fire suppression and other factors have diminished the natural ecological role of fire in the Pinaleño Mountains on the Safford Ranger District of the Coronado National Forest, resulting in a higher than average stand density and a heavy accumulation of dead and downed trees (fuel load). Both of these forest conditions increase the probability and consequences of severe wildland fire occurrence in the area.

In 1996 and 2004, large-acreage, high-intensity wildland fires exacerbated a reduction in the population of the Federally endangered Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*) through habitat loss and mortality. Also, since 1996, progressive insect infestations have defoliated and killed trees in the spruce-fir and mixed-conifer forests of the Pinaleño Mountains. Tree mortality associated with these outbreaks has exacerbated the probability of wildland fire and contributed further to a decline in the red squirrel population through habitat loss. Today, the population of the red squirrel is at its lowest point since censuses were initiated in 1986, and the viability of the species is of paramount concern to both the Forest Service and other Federal and state wildlife management agencies.

In May 2005, the Forest Service developed a tentative proposal to treat this area of the Forest to decrease the probability of severe wildland fire and improve general forest health. At that time, a scoping notice was distributed to the public requesting comments on the proposal, and two open house meetings were held to explain the nature of the treatments that were planned to be implemented. Based on public input and a continued decline in the squirrel population, the Forest Service has since recognized the need for further refinement of the proposed action to achieve a balance between short-term protection of squirrel habitat and long-term forest restoration. Thus, in 2007, a refined proposed action was developed to emphasize a concurrent reduction in the potential for severe wildland fire impacts and insect and disease outbreaks, while managing for long-term sustainability of red squirrel habitat. Given the sensitive nature of any proposed Forest treatments to the red squirrel and its habitat, the Forest Service decided to prepare an EIS that would provide a robust analysis to the decisionmaker, cooperating agencies and the public.

Proposed Action

The proposed action that will be evaluated in this EIS includes both on-the-ground treatments to improve Forest health and improve or protect red squirrel habitat; and administrative actions to incorporate amendments to the governing Forest Land and Resource Management Plan (Forest Plan), the latter of which will allow on-the-ground treatments to be implemented.

On the ground, approximately 3,705 acres of Forest would receive various combinations of silvicultural prescriptive treatments and/or fuel reduction actions, which include mechanical treatments and prescribed fire. To accomplish the proposed action, the Forest Plan must be amended to allow Christmas tree removal and public fuelwood gathering and to establish less restrictive Visual Quality Objectives (VQO) in the project area. Thus, the EIS will also evaluate proposed action of amending the Forest Plan to change current standards and guidelines for the project area.

The proposed action would implement more than 50 combinations of vegetation treatment options, depending on stand density and other physical conditions. These combinations will follow two general treatment strategies tiered from management guidance for the Mount Graham red squirrel and the Mexican spotted owl.

Live-tree thinning, using a combination of variable density, thinning from below, and group selection thinning techniques, is proposed as a silvicultural treatment on approximately 2,862 acres. In this treatment area, no live or dead trees larger than 18-inches diameter at breast height (dbh) would be removed on 1,773 acres; larger than 12-inches dbh on 47 acres; and larger than 9 inches dbh on 1,042 acres. Pockets of standing dead trees (up to 18-inches dbh) would be removed in areas where high tree mortality has occurred because of wildland fire and/or insect infestations.

Forest fuel reduction treatments would generally occur in the same areas where silvicultural treatments are proposed. These actions include masticating small trees (461 acres); lopping and scattering of trees less than 9 inches diameter (3,092 acres); underburning (2,642 acres); hand piling and burning small trees (1,612 acres); and pruning trees in treatment units that are along major roads.

Vegetation that is not mechanically reduced onsite would be removed from treatment units and transferred to collection points (landings) using ground-based mechanical removal equipment, cable logging systems, and/or manual, hand-based labor. The transfer method for each treatment unit would depend upon topography, availability of road access, cost, and resource protection needs. After material is removed from treatment units and taken to landings, it would be processed into sawlogs, firewood, or chips, and trucked from the project area. Some material may be piled and burned at the landing site.

All proposed treatments would include resource-specific design criteria to guide the manner in which the actions are implemented in order to minimize or reduce anticipated effects. Treatments are expected to continue in the project area for up to a period of ten years.

Purpose of and Need for Action

The purpose of this proposed action is to restore Forest ecosystem health and to protect habitat or restore degraded habitat for the endangered Mount Graham red squirrel.

Current fuel loads and stand densities in the project area are much greater than historic forest conditions, leaving the forest increasingly vulnerable to disease, insect infestations, and fire. The ecological implications of these shifts have led to increased susceptibility of the Forest to insect outbreaks and stand-replacing fires. Therefore, there is a need to initiate restoration of natural ecological processes and to treat the causes of declining ecosystem health by reducing stand densities, changing understory species composition, and reducing fuel loading. Restoration seeks to return forests, or to initiate an ecological trajectory to return forests, to a condition that is self-sustaining and compatible with the conditions under which they naturally evolved.

According to the Mount Graham Red Squirrel Recovery Plan (USDI Fish and Wildlife Service, 1993, Arizona Ecological Services State Office, Phoenix, AZ), the main threats to this endangered subspecies are habitat loss and catastrophic wildland fire. Over the past 20 years, approximately 50% of previously occupied red squirrel habitat has been rendered unsuitable due to insect outbreaks and fire. Associated with this reduction in habitat, there is an accompanying decline in population size; the current population estimate is 216 squirrels. As such, the remaining habitat, most of which falls within the project area, is of high importance. Therefore, a need exists to protect red squirrel habitat within the project area from losses due to fire, insect outbreaks, and diseases, and to restore areas of degraded habitat for this subspecies.

Preliminary Identification of Issues

Based on a preliminary review of the proposed action, the following issues were identified:

1. Short term impacts to the Mexican spotted owl may occur.

2. The efficacy of fuel reduction treatments proposed in this project is limited by the need to protect the Mount Graham red squirrel.

3. An increase of interspecies competition from the introduced Abert's squirrel with the Mount Graham red squirrel may result due to an increase in pine species.

4. An increase of avian predation on the Mount Graham red squirrel may result due to a reduction in hiding cover.

Responsible Official

Jeanine Derby, Forest Supervisor, Coronado National Forest, will be the Responsible Official who prepares the Record of Decision at the conclusion of this NEPA review. The address for the Coronado National Forest is 300 W. Congress St., Tucson, AZ 85701.

Nature of NEPA Decision To Be Made

The Coronado National Forest Supervisor's decision will address implementation of: (1) The proposed action, including Forest Plan amendments, (2) (an) alternative(s) to the proposed action and/or amendments if any exist, or (3) the no-action alternative; and approve or disapprove each of three proposed amendments to the Forest Plan.

Comments Requested

The Forest Service encourages citizens to express issues, concerns, and suggestions they may have about this proposed action. Comments should be directly related to the proposed action to best assist us in our environmental impacts analysis. Although comments are welcome at any time, they will be most useful to us if they are received by 30 days following the publication of this notice If you have any questions about this notice or the comment process, please contact Craig Wilcox, Forest Silviculturist, Coronado National Forest, Safford Ranger District, at telephone (928) 348–1961, prior to submitting your comments.

Written comments on this notice may be mailed to Craig Wilcox, Forest Silviculturist, Coronado National Forest, Stafford Ranger District, 711 S. 14th Ave., Suite D, Safford, AZ 85546. You may also submit written comments by facsimile to Mr. Wilcox at (928) 428–2393. Comments may be submitted by electronic mail to *cpwilcox@fs.fed.us.* Envelopes and the subject line of electronic mail messages or faxes should be labeled ''Pinaleño Ecosystem Restoration Project EIS.''

Comments and personal information associated with them, such as names and addresses, will become part of the administrative project record for this NEPA review. As such, they may be made available to a third-party upon request pursuant to the Freedom of Infomation act (FOIA). If you do not wish your personal information to be subject to release under FOIA, you may choose not to include it with your comments. Alternatively, you may request an exemption from FOIA with your comments submittal. Should you choose the latter, you will be informed by the Forest Service as to whether or not your request qualifies for an exemption. If it does not, you will be afforded the opportunity to resubmit your comments without personal information or to withhold them.

Early Notice of the Importance of Public Participation in the NEPA Process

Following the 30-day scoping period announced in this notice, the Forest Service will prepare a draft environmental impact statement (DEIS). Upon completion, the DEIS will be made available for a 45-day public review and comment period that will begin on the date that the EPA publishes a Notice of Availability of the DEIS in the **Federal Register**. The Forest Service believes that, at this early stage, it is important to provide the public with notice about several court rulings related to public participation in the NEPA environmental review process.

First, reviewers of a DEIS must structure their participation in the NEPA review so that it is meaningful and alerts the agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)]. Also environmental objections that could be raised at the DEIS stage but are not raised until after completion of the final environmental impact statement (FEIS) may be waived or dismissed by the courts [*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wisc. 1980)]. Because of these court rulings, it is very important that those parties who are interested in this proposed action participate before the close of a public comment period so that substantive comments and objections are available to the Forest Service in a timely manner that will allow them to be meaningfully considered and subsequently addressed in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on a DEIS should be as specific as possible. It is also helpful if comments refer to specific line numbers, pages, and/or chapters of the DEIS. Comments may address the adequacy of the DEIS or the merits of the alternatives formulated and

discussed in it. For comments of this nature, reviewers may choose to refer to CEQ regulations at 40 CFR 1503.3.

Comments received, including the names and addresses of those who comment, will be considered part of the public record of this NEPA review and will be available for public inspection (*Authority:* 40 CFR 1501.7 and 1508.22; FSF 1909.15, Section 21).

Authorization: National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321–4346); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR part 1b).

Dated: July 30, 2007.

Jeanine A. Derby,

Forest Supervisor.

[FR Doc. 07–3812 Filed 8–2–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Manti-La Sal National Forest, Utah, EIS for Oil and Gas Leasing

AGENCY: Forest Service, USDA, and Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Manti-La Sal National Forest gives notice of the intent to prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental and human effects of oil and gas leasing on lands administered by the Manti-La Sal National Forest. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA) requires the Forest Service to evaluate National Forest System (NFS) lands for potential oil and gas leasing.

As the agency responsible for lease issuance and administration, the Bureau of Land Management (BLM) will participate as a cooperating agency.

DATES: Comments concerning the scope of the analysis should be received by September 10, 2007, to be most helpful. The draft environmental impact statement is scheduled for completion by the spring of 2008, and the final environmental impact statement is scheduled for completion by the fall of 2008.

ADDRESSES: Send written comments to: Dale Harber, Oil and Gas Team Leader, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501; phone (435) 636–3548; fax (435) 637–4940; email *comments-intermtn-manti-lasal@fs.fed.us.* Please include ''Oil and Gas Leasing Analysis Project'' on the subject line.

FOR FURTHER INFORMATION CONTACT: Ann King, Public Affairs Officer, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501; phone (435) 636–3535.

Fore technical information contact Dale Harber, Oil and Gas Team Leader, (435) 636–3548.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

FOOGLRA requires the Forest Service to evaluate NFS lands for potential oil and gas leasing and establishes Forest Service consent authority for leasing prior to the BLM offering NFS lands for lease. A leasing EIS was prepared in the early 1990s, with the Record of Decision (ROD) signed January 12, 1993, and a ROD modifying specific aspects of the original ROD signed on January 4, 1994. Due to the length of time since the last EIS was prepared and the increased interest by the industry due to the increased demand for oil and gas, high prices, and discoveries of oil and gas reserves in nearby areas with similar geologic conditions, it is now time to prepare an updated EIS to continue leasing. The BLM Utah State Office has received, and continues to receive, numerous Expressions of Interest for leasing portions of the Manti-La Sal Natioal Forest.

Proposed Action

The Forest Supervisor of the Manti-La Sal National Forest and the Utah State Director, Bureau of Land Management, propose to conduct that analysis and decide which lands to make available for oil and gas leasing. The analysis area includes all NFS lands administered by the Manti-La Sal National Forest. As part of the analysis, the Forest Service will identify those areas that would be available for leasing subject to the terms and conditions of the standard oil and gas lease form, or the use of lease stipulations such as those prohibiting surface occupancy. The analysis will also: (1) Identify alternatives to the proposed action, including that of not allowing leasing (no action), (2) project the type/amount of post-leasing activity that is reasonably foreseeable, and (3) analyze the reasonably foreseeable impacts of projected post-leasing activity [36 CFR 228.102(c)].

Possible Alternatives

All alternatives studied in detail must fall within the scope of the purpose and need for action and will generally tier to and comply with the Manti-La Sal Forest Plan. Law requires evaluation of a ''no action alternative''. Under the No Action/No Lease alternative, no additional oil and gas leasing would occur. Alternatives to be evaluated would range from the No Action/No Lease alternative (most restrictive) to the Standard Lease Terms alterative (least restrictive) where all lands legally open to leasing would be made administratively available for leasing with only the standard BLM terms and conditions contained on BLM Lease Form 3100–11. Other alternatives which fall somewhere between the No Action/No Lease alternative and Lease with Standard Terms alternative would also be developed and evaluated, which would involve making some lands unavailable for leasing and other lands available for leasing with stipulations for the protection of other resources and interests.

The Forest is expecting that the public input will generate either thematic concerns or area-specific issues that may be addressed by modifying the proposed action to create a new alternative or alternatives.

Lead and Cooperating Agencies

The Forest Service is the lead agency. The Bureau of Land Management will participate as a cooperating agency.

Responsible Officials

Rodney L. Player, Forest Supervisor, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501.

Selma Sierra, Utah State Director, Bureau of Land Management, 440 West 200 South, Suite 500, Salt Lake City, UT 84145.

Nature of Decision to be Made

The Forest Supervisor, Manti-La Sal National Forest, will decide which lands administered by the Manti-La Sal National Forest will be administratively available for oil and gas leasing, along with associated conditions or constraints for the protection of non-mineral interests [36 CFR 228.102(d)]. The Forest Supervisor will also authorize the BLM to offer specific lands for lease, subject to the Forest Service ensuring that the required stipulations are attached to the leases [36 CFR 228.102(e)].

The BLM is responsible for issuing and administration of oil and gas leases under the Mineral Leasing Act of 1920, as amended, and Federal Regulations in 43 CFR 3101.7. The BLM Utah State Director must decide whether or not to offer for lease specific lands authorized for leasing by the Manti-La Sal National Forest and with what stipulations.

Scoping Process

The first formal opportunity to comment on the Manti-La Sal National Forest Oil and Gas Leasing Analysis Project is during the scoping process (40 CFR 1501.7), which begins with the issuance of this Notice of Intent. The Forest Service requests comments on the nature and scope of the environmental, social, and economic issues, and possible alternatives related to oil and gas leasing on lands administered by the Manti-La Sale National Forest. Mail comments to: Dale Harber, Oil and Gas Team Leader, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501.

A series of public meetings are scheduled to describe the proposal and to provide an opportunity for public input. Meetings are planned in Moab, Monticello, Ferron, Ephraim, Price, and Provo, Utah, and Delta, Colorado, in late August and early September. The schedule will be published in the newspapers of record for the Manti-La Sal National Forest Supervisor's Office and the Ranger Districts as soon as it is finalized. Written comments will be accepted at this meetings.

The Forest Service will work with tribal governments to address issues that would significantly or uniquely affect them.

Preliminary Issues

Important goals for the project are to meet the legal requirements for evaluating NFS lands and make the required decisions. The intent of the applicable laws and regulations (*see Summary*) are to lease appropriate NFS lands and provide a reasonable opportunity to explore for, discover, and produce economic oil and gas reserves from available Federal lands, while meeting the requirements of environmental laws and protection of other resources and interests not compatible with such activities. Issues are anticipated to involve potential effects to wildlife, water, vegetation, recreation, public safety, roadless character, visual resources, cultural and paleontological resources, and social and economic settings. Specific issues will be developed through review of public comments and internal review.

Comment Requested

This Notice of Intent initiates the scoping process which guides the development of the EIS. The Forest has also received substantial input at public meetings held for the Forest Plan revision, including issues relative to mineral exploration and development. Through these efforts the Forest has an understanding of the broad range of perspectives on the resource issues and social values attributed to resource activities on the Manti-La Sal National Forest. Consequently, *site-specific* comments or concerns are the most important types of information needed for this EIS. Because the Oil and Gas Leasing EIS is a stand-alone document, only public comment letters which address relevant issues and concerns will be considered and formally addressed in an appendix in the EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement is expected to be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 533 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by providing comments during the scoping comment period and during the comment period following the release of the draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing their points.

Comment received, including the names and addresses of those who comments, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: July 26, 2007.

Rodney L. Player,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 07–3743 Filed 8–2–07; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: September 2, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Long Format Replacement Pages—FCCL

NSN: 7510–00–NSH–0257—Refill sheets for long format Flight Crew Check List Binder.

Standard Format Replacement Pages, FCCL

NSN: 7510–01–537–1400—Refill sheets for Flight Crew Checklist Binders—5.5″ x 8.00″ w/16 holes for rings.
Coverage: A-List for the total Government requirement as specified by the General Services Administration.
NPA: Pueblo Diversified Industries, Inc., Pueblo, CO.
Contracting Activity: General Services Administration, Federal Supply Services, Region 2, New York, NY.

USB Flash Drives

NSN: 7520–00–NIB–1832—USB Flash Drives.
NSN: 7520–00–NIB–1833—USB Flash Drives.
NSN: 7520–00–NIB–1834—USB Flash Drives.
NSN: 7520–00–NIB–1835—USB Flash Drives.
NSN: 7520–00–NIB–1836—USB Flash Drives.
NSN: 7520–00–NIB–1837—USB Flash Drives.
NSN: 7520–00–NIB–1838—USB Flash Drives.
NSN: 7520–00–NIB–1839—USB Flash Drives.
NSN: 7520–00–NIB–1840—USB Flash Drives.
NSN: 7520–00–NIB–1841—USB Flash Drives.
NSN: 7520–00–NIB–1842—USB Flash Drives.
NSN: 7520–00–NIB–1843—USB Flash Drives.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Coverage: A-List for the total Government requirement as specified by the General Services Administration.
Contracting Activity: General Services Administration, Region 2, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Services

Service Type/Location: Custodial Services, Department of Energy—Lindsay Complex, 775 Lindsay Blvd, Idaho Falls, ID.
NPA: Development Workshop, Inc., Idaho Falls, ID.
Contracting Activity: Department of Energy—IDAHO, Idaho Falls, ID.
Service Type/Location: Custodial Services, U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Plant Protection Quarantine (PPQ), Professional Development Center (PDC), 67 Thomas Johnson Drive, Suite A2 (Building 2), 69 Thomas Johnson Drive, Suite 100 (Building 1), Frederick, MD.
NPA: NW Works, Inc., Winchester, VA.
Contracting Activity: U.S. Department of Agriculture, Animal & Plant Health Inspection Service, MRP, Minneapolis, MN.
Service Type/Location: Grounds Maintenance, U.S. Department of Agriculture, Agricultural Research Service, 3127 Ligon Street, Raleigh, NC.
NPA: OE Enterprises, Inc., Hillsborough, NC.
Contracting Activity: U.S. Department of Agriculture, Agriculture Research Service—SAA Raleigh, Raleigh, NC.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Envelope, Inter-Departmental

NSN: 7530–00–NSH–0083—Envelope, Inter-Departmental, Blue.
NSN: 7530–00–NSH–0084—Envelope, Inter-Departmental, Red.
NSN: 7530–00–NSH–0085—Envelope, Inter-Departmental, Yellow.
NPA: Gateway Community Industries, Inc., Kingston, NY.
Contracting Activity: General Services Administration, Southwest Supply Center, Fort Worth, TX.

Marker, Lumocolor

NSN: 7520–01–507–6962—Markers, Lumocolor, Non-Permanent.
NSN: 7520–01–507–6966—Markers, Lumocolor, Non-Permanent.
NSN: 7520–01–507–6973—Markers, Lumocolor, Permanent.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Perforator, Paper, Desk

NSN: 7520–01–431–6247—Perforator, Paper, Desk.
NSN: 7520–01–431–6249—Perforator, Paper, Desk.
NPA: Foothill Workshop for the Handicapped, Inc., Pasadena, CA.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

G. John Heyer,

General Counsel.

[FR Doc. E7–15091 Filed 8–2–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

Effective Date: September 2, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On June 1 and June 8, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 30542; 31805) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Notebook Security Cable

NSN: 5340–01–384–2016—Notebook Security Cable.
Coverage: 100% A-List for the total Government requirement as specified by the General Services Administration.
NPA: Alphapointe Association for the Blind, Kansas City, MO.
Contracting Activity: General Services Administration, Southwest Supply Center, Fort Worth, TX.

Retractable Markers

NSN: 7520–00–NIB–1653—chisel tip, yellow 4/PK.
NSN: 7520–00–NIB–1654—chisel tip, yellow 12/PK.
NSN: 7520–00–NIB–1663—permanent ink, chisel tip, black, 4/PK.
NSN: 7520–00–NIB–1665—permanent ink, bullet tip, 4/PK (black, red, blue, green).
NSN: 7520–00–NIB–1666—permanent ink, chisel tip, 4/PK (black, blue, red, green).
NSN: 7520–00–NIB–1773—chisel tip, 10 color set (3 yellow, 2 pink, 1 orange, 2 green, 2 blue).
NSN: 7520–00–NIB–1788—chisel tip, 5 color set (yellow, blue, pink, green, orange).
NSN: 7520–00–NIB–1789—permanent ink, bullet tip, black, 4/PK.
NSN: 7520–01–519–5769—dry erase, chisel tip, 4/PK assorted colors (black, blue, red, green).
Coverage: 100% A-List for the total Government requirement as specified by the General Services Administration.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, TX.
Contracting Activity: General Services Administration, Region 2, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Service

Service Type/Location: Facility Support Operations, Directorate of Public Works, Fort Bliss, El Paso, TX.
NPA: PRIDE Industries, Inc., Roseville, CA.
Contracting Activity: ARMY–Bliss, Fort Bliss, TX.

Deletions

On June 8, 2007 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 31806) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

Cotton, Purified

NSN: 6510–00–201–3000—Cotton, Purified.
NPA: Elwyn, Inc., Aston, PA.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Film, Copying, Transparent, Ink Jet Process

NSN: 7530–01–325–0618—Film, Copying, Transparent, Ink Jet Process.

Transparency Film, Xerographic

NSN: 7530–01–386–2356—Transparency Film, Xerographic w/o Strip.
NPA: Industries of the Blind, Inc., Greensboro, NC.
Contracting Activity: General Service Administration, Region 2, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Services

Service Type/Location: Completion of DD Form 1574 & 1574–1, Robins Air Force Base, Robins AFB, GA.
NPA: Good Vocations, Inc., Macon, GA.
Contracting Activity: Department of the Air Force, Robins AFB, GA.
Service Type/Location: Hearing/Grievance Examiner Services (IB), The Corporation for National & Community Service, 1201 New York Avenue, NW., Washington, DC.
NPA: Federal Dispute Resolution Center, Alexandria, VA,
Contracting Activity: The Corporation for National & Community Service, Washington, DC.
Service Type/Location: ADA Compliance Investigator, Department of Transportation , Maritime Administration Headquarters, 400 7th Street SW., Washington, DC.
NPA: Federal Dispute Resolution Center, Alexandria, VA.
Contracting Activity: Department of Transportation, Maritime Administration.
Service Type/Location: Janitorial/Custodial, Marine Corps Reserve Training Center, 3506 South Memorial Parkway, Huntsville, AL.

NPA: Huntsville Rehabilitation Foundation, Huntsville, AL.
Contracting Activity: Department of the Navy, Marine Corps Reserve Training Center, Huntsville, AL.
Service Type/Location: Litigation Support Services, U.S. Department of Agriculture, The Animal and Plant Health Inspection Services, Agriculture Marketing Service, Minneapolis, MN.
NPA: Federal Dispute Resolution Center, Alexandria, VA.
Contracting Activity: U.S. Department of Agriculture, Animal and Plant Health Inspection Services, Minneapolis, MN.
Service Type/Location: Litigation Support Services, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA.
NPA: Federal Dispute Resolution Center, Alexandria, VA.
Contracting Activity: U.S. Department of Agriculture, Food and Nutrition Services, Alexandria, VA.

G. John Heyer,
General Counsel.
[FR Doc. E7–15092 Filed 8–2–07; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 29–2007]

Foreign-Trade Zone 158—Vicksburg/Jackson, MS; Request for Manufacturing Authority H.M. Richards, Inc. (Upholstered Furniture)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, pursuant to Section 400.28(a)(2) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of H.M. Richards, Inc. (Richards) (a subsidiary of Rooms To Go, Inc.), to manufacture upholstered furniture and related parts under FTZ procedures within FTZ 158. It was formally filed on July 26, 2007.

The Richards facility (800 employees) is located at 414 Road 2790 within the Harry A. Martin North Lee Industrial Complex (Site 15) in Guntown, Mississippi. The facility is used to produce upholstered furniture (up to 400,000 sofas, chairs, and recliners annually) and cut-and-sewn upholstery covers for the U.S. market and export. The application proposes that Richards would utilize foreign-origin ''micro-denier suede'' fabric to be cut and sewn into furniture upholstery covers under FTZ procedures. The finished upholstery covers (HTSUS 9401.90; duty free) would then be assembled into finished chairs, seats, sofas, and recliners manufactured by Richards at its Guntown plant.

The proposed scope of authority under FTZ procedures would only involve duty savings on foreign-origin, micro-denier suede fabrics (classified under HTSUS Headings 5407, 5512, 5515, 5516, 5903, 5906, 6001, 6005, 6006; duty rate range: 2.7–17.2%) finished with a caustic soda wash process, which the applicant indicates are not produced by U.S. mills. The application indicates that Richards does not seek FTZ benefits on any of the other foreign fabrics used in production at the facility (i.e., full duties would be paid on all such fabrics). All other material inputs used in production would be domestic-status.

FTZ procedures would exempt Richards from customs duty payments on the foreign micro-denier suede fabric used in export production. On micro-denier suede fabric used in production for the U.S. market, the company could elect the finished upholstery cover (i.e., furniture part) duty rate (free) after the fabric has been cut, sewn, and formed into upholstery covers, at which time they are entered for consumption from the zone. Richards would also have the option to elect the finished furniture duty rate (free) for the subject fabric when the finished furniture is entered for domestic consumption. The application indicates that the savings from FTZ procedures will help improve the facility's international competitiveness.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. The closing period for receipt of comments is October 2, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 17, 2007.

A copy of the application will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, Suite 255, 175 East Capitol Street, Jackson, Mississippi 39201; and, at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above. For further information, contact Pierre Duy, examiner, at: *pierre_duy@ita.doc.gov,* or (202) 482–1378.

Dated: July 27, 2007.
Andrew McGilvray,
Executive Secretary.
[FR Doc. 07–3831 Filed 8–2–07; 8:45 am]
BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 30–2007

Foreign–Trade Zone 158 – Vicksburg/Jackson, MS, Request for Manufacturing Authority, Bauhaus USA, Inc., (Upholstered Furniture)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by Greater Mississippi Foreign–Trade Zone, Inc., grantee of FTZ 158, pursuant to Section 400.28(a)(2) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Bauhaus USA, Inc. (Bauhaus) (a subsidiary of La–Z-Boy, Inc.), to manufacture upholstered furniture and related parts under FTZ procedures within FTZ 158. It was formally filed on July 26, 2007.

The Bauhaus facility (216 employees) is located at One Bauhaus Drive within the Turner Industrial Park (Site 16) in Saltillo, Mississippi. The facility is used to produce upholstered furniture (up to 200,000 sofas, chairs, and recliners annually) and cut–and-sewn upholstery covers for the U.S. market and export. The application proposes that Bauhaus would utilize foreign–origin ''micro–denier suede'' fabric to be cut and sewn into furniture upholstery covers under FTZ procedures. The finished upholstery covers (HTSUS 9401.90; duty free) would then be assembled into finished chairs, seats, sofas, and recliners manufactured by Bauhaus at its Mississippi facility.

The proposed scope of authority under FTZ procedures would only involve duty savings on foreign–origin, micro–denier suede fabrics (classified under HTSUS Headings 5407, 5512, 5515, 5516, 5903, 5906, 6001, 6005, 6006; duty rate range: 2.7 17.2%) finished with a caustic soda wash process, which the applicant indicates are not produced by U.S. mills. The application indicates that Bauhaus does not seek FTZ benefits on any of the other foreign fabrics used in production at the facility (i.e., full duties would be paid on all such fabrics). All other material inputs used in production would be domestic–status.

FTZ procedures would exempt Bauhaus from customs duty payments on the foreign micro–denier suede fabric used in export production. On micro–denier suede fabric used in production for the U.S. market, the company could elect the finished upholstery cover (i.e., furniture part) duty rate (free) after the fabric has been cut, sewn, and formed into upholstery covers, at which time they are entered for consumption from the zone. Bauhaus would also have the option to elect the finished furniture duty rate (free) for the subject fabric when the finished furniture is entered for domestic consumption. The application indicates that the savings from FTZ procedures will help improve the facility's international competitiveness.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is October 2, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 17, 2007.

A copy of the application will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, Suite 255, 175 East Capitol Street, Jackson, Mississippi 39201; and, at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above. For further information, contact Pierre Duy, examiner, at: pierre__duy@ita.doc.gov, or (202) 482–1378.

Dated: July 27, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–15169 Filed 8–2–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 28–2007

Foreign–Trade Zone 158 – Vicksburg/Jackson, MS, Request for Manufacturing Authority, Lane Furniture Industries, Inc., (Upholstered Furniture)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by Greater Mississippi Foreign–Trade Zone, Inc., grantee of FTZ 158, pursuant to Section 400.28(a)(2) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Lane Furniture Industries, Inc. (Lane) (a subsidiary of Furniture Brands International, Inc.), to manufacture upholstered furniture and related parts under FTZ procedures within FTZ 158. It was formally filed on July 26, 2007.

The Lane facilities (3,300 employees) are located in three sites within FTZ 158: Site 14 – at 3464 McCullough Boulevard within the Burlington Northern Industrial Park, Belden, Mississippi; Site 16 – at 234 Industrial Park Road within the Turner Industrial Park, Saltillo, Mississippi; and, Site 17 – at 5380 Highway 145 South within the Tupelo Lee Industrial Park, Verona, Mississippi. The facilities are used to produce upholstered furniture (up to 1.3 million sofas, chairs, and recliners annually) and cut–and-sewn upholstery covers for the U.S. market and export. The application proposes that Lane utilize foreign–origin ''micro–denier suede'' fabric to be cut and sewn into furniture upholstery covers under FTZ procedures. The finished upholstery covers (HTSUS 9401.90; duty free) would then be assembled into finished chairs, seats, sofas, and recliners manufactured by Lane at its Mississippi facilities.

The proposed scope of authority under FTZ procedures would only involve duty savings on foreign–origin, micro–denier suede fabrics (classified under HTSUS Headings 5407, 5512, 5515, 5516, 5903, 5906, 6001, 6005, 6006; duty rate range: 2.7–17.2%) finished with a caustic soda wash process, which the applicant indicates are not produced by U.S. mills. The application indicates that Lane does not seek FTZ benefits on any of the other foreign fabrics used in production at the facilities (i.e., full duties would be paid on all such fabrics). All other material inputs used in production would be domestic–status.

FTZ procedures would exempt Lane from customs duty payments on the foreign micro–denier suede fabric used in export production. On micro–denier suede fabric used in production for the U.S. market, the company could elect the finished upholstery cover (i.e., furniture part) duty rate (free) after the fabric has been cut, sewn, and formed into upholstery covers, at which time they are entered for consumption from the zone. Lane would also have the option to elect the finished furniture duty rate (free) for the subject fabric when the finished furniture is entered for domestic consumption. The application indicates that the savings from FTZ procedures will help improve the facilities' international competitiveness.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is October 2, 2007. Comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 17, 2007.

A copy of the application will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, Suite 255, 175 East Capitol Street, Jackson, Mississippi 39201; and, at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above. For further information, contact Pierre Duy, examiner, at: pierre__duy@ita.doc.gov, or (202) 482–1378.

Dated: July 27, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–15173 Filed 8–2–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 31–2007

Foreign–Trade Zone 7-- Mayaguez, Puerto Rico, Request for Manufacturing Authority, Merck Sharpe & Dohme Quimica de Puerto Rico Inc., (Pharmaceutical Manufacturing)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Puerto Rico Industrial Development Company (PRIDCO), grantee of FTZ 7, requesting authority

on behalf of Merck Sharpe & Dohme Quimica de Puerto Rico Inc. (MSDQ) to conduct pharmaceutical manufacturing operations under FTZ procedures within FTZ 7 at the MOVA Pharmaceutical Corporation (MOVA) pharmaceutical manufacturing facility in Caguas, Puerto Rico. The application was filed on July 27, 2007.

The MOVA facilities (650 employees, 16 acres, buildings totaling 250,000 sq. ft, 40 percent of which is devoted to manufacturing) are located on State Road 1, Km 34.8, within the Villa Blanca Industrial Park in Caguas, Puerto Rico (Site 1, Parcel 2). MSDQ will act as the operator within FTZ 7, with the manufacturing activity being contacted by MOVA on behalf of MSDQ. The company has indicated that the square footage of the buildings devoted to manufacturing operations could grow to include up to 70 percent in the near future. MSDQ has requested authority to manufacture two pharmaceutical products, MK–431A (HTSUS 3004.90) and sitagliptin (HTSUS 2933.59) for the U.S. market and export. Duty rates on the finished products range from duty–free to 6.5 percent. Foreign components that would be used in the manufacturing process (up to 25 percent of total content) include sitagliptin (HTSUS 2933.59), metformin hydrochloride (HTSUS 2925.20), enamine amide (HTSUS 2933.59) and butyl josphos (HTSUS 2931.00), with duty rates of 3.7 to 6.5 percent, *ad valorem*.

The application also requests authority to include a broad range of inputs and finished pharmaceutical products that MSDQ may produce under FTZ procedures in the future. (New major activity involving these inputs/products would require review by the FTZ Board.) The duty rates for these inputs and final products range from duty–free to 10 percent.

Zone procedures would exempt MSDQ from customs duty payments on the foreign components used in export production to non–NAFTA countries. Exports account for approximately 30 to 40 percent of production. On domestic sales and sales to NAFTA countries, MSDQ could defer duty until the products are entered for consumption or exported, and choose the lower duty that applies to the finished product for the foreign components used in production. The company would also realize certain logistical savings related to zone–to-zone transfers and direct delivery procedures as well as savings on materials that become scrap/waste during manufacturing. The application indicates that FTZ–related savings would help improve MSDQ and MOVA's international competitiveness.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 17, 2007).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, Centro Internacional de Mercadeo, Tower II, Suite 102, Road 165, Guaynabo, Puerto Rico, 00968–8058.

Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Christopher Kemp at *Christopher__kemp@ita.doc.gov* or (202) 482–0862.

Dated: July 30, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–15166 Filed 8–2–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–827)

Certain Cased Pencils: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 2007.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230; telephone: (202) 482–0650.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2006, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on certain cased pencils (''cased pencils'') from the People's Republic of China (''PRC''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 69543 (December 1, 2006). We received timely requests for review from China First Pencil Co., Ltd. (''China First''), Shandong Rongxin Import & Export Co., Ltd. (''Rongxin'') and Three Star Stationery Industry Corp. (''Three Star'').

On February 2, 2007, the Department published a notice of initiation of the antidumping duty administrative review of cased pencils from the PRC for the period December 1, 2005, through November 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On April 9, 2007, China First and Three Star requested a 60–day extension of the deadline by which parties who have requested a review may withdraw the request for review. On April 12, 2007, the Department granted that request. On May 21, 2006, China First and Three Star withdrew their requests for an administrative review. On June 6, 2007, Rongxin withdrew its request for review.

Rescission of Review

The Department's regulations, at 19 CFR 351.213(d)(1), provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. China First, Three Star and Rongxin were the only parties to request reviews of their respective companies. China First, Three Star and Rongxin made timely requests to withdraw their requests for review. Therefore, since no other party requested a review of these companies, we are rescinding this review of the antidumping duty order on cased pencils from the PRC covering the period December 1, 2005, through November 30, 2006.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For all firms, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR

351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 17, 2007.

Stephen J. Claeys

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–15137 Filed 8–2–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–801

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the 3rd Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 2007.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2006, the Department published a notice of initiation of a review of certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''), covering the period August 1, 2005, through July 31, 2006.[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006).

Extension of Time Limit of Preliminary Results

The Department determines that completion of the preliminary results of these reviews within the statutory time period is not practicable because the case is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act. The Third administrative review covers four companies, and to conduct the sales and factor analyses for each requires the Department to gather and analyze a significant amount of information pertaining to each company's sales practices and manufacturing methods. In addition, two companies involve complicated affiliation and collapsing issues. The Department requires additional time to analyze these issues.

Therefore, given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 30 days until August 31, 2007. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(2)(C)(3)(A) of the Act and section 351.214(h)(I)(1) of the Department's regulations.

Dated: July 26, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–15033 Filed 8–2–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] In accordance with the *Circumvention Inquiry*, the period of review for Lian Heng Investment Co., Ltd. and Lian Heng Trading Co., Ltd. Is October 22, 2004 through July 31, 2006. *See Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608 (July 7, 2006) (''Circumvention Inquiry'').

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–835)

Oil Country Tubular Goods from Japan: Final Results and Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On May 2, 2007, the Department of Commerce (the Department) published in the **Federal Register** a notice of intent to rescind the administrative review of the antidumping duty order on Oil Country Tubular Goods (OCTG) from Japan. See Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Administrative Review, 72 FR 24275 (May 2, 2007) (Preliminary Results). This review covers four manufactures/exporters: JFE Steel Corporation (JFE), Nippon Steel Corporation (Nippon), NKK Tubes (NKK) and Sumitomo Metal Industries, Ltd. (SMI). The period of review (POR) covers sales of subject merchandise to the United States during the period August 1, 2005 through July 31, 2006.

We provided interested parties with an opportunity to comment on the notice of intent to rescind this administrative review. However, we received no comments from interested parties. Consequently, we are rescinding this administrative review.

EFFECTIVE DATE: August 3, 2007.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1396 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2007, the Department published in the **Federal Register** a notice of intent to rescind the antidumping duty administrative review of the antidumping duty order on OCTG from Japan. No interested parties filed case briefs in response to the Department's invitation to comment on the *Preliminary Results*.

Scope of the Order

The products covered by this order are OCTG, hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non–API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under sub–headings: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00,

7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

As a result of recent changes to the HTSUS, effective February 2, 2007, the subject merchandise is also classifiable under the following additional HTSUS item numbers: 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The HTSUS sub–headings are provided for convenience and customs purposes only. The written description of the scope of the order remains dispositive.

Final Results and Rescission of Administrative Review

As stated in the *Preliminary Results*, the Department determined that all four companies had no reviewable sales of subject merchandise during the POR. Although our review of data from U.S. Customs and Border Protection (CBP) showed that there were entries during the POR of merchandise produced by these companies, based on our analysis of the CBP information and documentation submitted by respondent companies, we determined that those entries were either made by unaffiliated resellers without the knowledge of the respondent companies, or were merchandise out of the scope of antidumping duty order. As such, they are not subject to the administrative review. See memorandum from Jun Jack Zhao, Case Analyst, to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, *Analysis Memorandum regarding the Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Japan (A–588–835)*, dated concurrently with the *Preliminary Results*. Because we did not receive comments from any of the interested parties on the *Preliminary Results*, we do not have any reason to reconsider our preliminary decision. Therefore, consistent with the Department's preliminary results of this review, and in accordance with 19 CFR § 351.213(d)(3), we are rescinding the review with respect to all four companies.

Duty Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR § 351.212(b). We will direct CBP to liquidate any entries of subject merchandise manufactured by JFE, Nippon, NKK, SMI, and entered or withdrawn from warehouse for consumption during the POR, at the ''all others'' rate from the investigation, 44.20 percent, in accordance with the Department's clarification of its ''automatic assessment'' regulation; the sales of any such entries were made by intermediary companies (e.g., resellers) that do not have their own rates because they were not covered in this review, a prior review, or the less than fair value (LTFV) investigation. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of these final results.

Cash Deposit Requirements

On May 31, 2007, the U.S. International Trade Commission determined that revoking the existing antidumping duty orders on imports of OCTG from Argentina, Italy, Japan, Korea and Mexico would be unlikely to lead to continuation or recurrence of material injury. As a result, the Department revoked these antidumping duty orders. *See Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico; Revocation of Antidumping Duty Orders Pursuant to Second Five-year (Sunset) Reviews*, 72 FR 34442 (June 22, 2007). The effective date of the revocation of this order was July 25, 2006. Consequently, the Department has instructed CBP to discontinue the suspension of liquidation of all entries of subject merchandise entered on or after July 25, 2006. Therefore, no further cash deposits of estimated antidumping duties will be required, and antidumping duties will not be assessed on entries after July 24, 2006.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–15158 Filed 8–2–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–831

Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from Taiwan with respect to three companies.[1] There is only one respondent participating in this review, Chia Far Industrial Factory Co., Ltd. (Chia Far). The period of review (POR) is July 1, 2005, through June 30, 2006.

We preliminarily determine that sales made by Chia Far have been made below normal value (NV). We have preliminarily assigned a margin based on adverse facts available (AFA) to the remaining two respondents, PFP Taiwan Co., Ltd. (PFP Taiwan) and Yieh Corp., because these companies were not

[1] This figure does not include those companies for which the Department is preliminarily rescinding the administrative review.

responsive to the Department's requests for information.If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

EFFECTIVE DATE: August 3, 2007.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration–Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published in the **Federal Register** the antidumping duty order on SSSSC from Taiwan. *See Notice of Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From United Kingdom, Taiwan, and South Korea*, 64 FR 40555 (July 27, 1999) (*SSSSC Order*). On July 3, 2006, the Department published in the **Federal Register** a notice of opportunity to request administrative review of the antidumping duty order on SSSSC from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 37890 (July 3, 2006). On July 31, 2006, the petitioners[2] submitted a timely letter requesting that the Department conduct an administrative review of the sales of SSSSC made during the POR by Chain Chon Industrial Co., Ltd., Chia Far, Chien Shing Stainless Co., China Steel Corporation, Emerdex Stainless Flat–Rolled Products, Inc., Emerdex Stainless Steel, Inc., Emerdex Group., Goang Jau Shing Enterprise Co., Ltd., PFP Taiwan, Ta Chen Stainless Pipe Co., Ltd., Tang Eng Iron Works, Yieh Loong Enterprise Co., Ltd. (also known as Chung Hung Steel Co., Ltd.), Yieh Trading Corp. (also known as Yieh Corp.), Yieh Mau Corp., and Yieh United Steel Corporation, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1). On August 30, 2006, the Department published a notice of initiation of administrative review covering each of these 15 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (Aug. 30, 2006) (*Notice of Initiation*).

In August 2006, the Department issued its antidumping questionnaire to all of the companies for which a review was requested except the Emerdex companies (for further discussion of the Emerdex companies, see the section of this notice entitled ''Emerdex Companies,'' below). In August and September 2006, we received submissions from 10 companies indicating that they made no shipments of subject merchandise during the POR.

Because we did not receive a response to the antidumping duty questionnaire from PFP Taiwan, on September 7, 2006, we re–issued the questionnaire to this company and requested that it submit a full response. Because PFP Taiwan also did not respond to the second questionnaire, we are assigning it a preliminary dumping margin based on AFA. For further discussion, see the ''Application of Facts Available'' section of this notice, below.

On September 15, 2006, we received a response to section A of the questionnaire (*i.e.*, the section covering general information) from Chia Far and on October 10, 2006, we received Chia Far's response to sections B, C, and D of the questionnaire (*i.e.*, the sections covering home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively).

We issued a supplemental questionnaire covering sections A through C to Chia Far on December 22, 2006. Chia Far responded to this questionnaire on January 16, 2007.

On January 29, 2007, we obtained information from CBP indicating that Yieh Corp., one of the companies claiming to have no shipments of SSSSC to the United States during the POR, did in fact make U.S. shipments of subject merchandise. Consequently, on February 1, 2007, we requested that Yieh Corp. explain why it did not report the entries in question. On March 5, 2007, Yieh Corp. stated that its failure to do so was an oversight.

On March 26, 2007, the Department postponed the preliminary results in this review until no later than July 31, 2007. *See Stainless Steel Sheet and Strip in Coils from Taiwan; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 14077 (Mar. 26, 2007).

On March 30, 2007, we issued Chia Far a second supplemental questionnaire covering sections A through C, as well as a supplemental questionnaire covering section D. Chia Far responded to these questionnaires on April 20, 2007, and April 27, 2007, respectively.

On May 22, 2007, we issued a second supplemental section D questionnaire to Chia Far.

On May 24, 2007, we re–issued the antidumping duty questionnaire to Yieh Corp. and requested that it submit a full response. Because Yieh Corp. did not respond to this questionnaire, we are assigning it a preliminary dumping margin based on AFA. For further discussion, see the ''Application of Facts Available'' section of this notice, below.

On June 7, 2007, we received Chia Far's response to the Department's second supplemental section D questionnaire.

In June and July 2007, we conducted a verification of the sales and cost data reported by Chia Far. We have incorporated our sales verification findings in these preliminary results. However, because the cost verification was conducted too close to the preliminary results deadline, we were unable to take any findings from the cost verification into account here. We will consider these findings in our final results.

Period of Review

The POR is July 1, 2005, through June 30, 2006.

Scope of the Order

The products covered by the order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20,

[2] The petitioners are Allegheny Ludlum Corporation, United Auto Workers Local 3303 (formerly Butler Armco Independent Union), United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization.

7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Excluded from the scope of the order are the following: 1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, 2) sheet and strip that is cut to length, 3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), 4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and 5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

Also excluded from the scope of the order are certain specialty stainless steel products described below. Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as Arnokrome III.[3]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as Gilphy 36.[4]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of the order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as Durphynox 17.[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as GIN4 Mo. The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and

[3] Arnokrome III is a trademark of the Arnold Engineering Company.

[4] Gilphy 36 is a trademark of Imphy, S.A.

[5] Durphynox 17 is a trademark of Imphy, S.A.

[6] This list of uses is illustrated and provided for descriptive purposes only.

0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is GIN5 steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, GIN6.[7]

Partial Preliminary Rescission of Review

As noted in the ''Background'' section, above, 10 respondents certified to the Department that they had no shipments/entries of subject merchandise into the United States during the POR. These companies are: 1) Chain Chon Industrial Co., Ltd.; 2) Chien Shing Stainless Co.; 3) China Steel Corporation; 4) Goang Jau Shing Enterprise Co., Ltd.; 5) Ta Chen Stainless Pipe Co., Ltd.; 6) Tang Eng Iron Works; 7) Yieh Loong Enterprise Co. Ltd.; 8) Yieh Mau Corp.; 9) Yieh Corp.; and 10) Yieh United Steel Corporation. The Department subsequently obtained CBP information consistent with the no–shipment claims made by each of these companies except Yieh Corp. *See* the June 19, 2007, Memorandum to The File from Jill Pollack, Senior Analyst, entitled, ''CBP List of Exporters'' (the ''CBP Memo''). Because the evidence on the record does not indicate that these nine companies exported subject merchandise to the United States during the POR, we preliminarily determine it is appropriate to rescind the review for these respondents. *See Chia Far Industrial Factory Co., Ltd. v. United States*, 343 F. Supp 2d 1344, 1374 (2004). Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Chain Chon Industrial Co., Ltd., Chien Shing Stainless Co., China Steel Corporation, Goang Jau Shing Enterprise Co., Ltd., Ta Chen Stainless Pipe Co., Ltd., Tang Eng Iron Works, Yieh Loong Enterprise Co., Ltd, Yieh Mau Corp, and Yieh United Steel Corporation. *See, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 35190, 35191 (June 29, 1998); *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005).

Regarding the tenth company, Yieh Corp., CBP information indicated that this company may, in fact, have had shipments or entries of subject merchandise entered into the United States during the POR. *See* the CBP Memo. Based on the CBP information, on February 1, 2007, we requested that Yieh Corp. explain the entries at issue. In a response dated March 5, 2007, Yieh Corp. stated that it had inadvertently overlooked the shipments in question. As a result, on May 24, 2007, we afforded Yieh Corp. an additional opportunity to respond to the questionnaire. Yieh Corp. did not respond to this questionnaire. Because Yieh Corp. had shipments of subject merchandise during the POR, we are not rescinding the administrative review with respect to it. For further information, see the ''Application of Facts Available'' section of this notice.

Emerdex Companies

The Department finds that it is appropriate to rescind the instant review with respect to the Emerdex Companies named by the petitioners in their review request because the Department found in the 2003–2004 administrative review of this order that the Emerdex companies are U.S. entities. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 71 FR 45521, 45524–45525 (Aug. 9, 2006) (unchanged in *Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 75504 (Dec. 15, 2006). We note that the petitioners in the instant review have not provided any additional information demonstrating that the Emerdex companies for which they have requested a review are located in Taiwan. Consequently, consistent with the Department's findings in the prior review, we are preliminarily rescinding this review with regard to the Emerdex companies.

Application of Facts Available

Section 776(a) of the Act provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

As discussed in the ''Background'' section above, in August 2006, the Department requested that the 12 companies subject to this review respond to the Department's questionnaire. The original deadline to file a response was September 1, 2006. One of these 12 companies, PFP Taiwan, did not respond to the Department's initial request for information. Subsequently, in September 2006, the Department issued a letter to this company affording it a second opportunity to submit a response to the Department's questionnaire. However, PFP Taiwan also did not respond to this second questionnaire. On July 31, 2007, the Department placed documentation on the record confirming delivery of the questionnaire to this company. *See* the July 31, 2007, Memorandum to the File from Elizabeth Eastwood, Senior Analyst, entitled, ''Confirmation of Delivery of the Questionnaire in the 2005–2006 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Taiwan.'' By failing to respond to the Department's questionnaire, this company withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because this company did not respond to the Department's questionnaire, the Department preliminarily finds that the use of total facts available is warranted.

Furthermore, one additional company, Yieh Corp., claimed that it made no shipments of subject merchandise to the United States during the POR. However, according to data obtained from CBP, it appeared that Yieh Corp. may, in fact, have made shipments of subject merchandise to the United States during the POR. On January 29, 2007, we placed copies of the entry documentation related to these shipments on the record of this proceeding. *See* the January 29, 2007, Memorandum to the File from Jill

[7] GIN4 Mo, GIN5 and GIN6 are the proprietary grades of Hitachi Metals America, Ltd.

Pollack, Senior Analyst, entitled, ''2005–2006 Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan: Entry Documents from U.S. Customs and Border Protection (CBP).''

On February 1, 2007, we requested that Yieh Corp. explain why it did not report the entries in question. On March 5, 2007, Yieh Corp. responded by stating that it had inadvertently overlooked them. On May 24, 2007, we informed Yieh Corp. that it was required to respond to the Department's questionnaire no later then June 7, 2007. Because Yieh Corp. did not respond to this questionnaire, we find that Yieh Corp. withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department preliminarily finds that the use of total facts available is warranted for Yieh Corp.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1 (1994) at 870 (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*). We preliminarily find that PFP Taiwan and Yieh Corp. did not act to the best of their abilities in this administrative review, within the meaning of section 776(b) of the Act, because they could have responded to the Department's requests for information, but failed to do so. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to these companies. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) The petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (Nov. 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have preliminarily assigned a rate of 21.10 percent, which is the highest appropriate dumping margin from this or any prior segment of the proceeding. *See* section 776(b)(2) of the Act. This rate was the highest petition margin and was used as AFA in numerous antidumping duty administrative reviews of this order. *See, e.g., Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519, 7521 (Feb. 13, 2006) (*2003–2004 SSSSC from Taiwan*).

The Department notes that, while the highest dumping margin calculated during this or any prior segment of the proceeding is 36.44 percent, this margin represents a combined rate applied to a channel transaction in the less–than-fair–value (LTFV) segment of this proceeding, and it is based on ''middleman dumping'' by a different respondent. *See Tung Mung Development Co. v. United States*, 219 F. Supp. 2d 1333, 1345 (CIT 2002), *aff'd* 354 F. 3d 1371, 1382 (Fed. Cir. 2004). Where circumstances indicate that a particular dumping margin is not appropriate as AFA, the Department will disregard the margin and determine another more appropriate one as facts available. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest dumping margin for use as AFA because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high dumping margin). An AFA rate based on middleman dumping would be inappropriate to use here given that the record does not indicate that any of PFP Taiwan's or Yieh Corp.'s exports to the United States during the POR involved a middleman. Thus, consistent with previous reviews, the Department has continued to use as AFA the highest dumping margin from any segment of the proceeding for a producer's direct exports to the United States, without middleman dumping, which is 21.10 percent.

Section 776(c) of the Act requires that the Department, to the extent practicable, corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As noted in *F.Lii de Cecco di Filippo Fara S. Martino, S.p.A. v. United States*, 216 F.3d 1027, 1030 (2000), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information.

The rate of 21.10 percent constitutes secondary information. To corroborate this rate, among other things, we compared it to the transaction–specific rates calculated for Chia Far and found it to be reliable and relevant for use in this administrative review. For the company–specific information used to corroborate this rate, see the July 31, 2007, memorandum to the File from Elizabeth Eastwood, Senior Analyst, entitled, ''Corroboration of Adverse Facts Available Rate for the Preliminary Results in the 2005–2006 Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils From Taiwan.'' We find the 21.10 percent rate to be probative because it does not appear to be aberrational when compared to Chia Far's transaction–specific rates and no information has been presented to call into question the relevance of the rate. Thus, we find that the rate of 21.10 percent is sufficiently corroborated for purposes of the instant administrative review.

Affiliation

During the first administrative review in this proceeding, the Department

found Chia Far and its U.S. reseller, Lucky Medsup Inc. (Lucky Medsup), to be affiliated by way of a principal–agent relationship. The Department primarily based its finding on: 1) A document demonstrating the existence of a principal–agent relationship; 2) Chia Far's degree of involvement in sales between Lucky Medsup and its customers; 3) evidence indicating Chia Far knew the identity of Lucky Medsup's customers, and the customers were aware of Chia Far; 4) Lucky Medsup's operations as a ''go–through'' who did not maintain any inventory or further manufacture products; and, 5) Chia Far's inability to provide any documents to support its claim that the document indicating a principal–agent relationship was not valid during the POR. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (Feb. 13, 2002) and the accompanying Issues and Decision Memorandum at Comment 23 (upheld by the Court of International Trade (CIT) in *Chia Far Industrial Factory Co. Ltd. v. United States, et al.*, 343 F. Supp. 2d 1344, 1356 (CIT 2004)). *See also* the July 31, 2007, memorandum from Elizabeth Eastwood, Senior Analyst, to the file entitled, ''Placing Information Regarding the Principal–Agent Relationship between Lucky Medsup Inc. and Chia Far Industrial Factory Co., Ltd. on the Record of the 2005–2006 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Taiwan.'' The Department continues to treat Chia Far and Lucky Medsup as affiliated parties.

In the instant administrative review Chia Far contends that it is not affiliated with Lucky Medsup because: 1) there is no cross–ownership between Chia Far and Lucky Medsup and no sharing of officers or directors; 2) Lucky Medsup's owner operates independently of Chia Far as a middleman; 3) Lucky Medsup's transactions with Chia Far are at arm's length; 4) there are no exclusive distribution contracts between Lucky Medsup and Chia Far (the one that existed in 1994 was terminated in 1995); and, 5) Lucky Medsup is not obligated to sell Chia Far's merchandise and Chia Far is not obligated to sell through Lucky Medsup in the United States.

We, however, find the fact pattern in the instant review is not significantly dissimilar from that which existed in the previous antidumping duty administrative reviews, where the Department had found the parties to be affiliated. *See, e.g., Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (Feb. 13, 2002). First and foremost, Chia Far has not provided any documents in response to the Department's request that it demonstrate that the agency agreement was terminated and the principal–agent relationship no longer exists. *See* Chia Far's January 16, 2007, supplemental questionnaire response at page 2. Furthermore, Chia Far's degree of involvement in Lucky Medsup's U.S. sales is similar to that found in prior reviews. Specifically, Chia Far knew the identity of the end–customers and of certain sales terms that the end–customers had requested before it set its price to Lucky Medsup, Lucky Medsup's sales order confirmation identifies Chia Far as the manufacturer, and Chia Far shipped the merchandise directly to the end–customers. *See* the the June 29, 2007, memorandum to the file from Shawn Thompson and Jill Pollack entitled, ''Verification of the Sales Response of Chia Far Industrial Factory Co. Ltd. (Chia Far) in the Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils (SSSSC) from Taiwan'' at pages 8 and 9. Lastly, as was true in prior segments of this proceeding, during the instant POR Lucky Medsup did not maintain inventory or further manufacture SSSSC. Therefore, we continue to find that Chia Far is affiliated with Lucky Medsup by way of a principal–agent relationship. We invite comments from interested parties on this issue for consideration in the final results.

Identifying Home Market Sales

Section 773(a)(1)(B) of the Act defines NV as the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country (home market), in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade (LOT) as the export price (EP) or constructed export price (CEP). In implementing this provision, the CIT has found that sales should be reported as home market sales if the producer ''knew or should have known that the merchandise {it sold} was for home consumption based upon the particular facts and circumstances surrounding the sales.'' *See Tung Mung Development Co., Ltd. & Yieh United Steel Corp. v. United States, et al.*, 25 CIT 752, 783 (2001); citing *INA Walzlager Schaeffler KG v. United States*, 957 F. Supp. 251 (1997). Where a respondent has no knowledge as to the destination of subject merchandise, except that it is for export, the Department will classify such sales as export sales and exclude them from the home market sales database. *See Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products, Certain Cold–Rolled Carbon Steel Plate Products, Certain Corrosion–Resistant Carbon Steel Flat Products, and Certain Cut–to-Length Carbon Steel Plate From Korea*, 58 FR 37176, 37182 (July 9, 1993).

In its October 10, 2006, questionnaire response, Chia Far stated that it has reason to believe that some of the home market customers to whom it sold SSSSC during the POR may have exported the merchandise. Specifically, Chia Far indicated that it shipped some of the SSSSC it sold to home market customers during the POR to a container yard or placed the SSSSC in an ocean shipping container at the home market customer's request. Chia Far stated that, even though the merchandise was containerized or sent to a container yard, it could not prove the merchandise was exported to a third country, and therefore, it included those sales among its reported home market sales. Although Chia Far stated that it does not definitively know whether the SSSSC in question will be exported, the Department has preliminarily determined that, based on the fact that these sales were sent to a container yard or placed in a container by Chia Far at the request of the home market customer, Chia Far should have known that the SSSSC in question was not for consumption in the home market. Therefore, consistent with this determination, the Department has preliminarily excluded these sales from Chia Far's home market sales database.

Comparisons to Normal Value

In order to determine whether Chia Far sold SSSSC to the United States at prices less than NV, the Department compared the EP and CEP of individual U.S. sales to the monthly weighted–average NV of sales of the foreign like product made in the ordinary course of trade. See section 777A(d)(2) of the Act; *see also* section 773(a)(1)(B)(i) of the Act. Section 771(16) of the Act defines foreign like product as merchandise that is identical or similar to subject merchandise and produced by the same person and in the same country as the subject merchandise. Thus, we considered all products covered by the scope of the order that were produced by the same person and in the same country as the subject merchandise, and sold by Chia Far in the comparison market during the POR, to be foreign like products for the purpose of determining appropriate product

comparisons to SSSSC sold in the United States.

During the POR, Chia Far sold subject merchandise and foreign like product that it made from hot- and cold–rolled stainless steel coils (products covered by the scope of the order) purchased from unaffiliated parties. Chia Far further processed the hot- and cold–rolled stainless steel coils by performing one or more of the following procedures: cold–rolling, bright annealing, surface finishing/shaping, and slitting. We did not consider Chia Far to be the producer of the merchandise under review if it performed insignificant processing on the coils (*e.g.*, annealing, slitting, surface finishing). *See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 69 FR 74495 (Dec. 14, 2004) and the accompanying Issues and Decision Memorandum at Comment 4 (listing painting, slitting, finishing, pickling, oiling, and annealing as minor processing for flat–rolled products). Furthermore, we did not consider Chia Far to be the producer of the cold–rolled products that it sold if it was not the first party to cold–roll the coils. The cold–rolling process changes the surface quality and mechanical properties of the product and produces useful combinations of hardness, strength, stiffness, and ductility. Stainless steel cold–rolled coils are distinguished from hot–rolled coils by their reduced thickness, tighter tolerances, better surface quality, and increased hardness which are achieved through cold–rolling. Chia Far's cold–rolling of the cold–rolled coils that it purchased may have modified these characteristics to suit the needs of particular customers; however, it did not impart these defining characteristics to the finished coils. Thus, we considered the original party that cold–rolled the product to be its producer.

Product Comparisons

The Department compared U.S. sales to sales made in the comparison market within the contemporaneous window period, which extends from three months prior to the month in which the first U.S. sale was made until two months after the month in which the last U.S. sale was made. *See* 19 CFR 351.414(e)(2). Where there were no sales of identical merchandise made in the comparison market in the ordinary course of trade, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, the Department selected identical and most similar foreign like products based on the physical characteristics reported by Chia Far in the following order of importance: grade, hot- or cold–rolled, gauge, surface finish, metallic coating, non–metallic coating, width, temper, and edge.

Export Price and Constructed Export Price

The Department based the price of Chia Far's U.S. sales of subject merchandise on EP or CEP, as appropriate. Specifically, when Chia Far sold subject merchandise to unaffiliated purchasers in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record, we based the price of the sale on EP, in accordance with section 772(a) of the Act. When Chia Far sold subject merchandise to unaffiliated purchasers in the United States through its U.S. affiliate, Lucky Medsup, we based the price of the sale on CEP, in accordance with section 772(b) of the Act.

We revised Chia Far's reported U.S. sales data to take in account our findings at verification. For further discussion, see the the July 31, 2007, memorandum to the file from Elizabeth Eastwood entitled, ''Sales Calculation Adjustments for Chia Far Industrial Factory Co., Ltd. (Chia Far) for the Preliminary Results'' (Chia Far Sales Calculation Memorandum).

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, and harbor maintenance fees, in accordance with section 772(c)(2)(A) of the Act. In addition, we found at verification that Chia Far incurred certificate–of-origin fees on some EP sales. Because Chia Far was not able to identify at verification on which transactions it incurred this expense, pursuant to section 776(a)(1) of the Act, as facts available we are assigning this certificate–of-origin fee to all EP sales. For further discussion, see the Chia Far Sales Calculation Memorandum.

We based CEP on packed prices sold to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight expenses, foreign brokerage and handling expenses, container handling expenses, foreign harbor construction expenses, international freight expenses, marine insurance expenses, U.S. duty expenses, U.S. brokerage and handling expenses, other U.S. transportation expenses, and harbor maintenance fees, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted from CEP those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, bank fees, and warranties), and indirect selling expenses. We recalculated Lucky Medsup's indirect selling expense ratio to include an amount for unreported pension expenses. For the details of this recalculation, see the Chia Far Sales Calculation Memorandum.

In addition, we deducted from the CEP starting price an amount for CEP profit (profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) of the Act) in accordance with sections 772(d)(3) and 772(f) of the Act. We computed profit by deducting from the total revenue realized on sales in both the U.S. and home markets, all expenses associated with those sales. We then allocated profit to the expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of Chia Far's home market sales of the foreign like product is more than five percent of the aggregate volume of its U.S. sales of subject merchandise, we based NV on sales of the foreign like product in the respondent's home market.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison

market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[8] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from Chia Far regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Chia Far for each channel of distribution. Chia Far reported that it made EP sales in the U.S. market to distributors, as well as CEP sales to Lucky Medsup. Chia Far reported identical selling activities for both channels of distribution. We examined the selling activities performed for these channels and found that Chia Far performed the following selling functions: 1) Price negotiation and communication with the customer; 2) arranging for freight and the provision of customs clearance/brokerage services (where necessary); 3) provision of general technical advice (where necessary) and quality assurance related activities; and 4) packing. These selling activities can be generally grouped into four core selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; and 3) inventory maintenance and warehousing; and, 4) warranty and technical support. Accordingly, based on the core selling functions, we find that Chia Far performed sales and marketing, freight and delivery services, and warranty and technical support services for U.S. sales. Because Chia Far's selling activities did not vary by distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Chia Far reported that it made sales to distributors and end users. We examined the selling activities performed for home market sales and found that Chia Far performed the following selling functions equally for sales to distributors and end users: 1) Price negotiation and communication with the customer; 2) arranging for freight (where necessary); 3) provision of general technical advice (where necessary) and quality assurance related activities; 4) packing; and, 5) post–sale warehousing/processing on request. Accordingly, based on the core selling functions described above, we find that Chia Far performed sales and marketing, freight and delivery services, warranty and technical support services, and inventory maintenance and warehousing for home market sales. Consequently, we preliminarily determine that there is one LOT in the home market for Chia Far.

Finally, we compared the U.S. LOT to the home market LOT and found that the core selling functions performed for U.S. and home market customers do not differ significantly. Specifically, although Chia Far performed occasional warehousing and post–sale processing functions in the home market that it did not perform on sales to the United States, we do not find these differences to be material selling function distinctions significant enough to warrant a separate LOT. Thus, we determine that the NV LOT for Chia Far is the same as the U.S. LOT for Chia Far.

Regarding the CEP–offset provision, as described above, it is appropriate only if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Because we find that no difference in LOTs exists, we do not find that a CEP offset is warranted for Chia Far.

C. Cost of Production Analysis

In the 2003–2004 administrative review, the most recently completed segment of this proceeding as of the date of initiation of this review, the Department determined that Chia Far sold foreign like product at prices below the cost of producing the product and excluded such sales from the calculation of NV. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 46137, 46144 (Aug. 9, 2005) (unchanged in *2003–2004 SSSSC from Taiwan*). As a result, the Department initiated an investigation to determine whether Chia Far made home market sales during the POR at prices below their COPs.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each foreign like product sold by Chia Far during the POR, we calculated a weighted–average COP based on the sum of the respondent's materials and fabrication costs, G&A expenses, and financial expenses. We made the following adjustments to Chia Far's cost data.

1. We adjusted the reported product–specific costs of manufacturing to account for an unreconciled difference between the costs reported in Chia Far's submitted cost database and its audited financial statements.
2. We revised Chia Far's G&A expense rate to include the company's year–end adjustments to raw material and work–in-process inventories.
3. Because Chia Far had net financial income, we did not include an amount for financial expense in the calculation of COP. This is in accordance with the Department's practice of determining that, when a company earns enough financial income that it recovers all of its financial expense, that company did not have a resulting cost for financing during that period. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 26455, 26460 (May 5, 2006) (unchanged in *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (Nov. 7, 2006)); and *Notice of Final Results of Antidumping Duty Administrative*

[8] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

Review: Certain Softwood Lumber Products From Canada, 70 FR 73437 (Dec. 12, 2005), and accompanying Issues and Decision Memorandum at Comments 9 and 25.

4. For the cost of SSSSC not produced by Chia Far, we used, as facts available, Chia Far's costs to produce merchandise with characteristics identical or similar to the characteristics of the merchandise not produced by Chia Far.

For further information, see the July 31, 2007, memorandum to Neal M. Halper from Heidi Schriefer entitled, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Chia Far Industrial Factory Co., Ltd.''

2. Test of Comparison–Market Sales Prices

In order to determine whether sales were made at prices below the COP on a product–specific basis, we compared the respondent's weighted–average COP to the prices of its home market sales of foreign like product, as required under section 773(b) of the Act. In accordance with sections 773(b)(1)(A) and (B) of the Act, in determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: 1) In substantial quantities within an extended period of time; and 2) at prices which permitted the recovery of all costs within a reasonable period of time. We compared the COP to home market sales prices, less any applicable movement charges and direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Chia Far's sales of a given product were made at prices less than the COP, we did not disregard any below–cost sales of that product because the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of Chia Far's sales of a given product were made at prices less than the COP during the POR, we determined such sales to have been made in ''substantial quantities'' within an extended period of time (*i.e.*, one year) pursuant to sections 773(b)(2)(B) and (C) of the Act. Based on our comparison of POR average costs to reported prices, we also determined, in accordance with section 773(b)(2)(D) of the Act, that these sales were not made at prices which would permit recovery of all costs within a reasonable period of time. As a result, we disregarded the below–cost sales of that product.

D. Calculation of Normal Value Based on Comparison Market Prices

We based NV for Chia Far on prices to unaffiliated customers in the home market. We revised Chia Far's reported home market sales data to take in account our findings at verification. For further discussion, see the Chia Far Sales Calculation Memorandum. We made deductions from the starting price, where appropriate, for billing adjustments and rebates. We also made deductions from the starting price for foreign inland freight expenses under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in credit expenses, bank fees, and warranties.

We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that weighted–average dumping margins exist for the respondents for the period July 1, 2005, through June 30, 2006, as follows:

Manufacturer/Exporter	Percent Margin
Chia Far Industrial Factory Co., Ltd	1.43
PFP Taiwan Co., Ltd.	21.10
Yieh Trading Corp./Yieh Corp.	21.10

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d)(1). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) A statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. *See* 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For Chia Far, we will calculate importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings:*

Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case no cash deposit will be required; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.61 percent, the ''All Others'' rate made effective by the LTFV investigation. *See SSSSC Order*, 64 FR at 40557. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–15155 Filed 8–2–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 2007.

SUMMARY: The Department of Commerce (''Department'') hereby publishes a list of scope rulings completed between April 1, 2007, and June 30, 2007. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of June 30, 2007. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen, AD/CVD Operations, SEC Office, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–1904.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. See 19 C.F.R. 351.225(o). Our most recent notification of scope rulings was published on May 1, 2007. *See Notice of Scope Rulings*, 72 FR 23802 (May 1, 2007). This current notice covers all scope rulings and anticircumvention determinations completed by Import Administration between April 1, 2007, and June 30, 2007, inclusive, and it also lists any scope or anticircumvention inquiries pending as of June 30, 2007. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between April 1, 2007, and June 30, 2007:

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Musical Candle Company; its musical candle is included within the scope of the antidumping duty order; April 6, 2007.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: H S Candle, Inc.; its Wedding Cake (item WD008); Wedding Carriage (item WD011); Bride & Groom Wedding Cake Topper (item WD006); Wedding Bells (item WD012); and Pillow with Rings (item WD026) candles from its ''Wedding Candle'' series, and its Champagne Bottle in Ice Bucket (item HS028) from its ''Holiday Candle'' series, are not within the scope of the antidumping duty order; May 10, 2007.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: FashionCraft–Excello, Inc.; its flip flops (pink, blue, orange, or yellow; item #8820), wedding cake (white, ivory, pink or silver; item #8205, 8206, 8207, and 3875), baby bottle (pink or blue; item #3867, and 3868), pears (item #8201), rubber duckie (item #8209), coach (silver or gold; item #3854 and 3855), baby carriage (pink or blue; item #3852 and 3853), and teddy bear on a rocking horse (pink or blue; item #3863 and 3864) candles are not within the scope of the antidumping duty order; April 11, 2007.

A–570–803: Heavy Forged Hand Tools from the People's Republic of China

Requestor: Cummins Industrial Tools; the 10–ton log splitter is not within the scope of the antidumping duty order; June 1, 2007.

A–570–803: Heavy Forged Hand Tools from the People's Republic of China

Requestor: Agri–Fab; the Tow Behind Log Splitter is not within the scope of the antidumping duty order; June 1, 2007.

A–570–826: Paper Clips from the People's Republic of China

Requestor: Esselte Corporation; the Pendaflex® Pile Smart™ Label Clips are not within the scope of the antidumping duty order; May 1, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Target Corporation; the products in its ''Manhattan Collection'' (which consists of a bench, computer cart, bookcase, modular room divider

and desk) are not within the scope of the antidumping duty order; June 11, 2007.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: Ameristep Corporation, Inc.; its ''non–typical'' deer cart (product no. 7800) and its ''grizzly'' deer cart (product no. 9800) are not within the scope of the antidumping duty order; May 18, 2007.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: Bond Street Ltd.; the Stebco portable slide–flat cart (style no. 390009CHR) is included within the scope of the antidumping duty order; May 30, 2007.

A–570–901: Lined Paper Products from the People's Republic of China

Requestor: Lakeshore Learning Materials; certain printed educational materials, product numbers GG823 (Blank Writing Journal); RR801ML2 (Writing Journal); AA953ML3 (Diario para Escribir); GG528JNL (Vacation Journal); GG381JRN (Science Journal); RR969 and RR968 (My Math Journal); GG145 and GG146 (Math Journal, Grades 4 - 6); EE372 (Poetry Journal); GG154 and GG155 (Improve Your Writing Word Blank Journal); LA125 (Stamp, Draw, & Write Story Center); EE419 (Letter Writing Supply Kit); GG241JNL (Reading Journal); AA559 (Cursive Writing Letter Practice Book); AA558 (1 to 30 Printing Numbers Practice Book); AA565 (Lowercase Printing Letters Practice Book); and AA555 (Uppercase Printing Letters Practice Book), are not within the scope of the antidumping duty order; May 7, 2007.[1]

A–570–901: Lined Paper Products from the People's Republic of China

Requestor: Avenues in Leather, Inc.; its padfolios which contain one pad of paper (whether or not the pad of paper meets the description of merchandise covered by the scope of the order) are not within the scope of the antidumping duty order; May 8, 2007.

[1] Certain printed education materials, product numbers JJ537; JJ538; JJ342; JJ343; JJ225; JJ226; JJ2206; JJ2207; JJ255; JJ258, are not eligible for a scope ruling because they are in development and have not yet been produced.

Multiple Countries

A–122–503: Certain Iron Construction Castings from Canada; A–351–503 and C–351–504: Certain Iron Construction Castings from Brazil; A–570–502: Iron Construction Castings from the People's Republic of China

Requestor: Deeter Foundry, Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Leed Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Company, Tyler Pipe Company, and U.S. Foundry & Manufacturing Co.; iron construction castings made of gray and ductile cast iron are included within the scope of the antidumping and countervailing duty orders; May 3, 2007.

Anticircumvention Determinations Completed Between April 1, 2007, and June 30, 2007:

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; candles assembled in the United States from molded or carved articles of wax (a.k.a. wickless wax forms) from the PRC are circumventing the antidumping duty order; May 30, 2007.

Scope Inquiries Terminated Between April 1, 2007, and June 30, 2007:

People's Republic of China

A–570–864: Pure Magnesium in Granular Form from the People's Republic of China

Requestor: ESM Group Inc.; October 18, 2006, Final Scope Ruling on whether atomized ingots are included within the scope of the antidumping duty order rescinded and vacated; April 18, 2007.[2]

A–570–891: Hand Trucks from the People's Republic of China

Requestor: American Lawn Mower Company; whether its ''Collect–It Garden Waste Remover'' is within the scope of the antidumping duty order; requested March 28, 2007.[3]

[2] On November 16, 2006, Reade Manufacturing Company and Hart Metals, Inc. filed suit with the U.S. Court of International Trade, *Reade Manufacturing Co. v. United States*, Ct. No. 06-420, alleging they were interested parties who were not served the request for a scope ruling. On April 3, 2007, the Department entered into a Joint Stipulation for Entry of Judgment, pursuant to which the Department would rescind and vacate its Final Scope Ruling, effective October 18, 2006.

[3] This scope request was not eligible for a scope ruling because the ''Collect-It Garden Waste Remover'' was not yet in production.

Anticircumvention Inquiries Terminated Between April 1, 2007, and June 30, 2007:

None.

Scope Inquiries Pending as of June 30, 2007:

Belgium

A–423–808 and C–423–809: Stainless Steel Plate in Coils from Belgium

Requestor: Ugine & ALZ Belgium N.V.; whether stainless steel products with an actual thickness of less than 4.75 mm, regardless of nominal thickness, are within the scope of the antidumping and countervailing duty orders; requested June 8, 2007.

Italy

A–475–703: Granular Polytetrafluoroethylene Resin from Italy

Requestor: Petitioner, E.I. DuPont de Nemours & Company; whether imports of Polymist[reg] feedstock produced by the respondent Solvay Solexis, Inc. and Solvay Solexis S.p.A are within the scope of the antidumping duty order; requested August 18, 2006; initiated October 2, 2006.

Japan

A–588–702: Stainless Steel Butt–Weld Pipe Fittings from Japan

Requestor: Kuze Bellows Kogyosho Co., Ltd.; whether its ''Kuze Clean Fittings'' for automatic welding are within the scope of the antidumping duty order; requested March 26, 2007.

A–588–804: Ball Bearings and Parts Thereof from Japan

Requester: Toyota Tsusho America Inc.; whether steel balls used in automobile vents are within the scope of the antidumping order; requested April 23, 2007; initiated May 18, 2007.

People's Republic of China

A–570–502: Iron Construction Castings from the People's Republic of China

Requestor: A.Y. McDonald Mfg. Co.; whether cast iron lids and bases independently sourced from the PRC for its ''Arch Pattern'' and ''Minneapolis Pattern'' curb boxes are included within the scope of the antidumping duty order; requested April 2, 2007.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Enchante Accessories, Inc.; whether its palm oil wax candle is included within the scope of the antidumping duty order; requested January 29, 2007; initiated April 30, 2007.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Wedding Brand Investors LLC; whether white or ivory pillars and tapers are included within the scope of the antidumping duty order; requested June 12, 2007.

A–570–801: Cased Pencils from the People's Republic of China

Requestor: Walgreen Co.; whether the ''Artskills™ Draw & Sketch Kit'' is included within the scope of the antidumping duty order; requested May 25, 2007.

A–570–801: Cased Pencils from the People's Republic of China

Requestor: Walgreen Co.; whether the ''Artskills™ Stencil Kit'' is included within the scope of the antidumping duty order; requested May 25, 2007.

A–570–803: Heavy Forged Hand Tools With or Without Handles from the People's Republic of China

Requestor: Fiskars Brands, Inc.; whether a stamped machete, gator machete, and brush axe are included within the scope of the antidumping duty order; requested June 26, 2007.

A–570–848: Freshwater Crawfish Tailmeat from the People's Republic of China

Requestor: Maritime Products International; whether breaded crawfish tailmeat is included within the scope of the antidumping duty order; requested November 8, 2006; initiated December 18, 2006.

A–570–864: Pure Magnesium in Granular Form from the People's Republic of China

Requestor: ESM Group Inc.; whether atomized ingots are included within the scope of the antidumping duty order; original scope ruling rescinded and vacated April 18, 2007[4]; initiated April 18, 2007.

A–570–866: Folding Gift Boxes from the People's Republic of China

Requestor: Footstar; whether certain boxes for business cards and forms are included within the scope of the antidumping duty order; requested April 26, 2007.

A–570–866: Folding Gift Boxes from the People's Republic of China

Requestor: Hallmark Cards, Inc.; whether its ''FunZip'' gift presentation is included within the scope of the antidumping duty order; requested June 1, 2007.

[4] See ''Scope Inquiries Terminated Between April 1, 2007 and June 30, 2007'' section, above.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: International E–Z Up, Inc.; whether its Instant Work Bench is included within the scope of the antidumping duty order; requested April 6, 2007.

A–570–882: Refined Brown Aluminum Oxide from the People's Republic of China

Requestor: 3M Company; whether certain semi–friable and heat–treated, specialty aluminum oxides are included within the scope of the antidumping duty order; requested September 19, 2006; initiated January 17, 2007.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Asia Dynamics, Inc.; whether certain hospital patient belongings bags (model nos. 304211, 304311, 304411, 304611, 304711, 304811, 40219, 40229) are included within the scope of the antidumping duty order; requested May 23, 2007.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: DMS Holdings, Inc.; whether certain MABIS Healthcare hospital bags (biohazard disposal bag nos. 75–860–010, 75–860–080, 75–864–080; isolation bag no. 75–850–000; patient set–up bag nos. 75–833–000, 75–842–000, 75–970–550, 75–973–550, 75–979–550; personal belongings bag nos. 75–010–850, 75–011–850, 75–013–850, 75–014–850, 75–019–850, 75–032–850, 75–033–850, 75–036–850, 75–037–850, 75–038–850, 75–046–850, 75–047–850, 75–075–850, 75–105–850, 75–109–850, 75–110–850, 75–111–850, 75–117–850, 75–118–850, 75–120–850, 75–834–000, 75–838–000, 75–839–000, 75–844–000, 75–845–000, 75–847–000; kit packing bag nos.75–801–000, 75–802–000, 75–803–000, 75–804–000, 75–862–000, 75–863–000, 75–865–000) are included within the scope of the antidumping duty order; requested June 8, 2007.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Medline Industries, Inc.; whether certain hospital patient belongings bags and surgical kit bags (drawstring bags model nos. DS500C, DS400C, DONDS600, 38667, 7510, 42818, 25117, 28614, 42817; rigid handle bag model no. 26900) are included within the scope of the antidumping duty order; requested June 18, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: AP Industries; whether convertible cribs (model nos. 1000–0100; 1000–0125; 1000–0160; 1000–1195/2195; 1000–2145; and 1000–2165) are included within the scope of the antidumping duty order; requested June 26, 2007.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: Northern Tool & Equipment Co.; whether a high–axle torch cart (item #164771) is included within the scope of the antidumping duty order; requested March 27, 2007.

A–570–898: Chlorinated Isocyanurates from the People's Republic of China

Requestor: BioLab, Inc.; whether chlorinated isocyanurates originating in the People's Republic of China, that are packaged, tableted, blended with additives, or otherwise further processed in Canada before entering the U.S., are included within the scope of the antidumping duty order; requested November 22, 2006; initiated March 9, 2007.

A–570–901: Lined Paper Products from the People's Republic of China

Requestor: Lakeshore Learning Materials; whether certain printed educational materials, product numbers RR973 and RR974 (Reader's Book Log); GG185 and GG186 (Reader's Response Notebook); GG181 and GG182 (The Writer's Notebook); RR673 and RR674 (My Word Journal); AA185 and AA186 (Mi Diario de Palabras); RR630 and RR631 (Draw & Write Journal); AA786 and AA787 (My First Draw & Write Journal); AA181 and AA182 (My Picture Word Journal); GG324 and GG325 (Writing Prompts Journal); EE441 and EE442 (Daily Math Practice Journal Grades 1 - 3); EE443 and EE444 (Daily Math Practice Journal Grades 4 - 6); EE651 and EE652 (Daily Language Practice, Grades 1–3); EE653 and EE654 (Daily Language Practice Journal, Grades 4 - 6), are included within the scope of the antidumping duty order; requested December 7, 2006; initiated May 7, 2007.

A–570–901: Lined Paper Products from the People's Republic of China

Requestor: Bond Street Ltd.; whether its writing cases (previously found to be not included within the scope when containing writing pads with a backing, provided that they do not have a front cover and/or they consist of hole–punched or drilled filler paper), which contain writing tablets 2i and 2ii (previously found to be included within

the scope), are included within the scope of the antidumping duty order; requested December 22, 2006.

A–570–904: Activated Carbon from the People's Republic of China

Requestor: Cherishment, Inc.; whether a certain type of patented activated carbon (192 patent HTCC product) is included within the scope of the antidumping duty order; requested June 1, 2007.

Multiple Countries

A–533–809: Certain Forged Stainless Steel Flanges from India; A–583–821: Certain Forged Stainless Steel Flanges from Taiwan

Requestor: Lokring Technology Corporation; whether certain assemblies comprising stainless steel flanges from India or Taiwan welded to stainless steel ''half–bodies'' with swage rings, and completed in Canada, are within the scope of the order; requested June 26, 2007.

Anticircumvention Rulings Pending as of June 30, 2007:

People's Republic of China

A–570–001: Potassium Permanganate from the People's Republic of China

Requestor: Specialty Products International, Inc.; whether sodium permanganate is later–developed merchandise that is circumventing the antidumping duty order; requested October 10, 2006.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Meco Corporation; whether the common leg table (a folding metal table affixed with cross bars that enable the legs to fold in pairs) produced in the PRC is a minor alteration that circumvents the antidumping duty order; requested October 31, 2005; initiated June 1, 2006.

A–570–894: Certain Tissue Paper Products from the People's Republic of China

Requestor: Seaman Paper Company; whether imports of tissue paper from Vietnam made out of jumbo rolls of tissue paper from the PRC are circumventing the antidumping duty order; requested July 19, 2006; initiated September 5, 2006.

A–570–901: Lined Paper Products from the People's Republic of China

Requestor: Association of American School Suppliers, whether imports of notebooks and filler paper from Taiwan are circumventing the antidumping duty order; requested January 16, 2007.

Interested parties are invited to comment on the completeness of this list of pending scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 1401 Constitution Avenue, N.W., Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 C.F.R. 351.225(o).

Dated: July 27, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–15159 Filed 8–2–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Federal Advisory Committee

AGENCY: DoD.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Defense Policy Board Advisory Committee.

The Defense Policy Board Advisory Committee, pursuant to 41 CFR 102–3.50(d), is a discretionary Federal advisory committee established to provide the Secretary of Defense and the Deputy Secretary of Defense, through the Under Secretary of Defense for Policy, with independent, informed advice and opinion concerning matters of defense policy.

The Committee will focus on: (a) Issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization and transformation on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) any other research and analysis of topics raised by the Secretary of Defense, Deputy Secretary or Under Secretary of Defense for Policy.

The Under Secretary of Defense (Policy) may act upon the Committee's advice and recommendations.

The Defense Policy Board Advisory Committee shall be comprised of no more than twenty-six members, who have distinguished backgrounds in national security affairs, and no more than four of the members shall be Federal officers or employees.

Committee members appointed by the Secretary of Defense, who are not full-time Federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109. Members will be appointed to serve a term of two years, and their consultant appointments will be renewed annually. With the exception of travel and per diem for official travel, Committee members shall serve without compensation.

The Secretary of Defense shall select the Committee's Chairperson from the membership at large. In addition, the Under Secretary of Defense for Policy may appoint consultants to support the Committee and the Committee's task forces.

The Defense Policy Board Advisory Committee shall meet at the call of the committee's Designated Federal Officer, in consultation with the Chairperson and the Under Secretary of Defense for Policy. The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

The Defense Policy Board Advisory Committee shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered committee, and shall report all their recommendations and advice to the Defense Policy Board Advisory Committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Department of Defense or any Federal officers or employees who are not members of the Defense Policy Board Advisory Committee.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Policy Board Advisory Committee membership about the committee's mission and functions. Written statements may be submitted at any time or in response to the stated

agenda of planned meeting of the Defense Policy Board Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Defense Policy Board Advisory Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Policy Board Advisory Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORAMTION CONTACT: Jim Freeman, DoD Committee Management Office, 703–601–2554, extension 128.

Dated: July 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–3821 Filed 8–1–07; 10:22 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Federal Advisory Committee

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.365, the Department of Defense gives notice that it will renew the charter for the Defense Task Force on Sexual Assault in the Military Services on September 22, 2007.

The Task Force, under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), and in accordance with section 576 of Public Law 108–375, shall conduct an examination of matters relating to sexual assault by members or against members of the Armed Forces of the United States.

Pursuant to section 576(e) of Public Law 108–375, the Task Force, no later than one year after the initiation of its examination, shall submit to the Secretary of Defense and the Secretaries of the Army, Navy and Air Force on the activities of the Task Force and on the activities of the Department of Defense and the Armed Forces to respond to sexual assault.

Within 90 days after receipt of the Task Force's report, the Secretary of Defense shall submit the Task Force's report, together with the Secretary of Defense's evaluation of the report, to the Committees on Armed Services of the Senate and House of Representatives.

The Task Force shall be comprised of no more than fourteen members, and the membership shall be comprised of an equal number of military and civilian members. The Secretary of Defense shall select the military Co-Chairperson, and the civilian members shall select a civilian Co-Chairperson.

Task Force members appointed by the Secretary of Defense, who are not full-time Federal officers or employees, shall serve as Special Government Employees, and all members shall be appointed on an annual basis for the duration of the Task Force.

Task Force members who are Federal officers or employees shall serve without compensation (other than compensation to which they are entitled to as a Federal officer or employee). Other Task Force members shall be appointed under the authority of 5 U.S.C. 3161, and will receive compensation for their service. All Task Force members shall receive compensation for travel and per diem for official Task Force travel.

The Defense Task Force on Sexual Assault in the Military Services shall meet at the call of the committee's Designated Federal Officer, in consultation with the Co-Chairpersons. The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

The Task Force shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Task Force, and shall report all their recommendations and advice to the Task Force for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Task Force nor can they report directly to the Department of Defense or any Federal officers or employees who are not Task Force members.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Task Force on Sexual Assault in the Military Services membership about the committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Defense Task Force on Sexual Assault in the Military Services.

All written statements shall be submitted to the Designated Federal Officer for the Defense Task Force on Sexual Assault in the Military Services, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Task Force on Sexual Assault in the Military Services. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Committee Management Office, 703–601–2554, extension 128.

Dated: July 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–3822 Filed 8–1–07; 10:23 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Federal Advisory Committee

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it will renew the charter for the Defense Advisory

Board for Employer Support of the Guard and Reserve on October 1, 2007.

The Defense Advisory Board for Employer Support of the Guard and Reserve, pursuant to 41 CFR 102–3.50(d), is a discretionary Federal advisory committee established to provide the Secretary of Defense, through the Under Secretary of Defense (Personnel and Readiness) and the Assistant Secretary of Defense (Reserve Affairs), with independent advice concerning matters arising from the military service obligations of members of the National Guard and Reserve members and the impact on their civilian employment. The Assistant Secretary of Defense (Reserve Affairs) may act upon the advice of the committee.

The Defense Advisory Board for Employer Support of the Guard and Reserve shall be composed of no more than 15 members appointed by the Secretary of Defense for three-year terms, and their appointments will be reviewed on an annual basis. Those members, who are not full-time Federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109. With the exception of travel and per diem for official travel, Committee members shall serve without compensation. The Assistant Secretary of Defense (Reserve Affairs) shall select the Committee's Chairperson from the membership at large.

The Defense Advisory Board for Employer Support of the Guard and Reserve shall meet at the call of the committee's Designated Federal Officer, in consultation with the Chairperson and the Assistant Secretary of Defense (Reserve Affairs). The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Advisory Board for Employer Support of the Guard and Reserve membership about the committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meetings of the Defense Advisory Board for Employer Support of the Guard and Reserve.

All written statements shall be submitted to the Designated Federal Officer for the Defense Advisory Board for Employer Support of the Guard and Reserve, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Advisory Board for Employer Support of the Guard and Reserve. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Committee Management Office, 703–601–2554, extension 128.

Dated: July 30, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–3823 Filed 8–1–07 10:24 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice; correction.

SUMMARY: The notice of an intent to grant an exclusive license for U.S. patent application 11/229,425, filed September 16, 2005 entitled ''Artillery Rocket Trajectory Correction Kit'' was originally published in the **Federal Register** on July 20, 2007 (72 FR 39801) and a correction notice was published in the **Federal Register** on July 27, 2007 (74 FR 41300). The geographical information has been updated. The correct information is: In accordance with 35 U.S.C. 209 and 37 CFR 404.7(b)(1)(i), announcement is made of the intent to an exclusive, royalty-bearing, revocable license for all geographic areas including the United States of America and its territories and possessions for any patents or patent applications claiming priority to U.S. patent application.

FOR FURTHER INFORMATION CONTACT: Dr. Russ Alexander, Office of Research & Technology Applications, (256) 876–8743.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–3790 Filed 8–2–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. provisional patent application filed April 24, 2006 entitled ''Trauma Training Mannequin''; U.S. provisional patent application filed August 18, 2006 entitled ''Trauma Training Mannequin''; U.S. provisional patent application filed June 8, 2006 entitled ''Trauma Training System''; U.S. patent application filed April 23, 2007 entitled ''Trauma Training System''; and foreign rights (PCT/US2005/043771) to Skedco, Inc., with its principal place of business at 10505 SW Manhasset Drive, Tualatin, Oregon 97062.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–ZA–J, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–3791 Filed 8–2–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for Improvements to the Freeport Harbor Navigation Project, Brazoria County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District, is issuing this notice to announce its intent to prepare a Draft Environmental Impact Statement (DEIS), for the proposed deepening and widening of the deep-draft Freeport Harbor Navigation Project, connecting port facilities in Freeport to the Gulf of Mexico. The District will conduct a study to evaluate deepening and widening alternatives, and dredged material disposal options, which will include both upland confined disposal and ocean disposal at designated sites in the Gulf of Mexico.

The Freeport Harbor Navigation Project study area is located on the mid to upper Texas coast in Brazoria County, TX, extending from approximately 3 miles offshore at the 60-foot depth contour in the Gulf of Mexico, through the jettied Freeport Harbor entrance channel upstream to the Stauffer Channel Turing Basin. Depths and widths of up to 60-feet and 600-feet respectively are being considered from seaward, along with varying dimensions for upstream reaches and basins. The non-federal sponsor is the Brazos River Harbor Navigation District.

ADDRESSES: U.S. Army Corps of Engineers, Galveston District, P.O. Box 1229, Galveston, TX 77553–1229.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Bragg, Project Manager—Project Management Branch, (409) 766–3979; or Mr. George Dabney, Environmental Lead—Planning and Environmental Branch, (409) 766–6345.

SUPPLEMENTARY INFORMATION: The existing navigation project, completed in 1996, is approximately 8.6 miles in length. The project's primary reaches and basins include a 47-foot deep, 400-foot wide entrance channel; a 45-foot deep, 400-foot wide main channel; 45-foot deep turning basins (with 750, 1,000 and 1,200-foot diameters); and a 36-foot deep, 750-foot diameter Brazos Harbor Turning Basin. The existing project encompasses numerous industrial and shipping facilities, located in or adjacent to the Port of Freeport, TX. The non-federal sponsor, the Brazos River Harbor Navigation District, seeks to increase navigation safety and efficiency, and to enhance its competitiveness by improving the existing project to attract larger, deeper draft vessels including LNG tankers, crude carriers and container ships.

To explore the feasibility of proposed project improvements, the non-federal sponsor has partnered with the U.S. Army Corps of Engineers, Galveston District, to conduct a feasibility study for determining optimum depths and widths necessary to safely accommodate current and projected navigation needs. Section 216 of the Flood Control Act of 1970, Public Law 91–611, authorizes the proposed deepening and widening improvements of the existing navigation project.

Project alternatives under evaluation include maintaining primary channel reaches at their existing dimensions (No Action Alternative), or, deepening and widening reaches to either 60 x 540 feet or 55 x 600 feet respectively. The remaining project reaches and basins will be deepened, widened or expanded to compatible dimensions.

The scoping process for public input will involve Federal, State, and local agencies, along with other interested parties and entities. Coordination with natural resources and environmental agencies will be conducted under the Fish and Wildlife Coordination Act, Endangered Species Act, Clear Water Act, Clean Air Act, National Historic Preservation Act, Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act. Public scoping meetings will also be held to discuss environmental issues associated with proposed channel improvements.

Issues to be considered during the public review and input process include: water and sediment quality, air and noise quality, hazardous, toxic and radiological waste, dredged material disposal, economics, threatened and endangered species, wetlands, historic properties, aesthetics, recreation, cumulative impacts, impact mitigation for natural resources, and other issues affecting public health and welfare. Any person or organization wishing to provide information on issues or concerns should contact the Galveston District Corps of Engineers at (see **ADDRESSES**).

It is estimated the DEIS will be available for public review and comment in April 2008.

Richard Medina,

Chief, Planning and Environmental Branch.

[FR Doc. 07–3817 Filed 8–2–07; 8:45 am]

BILLING CODE 3710–52–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement for the Hawaii Range Complex, HI

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 regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), and Presidential Executive Order 12114, the Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (EIS)/Overseas EIS on July 19, 2007, to evaluate the potential environmental effects of conducting current and emerging Navy Pacific Fleet training and defense-related research, development, test, and evaluation (RDT&E) operations within the Hawaii Range Complex (HRC) and to upgrade or modernize range complex capabilities (including hardware and infrastructure). A Notice of Intent for this DEIS/OEIS was published in the **Federal Register**, 71 FR 51188, on August 29, 2006.

The Draft EIS/OEIS was distributed to Federal, State, and Local agencies, elected officials, as well as other interested individuals and organizations on July 20, 2007. On July 27, 2007, Navy issued a revision to the Draft EIS/OEIS that was filed with the U.S. Environmental Protection Agency on July 19, 2007. Errata sheets and a corrected Draft EIS/OEIS were distributed to all Federal, State, and local agencies, elected officials, and other interested individuals and organizations on Navy's distribution list. To allow for the full 45-day review of the Draft EIS/OEIS, the public comment period has been extended from September 10, 2007 to September 17, 2007.

The Navy will conduct four public hearings to receive oral and written comments on the Draft EIS/OEIS. Federal agencies, state agencies, and local agencies and interested individuals are invited to be present or represented at the public hearings. This notice announces the dates and locations of the public hearings for this Draft EIS/OEIS.

Dates and Addresses: An open house session will precede the scheduled public hearing at each of the locations listed below and will allow individuals

to review the information presented in the Draft EIS/OEIS. Navy representatives will be available during the open house sessions to clarify information related to the Draft EIS/OEIS. In addition, the National Marine Fisheries Service (NMFS), which is participating as a cooperating agency in the development of the EIS, will be represented at the public hearings. All meetings will start with an open house from 5 p.m. to 6 p.m. Presentations and public comment will be held from 6 p.m. to 9 p.m. Public hearings will be held on the following dates and at the following locations: August 21, 2007, at Kauai War Memorial Convention Hall, 4191 Hardy Street, Lihue, Hawaii; August 23, 2007, at McKinley High School, 1039 South King Street, Honolulu, Hawaii; August 27, 2007, at Baldwin High School, 1650 Kaahumanu Avenue, Wailuku, Hawaii; August 29, 2007, at Waiakea High School, 155 West Kawili Street, Hilo, Hawaii.

FOR FURTHER INFORMATION CONTACT: Public Affairs Officer, *Pacific Missile Range Facility Attention:* HRC EIS/OEIS, P.O. Box 128, Kekaha, Kauai, Hawaii 96752–0128. Voice mail 1–866–767–3347 or facsimile 808–335–4520.

SUPPLEMENTARY INFORMATION: The HRC consists of open ocean areas (outside 12 nautical miles (nm)), offshore areas (within 12 nm from land), and onshore areas geographically situated on and around the Hawaiian Islands. The complex covers 235,000 square nm around the main Hawaiian Islands chain and a 2.1 million square nm Temporary Operating Area (TOA) of sea and airspace. The study area is a complex consisting of instrumented ocean areas, airspace, ocean surface operation areas, targets, and land range facilities.

Navy proposes to support and conduct current and emerging training and RDT&E operations in the HRC and to upgrade or modernize range complex capabilities to enhance and sustain Navy training and defense-related testing. This would be accomplished by increasing training operations and implementing necessary force structure changes; supporting three transient Strike Group training exercises at the same time and an additional aircraft carrier during Rim of the Pacific Exercises; operating a Portable Undersea Tracking Range; constructing and operating an Acoustic Test Facility; enhancing RDT&E and training operations at the Pacific Missile Range Facility (PMRF); and using the TOA as required.

The Draft EIS/OEIS evaluates the potential environmental impacts of three alternatives, including two action alternatives (Alternatives 1 and 2) and the No-action Alternative. The No-action Alternative stands as no change from current levels of training usage. Alternatives 1 and 2 analyze an increased tempo and frequency of training exercises in the HRC. Alternative 2 is the Navy's preferred alternative.

No significant adverse impacts are identified for any resource area in any geographic location within the HRC that cannot be mitigated, with the exception of exposure of marine mammals to underwater sound. NMFS has received an application from the Navy for a Marine Mammal Protection Act Letter of Authorization (LOA) and governing regulations to authorize incidental take of marine mammals that may result from the implementation of the activities analyzed in the Draft EIS/OEIS. NMFS is participating as a cooperating agency in the development of this Draft EIS/OEIS. NMFS staff will be present at the scheduled open house and public hearings and available to discuss both the MMPA incidental take authorization process and NMFS' participation in the development of the EIS.

The Draft EIS/OEIS was distributed to Federal, State, and local agencies, elected officials, as well as other interested individuals and organizations on July 20, 2007. On July 27, 2007, Navy issued a revision to the Draft EIS/OEIS that was filed with the U.S. Environmental Protection Agency on July 19, 2007. Errata sheets and a corrected Draft EIS/OEIS were distributed to all Federal, State, and local agencies, elected officials, and other interested individuals and organizations on Navy's distribution list. To allow for the full 45-day review of the Draft EIS/OEIS, the public comment period has been extended from September 10, 2007 to September 17, 2007.

Copies of the Draft EIS/OEIS are available for public review at the following libraries: Kahului Public Library, 90 School Street, Kahului, Maui, Hawaii 96732; Wailuku Public Library, 251 High Street, Wailuku, Maui Hawaii 96793; Hilo Public Library, 300 Waianuenue Avenue, Hilo, Hawaii, HI 96720; Hawaii State Library, Hawaii and Pacific Section Document Unit, 478 South King Street, Honolulu, Oahu, Hawaii 96813–2994; Lihue Public Library, 4344 Hardy Street, Lihue, Kauai, Hawaii 96766; Waimea Public Library, P.O. Box 397, Waimea, Kauai Hawaii 96766; and Princeville Public Library, 4343 Emmalani Drive, Princeville, Kauai, Hawaii 96722. The Draft EIS/OEIS is also available for electronic public viewing at *http://www.govsupport.us/hrc.* Single copies of the Draft EIS/OEIS and the Executive Summary will be made available upon request by contacting Public Affairs Officer, Pacific Missile Range Facility, P.O. Box 128, Kekaha, Kauai, Hawaii 96752–0128, *Attention:* HRC EIS/OEIS, voice mail 1–866–767–3347 or facsimile 808–335–4520.

Federal, State, and local agencies and interested parties are invited to be present or represented at the public hearing. Written comments can also be submitted during the open house sessions preceding the public hearings. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the Draft EIS/OEIS and will be responded to in the Final EIS/OEIS. Equal weight will be given to both oral and written statements.

In the interest of available time, and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If a long statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing at the hearing, mailed to Public Affairs Officer, Pacific Missile Range Facility, P.O. Box 128, Kekaha, Kauai, Hawaii 96752–0128, ATTN: HRC EIS/OEIS, facsimile 808–335–4520; or submitted via e-mail to *deis_hrc@govsupport.us* or via the project Web site at *http://www.govsupport.us/hrc.*

All written comments must be postmarked or received by September 17, 2007, to ensure they become part of the official record. All comments will be responded to in the Final EIS/OEIS.

Dated: July 30, 2007.

M.C. Holley,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Administrative Law Division, Alternate Federal Register Liaison Officer.

[FR Doc. E7–15127 Filed 8–2–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Finding

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions, the

Department of the Navy gives notice that a Finding of No Significant Harm (FONSH) has been issued and is available for exercise ''Valiant Shield 07.''

DATES: The effective date of availability is August 3, 2007.

ADDRESSES: Electronic copies of the FONSH are available for public viewing or downloading at *http://www.navydocuments.com.* Single copies of the FONSH may be obtained by written request from: Commander, Naval Facilities Engineering Command Pacific, 258 Makalapa Drive Suite 100, Pearl Harbor, HI, 96860–3134 (ATTN: Code EV 21KF).

FOR FURTHER INFORMATION CONTACT: Commander, U.S. Pacific Fleet, Public Affairs, Mr. Mark Matsunaga 808–471–3769 or visit *http://www.navydocuments.com.*

SUPPLEMENTARY INFORMATION: Valiant Shield 2007 (VS 07) is a major Navy training exercise proposed to occur in August 2007 in a large open ocean area, beyond any territorial seas, in the western Pacific Ocean. The purpose of this exercise is to demonstrate the Navy's ability to operate a large Naval force in coordination with other United States military services, supporting the Navy's requirement to maintain, train and equip combat-ready naval forces. Activities conducted during the exercise include anti-air warfare, anti-surface warfare including sinking exercise(s), and anti-submarine warfare, including use of active sonar.

The FONSH is based on analysis contained in an Overseas Environmental Assessment (OEA) evaluating environmental impacts associated with the proposed offshore Navy training. Environmental concerns addressed in the OEA include air quality, water resources, ocean physical environment, airborne noise, underwater sound, and biological resources, including fish, essential fish habitat, marine mammals and threatened and endangered species. The OEA includes an analysis of mid-frequency active sonar use, sinking exercises, and other Navy training activities that will occur over the exercise period. VS 07 incorporates the use of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar in accordance with current authorizations.

Endangered Species Act Section 7 consultation between the Navy and National Marine Fisheries Service (NMFS) resulted in a biological opinion from NMFS concluding that the proposed exercise is not likely to jeopardize the continued existence of any threatened or endangered species, nor to adversely modify or destroy any designated critical habitat.

This action includes mitigation measures that will be implemented to protect marine mammals, sea turtles and federally listed endangered/threatened species during the exercise. Based on information gathered during preparation of the OEA, consultation with NMFS, and evaluation of the nature, scope and intensity of the proposed action, the Navy finds that the conduct of Valiant Shield 2007 will not significantly harm the environment and, therefore, an Overseas Environmental Impact Statement is not required.

Dated: July 30, 2007.

M.C. Holley,

Office of the Judge Advocate General, U.S. Navy, Administrative Law Division, Alternate Federal Register Liaison Officer.

[FR Doc. E7–15128 Filed 8–2–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 4, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 30, 2007.

James Hyler,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Migrant Student Information Exchange (MSIX).

Frequency: Nightly Database Submission.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 17,885.

Burden Hours: 452,470.

Abstract: The collection is necessary to establish a set of minimum data elements to be collected and transferred between State migrant education programs (MEPs) as part of a larger, mandated Migrant Student Information Exchange (MSIX). State educational agencies (SEAs) with MEPs will transfer the minimum data elements using the MSIX in order to facilitate timely class placement and credit accrual for migratory children.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2841. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department

of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–15081 Filed 8–2–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Educational Materials in Accessible Formats for Students With Visual Impairments and Other Print Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327K.

Dates: Applications Available: Deadline for Transmittal of Applications: September 4, 2007.

Deadline for Intergovernmental Review: September 7, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technology and Media Services for Individuals with Disabilities program is to: (1) Improve results for students with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom for students with disabilities; and (3) provide support for captioning and video description that is appropriate for use in the classroom.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in sections 674(c)(1)(D) and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*

Absolute Priority: For FY 2007, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals with Disabilities—Educational Materials in Accessible Formats for Students with Visual Impairments and Other Print Disabilities.

Priority:

The purpose of this priority is to provide free educational materials, including textbooks, in accessible media for use by students with visual impairments and other print disabilities in elementary and secondary schools and in postsecondary and graduate schools. These materials may be provided using CD–ROMs, audiotapes, and similar technologies, including electronic text and digital audio synchronization.

To be considered for funding under this priority, the project must—

(a) Provide educational materials in accessible formats to State educational agencies (SEAs) and local educational agencies (LEAs) for use by elementary and secondary education students with visual impairments or other print disabilities. The educational materials, including specialized equipment needed to use the materials, must be provided at no cost. For example, the project may not assess membership fees to individual students or to institutions, including schools, SEAs, or LEAs;

(b) Provide educational materials in accessible formats for students with visual impairments or other print disabilities attending postsecondary and graduate schools. Materials may be provided directly to eligible students or to postsecondary and graduate institutions and vocational rehabilitation agencies requesting materials in accessible formats on behalf of eligible students. The materials and equipment needed to use the materials must be provided free of charge. For example, the project may not assess fees to individual students or to institutions, including, vocational rehabilitation agencies, post-secondary schools, and graduate schools;

(c) Obtain statements of eligibility signed by professionals who certify the eligibility of postsecondary and graduate students with visual impairments and other print disabilities and the students' specific need for educational materials in accessible formats;

(d) Coordinate and collaborate with publishers, software developers, other manufacturers of accessible materials for individuals with visual impairments or print disabilities, and the National Instructional Materials Access Center (NIMAC) to ensure that the project uses the most effective and economical technology available to provide access to educational materials, including textbooks;

(e) To the fullest extent possible and appropriate, produce accessible materials using files that are compliant with the National Instructional Materials Accessibility Standard (NIMAS);

(f) Coordinate with SEAs, LEAs, other government agencies, and disability and educational organizations, including the NIMAC, to ensure non-duplication of effort in the production or acquisition of accessible materials and in the delivery of these materials to SEAs, LEAs, and eligible postsecondary and graduate students;

(g) Cooperate with SEA and LEA efforts to implement or improve State systems for providing educational materials in accessible formats to students with visual impairments or other print disabilities;

(h) Ensure that project activities are conducted in compliance with section 121 of the Copyright Act, as amended;

(i) Establish an advisory group consisting of SEA and LEA representatives, parents of individuals with visual impairments and other print disabilities ages birth through 26, consumers with visual impairments and consumers with other print disabilities who use educational materials in accessible formats, and schools or other institutions where educational materials in accessible formats are used. The purpose of this advisory group is to provide the project with input and ongoing advice on the project's goals, objectives, program activities, and services;

(j) Budget for a one and one-half day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award. The primary purposes of this meeting will be to review the Department's grantee requirements, discuss the project's planned activities and budget, and confirm the expectations for the project's performance measures and evaluation;

(k) Budget for a three-day Project Director's meeting in Washington, DC, during each year of the project, and one additional two-day trip to Washington, DC, to meet with the Project Officer for the Office of Special Education Program (OSEP) and other funded projects for purposes of cross-project collaboration and information exchange; and

(l) Include on its Web site, if the project maintains a Web site, relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the

Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendations of a review team consisting of experts selected by the Secretary. The review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been, or are being, met by the project; and

(c) Evidence of the quality, relevance, and usefulness of the project's activities and the degree to which the project's activities have contributed to improved results for students with disabilities.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $7,000,000.

Estimated Range of Awards: $2,000,000–$7,000,000.

Estimated Average Size of Awards: $2,300,000.

Estimated Number of Awards: 1 to 3.

Maximum Award: $7,000,000 is the maximum award amount for a single budget period of 12 months.

Additional Funding Information: OSEP may have funds available to support enhancements to the activities described in the applications approved for funding under this competition. Applicants wishing to apply for enhancement funds may use up to five additional pages (for a total of 25 pages) to describe additional activities that augment or complement those put forth in the narrative section of their grant proposals. Enhancement activities are either expansions of activities already described in the narrative or new activities that will improve the quality of the tasks proposed by the applicant; for example, increased production and distribution of materials in accessible formats, the acquisition of expert technical assistance, or improved stakeholder involvement. A separate budget for the enhancement funds must be prepared and included in Part II of the application if the applicant chooses to include a proposal for potential enhancements as part of its application. The budget for the enhancement funds may not exceed $5,000,000.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

Eligible Applicants: National, nonprofit entities with a proven track record of meeting the needs of students with visual impairments and other print disabilities through services described in section 674(c)(1)(D) of IDEA that have the capacity to produce, maintain, and distribute, in a timely fashion, up-to-date textbooks in digital audio formats to qualified students and that have a demonstrated ability to significantly leverage Federal funds through other public and private contributions, as well as through the expansive use of volunteers.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*— (a) The projects funded under this competition must make positive efforts to employ, and advance in employment, qualified individuals with disabilities (*see* section 606 of IDEA).

(b) The applicant and grant recipient funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (*see* section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327K.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 20 pages, or 25 pages if you apply for enhancement funds, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the two-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 3, 2007.

Deadline for Transmittal of Applications: September 4, 2007.

Applications for grants under this competition may be submitted electronically using the *http://www.Grants.gov* Apply site (Grants.gov),

or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 7, 2007.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide *Grants.gov* Apply site. The Educational Materials in Accessible Formats for Students with Visual Impairments and Other Print Disabilities competition, CFDA number 84.327K, is included in this project. We request your participation in *Grants.gov.*

If you choose to submit your application electronically, you must use the Governmentwide *Grants.gov* Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Educational Materials in Accessible Formats for Students with Visual Impairments and Other Print Disabilities competition at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.327, not 84.327K).

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the *Grants.gov* system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*
- To submit your application via *Grants.gov,* you must complete all steps in the *Grants.gov* registration process (*see http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the *Grants.gov* 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via *Grants.gov.* In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. (This notification indicates receipt by *Grants.gov* only, not receipt by the Department.) The Department then will retrieve your application from *Grants.gov* and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov,* please contact the *Grants.gov* Support Desk, toll-free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327K), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.327K), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327K), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Peer Review:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, in order to avoid potential conflicts of interest for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence, and fairness of the review process and permit panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department selects for funding an equal number of applications in each group, different cut-off points for fundable applications in each group may result.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by

the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving results for children with disabilities. We will collect data on these measures from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Glinda Hill, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4063, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–7376.

If you use a TDD, call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 30, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–15130 Filed 8–2–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Educational Media Activities to Improve State Systems for Providing Educational Materials in Accessible Formats; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327S.

Dates: Applications Available: August 3, 2007.

Deadline for Transmittal of Applications: September 4, 2007.

Deadline for Intergovernmental Review: September 7, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technology and Media Services for Individuals with Disabilities program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom setting for children with disabilities; and (3) provide support for captioning and video description that is appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*).

Absolute Priority: For FY 2007, and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals with Disabilities—Educational Media Activities to Improve State Systems for Providing Educational Materials in Accessible Formats.

Background

The IDEA requires States to provide a free appropriate public education (FAPE) to all students with disabilities. This includes the provision of educational materials in accessible formats for students with disabilities eligible for services under Part B of IDEA, including students with visual impairments or other print disabilities and learning disabilities.

The 2004 amendments to IDEA added several new provisions to improve the timely production and dissemination of educational materials in accessible formats for students who are blind and other students with print disabilities, including the following:

- Section 612(a)(23) of IDEA requires States, including the Outlying Areas (OAs) (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) and the Freely Associated States (FAS) (Palau, the Marshall Islands, and the Federated States of Micronesia), to adopt the National Instructional Materials Accessibility Standard (NIMAS) for the purpose of providing instructional materials to persons who are blind and other persons with print disabilities, and to ensure that these materials are provided in a timely manner. (Section 613(a)(6) of IDEA includes similar requirements for local educational agencies (LEAs)).
- Section 674(e) of IDEA requires the Department of Education (Department) to establish a National Instructional Materials Access Center (NIMAC) to act as a repository for electronic files of print instructional materials created in the NIMAS format.
- Section 612(a)(23) of IDEA requires States, including the OAs and FAS, that choose to coordinate with the NIMAC, as part of any materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, to enter into a written contract with the publisher of the print instructional materials to: (1) Require the publisher to prepare and provide, on or before delivery of the print instructional materials, the NIMAC with NIMAS-compliant electronic files of print instructional materials (section 613(a)(6) of IDEA contains similar requirements for LEAs) or (2) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

Educational materials obtained from the NIMAC only may be provided to

students with disabilities who meet the eligibility criteria of section 674(e) of IDEA. However, the group of students that meets the 674(e) eligibility criteria does not include all students with disabilities eligible under Part B of IDEA whom State educational agencies (SEAs) and LEAs are required to serve. In the preamble to the regulations implementing Part B of IDEA (71 FR 46618), the Department explained that SEAs and LEAs have an obligation to provide accessible instructional materials in a timely manner to children with disabilities who may need educational materials in accessible formats, but who are not eligible to receive materials produced from files obtained through the NIMAC. States must determine how they will provide accessible materials to children who are eligible to receive materials produced from files obtained through the NIMAC, as well as to children who are eligible to receive services under Part B of IDEA but who are not eligible to receive materials produced from files obtained through the NIMAC.

States, including the OAs and FAS, and LEAs are experiencing significant challenges implementing these new provisions, including adapting existing systems for providing educational materials in accessible formats to address the new requirements. This priority supports educational media activities that address State needs for assistance in providing students with disabilities educational materials in accessible formats.

Priority:

The purpose of this priority is to support educational media activities that establish or enhance State, including OAs and FAS, systems or mechanisms for providing educational materials in accessible formats for students with disabilities who are eligible for services under Part B of IDEA.

Applicants must describe in their applications their specific plans for how they will use grant funds received under this priority to implement or enhance State systems for providing educational materials in accessible formats in a timely manner to students with disabilities who are eligible under Part B of IDEA, and ensuring that the accessible formats are appropriate for use by these students. Activities may include, but are not limited to, activities that assist States to:

- Understand and implement the NIMAS and NIMAC requirements in Part B of IDEA;
- Reconcile conflicting State and Federal statutory and regulatory provisions related to types of file formats that must be used in producing educational materials in accessible formats;
- Modify State and LEA systems that use other file formats to use NIMAS complaint-files;
- Determine how the SEA will assess the need for educational materials in accessible formats, assist LEAs in determining how student needs for accessible materials will be identified, document needs in students' individualized education programs (IEPs), and certify the eligibility of students for NIMAC materials in accordance with section 674(e)(3)(A) of IDEA;
- Develop data management and tracking systems for managing NIMAS files and providing educational materials in accessible formats;
- Identify vendors that convert NIMAS files into accessible formats and, as necessary, distribute the materials produced from the NIMAS files;
- Create an integrated system that coordinates NIMAC-related requests and educational media activities of students with visual impairments and other print disabilities with educational media activities that benefit children with disabilities who do not meet the NIMAC eligibility requirements, but who need accessible versions of educational materials as determined pursuant to section 614(d) of IDEA;
- Build upon existing State systems or infrastructures related to special education or regular education, rather than creating new systems to address the NIMAS and NIMAC requirements, as appropriate; and
- Coordinate with Federal technical assistance providers, such as the NIMAS Technical Assistance Center.

Applicants that are *not* SEAs, FAS, or OAs also may apply if the application includes a letter of endorsement from an SEA, FAS, or OA indicating that the applicant is applying on its behalf.

Where it would be a more effective use of resources, SEAs, FAS, and OAs are encouraged to form consortia that meet the requirements in 34 CFR 75.127 to 75.129, and submit a joint application that proposes to use the combined funds available for each State, FAS, or OA. A consortium is comprised of more than one eligible entity and could include entities from the same geographic region or entities with similar demographic characteristics, populations, geographic characteristics, or other characteristics. The Secretary views the formation of consortia as an effective and efficient strategy to address the requirements of this priority.

Projects funded under this priority also must—

(a) Budget for a three-day Project Directors' meeting in Washington, DC during the 18-month project period, plus one additional two-day trip to Washington, DC to meet with the Office of Special Education Programs (OSEP) Project Officer and other funded projects for purposes of cross-project collaboration and information exchange.

(b) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $6,300,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2008 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $400,000–$500,000.

Estimated Average Size of Awards: $420,000.

Maximum Award: The maximum amount available per State, OA, or FAS is $500,000. The level of funding for a consortium or any other group of States, including OAs and FAS, may not exceed the combined total of the maximum amounts that the entities comprising the consortium or group could have received if they had applied separately. The Secretary does not intend to make more than one award to serve a State, OA or FAS. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* An SEA of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, OA, or FAS and, if endorsed by an SEA, FAS, or OA, the following may apply on their behalf: LEAs, public charter schools that are LEAs under State law, institutions of higher education, tribes or tribal organizations, other public agencies, private nonprofit organizations, and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* General Requirements—

(a) The projects funded under this competition must make positive efforts to employ, and advance in employment, qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327S.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. If your proposed project is for a single State, you must limit the application narrative Part III to the equivalent of no more than 15 pages. If your proposed project is for a consortium or you are applying on behalf of multiple States, you must limit the application narrative Part III to the equivalent of no more than 25 pages. To determine the number of pages or the equivalent, you must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the two-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 3, 2007. Deadline for Transmittal of Applications: September 4, 2007.

Applications for grants under this competition may be submitted electronically using the *http://www.Grants.gov* Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 7, 2007.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Technology and Media Services for Individuals with Disabilities—Educational Media Activities to Improve State Systems for Providing Educational Materials in Accessible Formats, CFDA number 84.327S, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide *Grants.gov* Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Educational Media Activities to Improve State Systems for Providing Educational Materials in Accessible Formats competition at: *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.327, not 84.327S).

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- When you enter the *Grants.gov* site, you will find information about

submitting an application electronically through the site, as well as the hours of operation.

• Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the *Grants.gov* system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.

• You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via *Grants.gov*, you must complete all steps in the *Grants.gov* registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the *Grants.gov* 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via *Grants.gov*. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. (This notification indicates receipt by *Grants.gov* only, not receipt by the Department.) The Department then will retrieve your application from *Grants.gov* and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov,* please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

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By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327S), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.327S), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

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If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327S), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Peer Review:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which numerous entities throughout the country submit applications. The Standing Panel requirements under the Act also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, in order to avoid potential conflicts of interest, applications may be separated into two or more groups, and ranked and selected for funding within each specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence, and fairness of the review process and permit panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department selects for funding an equal number of applications in each group, different cut-off points for fundable applications in each group may result.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving results for children with disabilities. We will collect data on these measures from the projects funded under this competition.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Glinda Hill, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4063, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–7376.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 30, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–15131 Filed 8–2–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Tribal Colleges and Universities

AGENCY: Department of Education, President's Board of Advisors on Tribal Colleges and Universities

ACTION: Notice of An Open Teleconference Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the upcoming meeting of the President's Board of Advisors on Tribal Colleges and Universities to be held via telephone conference. The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to participate by following the instructions below. The President's Board on Tribal Colleges and Universities is giving less than 15 days notice due to scheduling difficulties.

DATES AND TIMES: The teleconference meeting will be held on Wednesday, August 8, 2007, 5 p.m.–6 p.m. Eastern Daylight Time.

ADDRESSES: Information concerning the conference call can be obtained from the White House Initiative on Tribal Colleges and Universities website. Instructions concerning how to participate, and contact information for the conference call can be obtained through the link *http://www.ed.gov/whitcu.* Alternately, interested parties may contact Tonya Ewers at 202–219–7040 for conference call information.

FOR FURTHER INFORMATION CONTACT: Deborah Cavett, Executive Director, White House Initiative on Tribal Colleges and Universities, 1990 K. Street, NW., Room 7014, Washington, DC 20006; telephone: (202) 219–7040, fax: 202–219–7086.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Tribal Colleges and Universities is established under Executive Order 13270, dated July 2, 2002, and Executive Order 13385 dated September 25, 2005. The Board is established (a) To report to the President annually on the results of the participation of tribal colleges and universities (TCUs) in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis also given to enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education on the needs of TCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of a three-year Federal plan for assistance to TCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of TCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist TCUs.

The purpose of the meeting is to review a recommendation received from the Working Group for the update of the Board's Action Agenda, to discuss extension of the Executive Order and to establish fiscal year (FY) 2008 meeting dates for the Board.

Additional Information: Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify Tonya Ewers at (202) 219–7040, no later than Wednesday August 1, 2007. We will attempt to meet requests for accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available between 5:45 p.m. and 6 p.m. Comments will be limited to three (3) minutes for those speakers who sign up to speak. Those members of the public interested in submitting written comments may do so at the address indicated above by Wednesday, August 1, 2007.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Tribal Colleges and Universities, U.S. Department of Education, 1990 K. Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

James F. Manning,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. E7–15097 Filed 8–2–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Department of Energy; Notice of Renewal of the Basic Energy Sciences Advisory Committee

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and section 102–3.65, title 41, Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee has been renewed for a two-year period.

The Committee will provide advice to the Office of Science (DOE), on the basic energy sciences program. The Secretary of Energy has determined that renewal of the Basic Energy Sciences Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on July 31, 2007.

James N. Solit,

Committee Management Officer.

[FR Doc. E7–15078 Filed 8–2–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 20, 2007. 6 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

6 p.m.—Call to Order, Introductions, Review of Agenda, and Approval of July Minutes.

6:15 p.m.—Deputy Designated Federal Officer's Comments.

6:30 p.m.—Federal Coordinator's Comments.

6:35 p.m.— Liaisons' Comments.

6:45 p.m.—Review of Action Items.

6:50 p.m.—Public Comments and Questions.

7 p.m.—Presentations

- C–400 90% Design Remedy Review.
- Soil Piles Investigation.

7:30 p.m.—Subcommittee Reports

- Water Disposition/Water Quality Subcommittee.
- Community Outreach Subcommittee.
- Long Range Strategy/Stewardship Subcommittee.
- Executive Committee.

7:45 p.m.—Public Comments and Questions.

7:55 p.m.—Administrative Issues: Motions, Review of Work Plan, and Review of Next Agenda.

8 p.m.—Final Comments.

8:15 p.m.—Adjourn.

Breaks Taken As Appropriate.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday or by writing to Reinhard Knerr, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6825.

Issued at Washington, DC on July 31, 2007.

Rachel M. Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–15077 Filed 8–2–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–024]

Dominion Transmission, Inc.; Notice of Errata Fuel Report

July 27, 2007.

Take notice that on July 19, 2007, Dominion Transmission, Inc. (DTI) tendered for filing a revised Workpaper 3 to its June 27, 2007 informational fuel report.

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.

Comment Date: 5 p.m. Eastern Time on August 6, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15075 Filed 8–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–83–000]

Electric Transmission Texas, LLC; Notice of Filing

July 27, 2007.

Take notice that on July 19, 2007, pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207, Electric Transmission Texas, LLC filed a petition for declaratory disclaiming jurisdiction of the Commission under section 201(e) of the Federal Power Act, 16 U.S.C. 824(e), by reasoning of owning certain transmission facilities located exclusively in the Electric Reliability Council of Texas.

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 August 20, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15073 Filed 8–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–15-000]

Enbridge Pipelines (Southern Lights) LLC; Notice of Petition for Declaratory Order

July 27, 2007.

Take notice that on July 20, 2007, Enbridge Pipelines (Southern Lights) LLC (EPSL), pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedures, 18 CFR 385.207(a)(2) (2007), tendered for filing a petition to the Commission to issue a declaratory order confirming the proposed rate structure for the planned Southern Lights Pipeline, which will transport light liquid hydrocarbons from Chico, Illinois to Edmonton, Alberta. EPSL is only seeking Commission rulings with respect to the portion of the Southern Lights Pipeline that will be built and operated in the United States.

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 August 10, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15074 Filed 8–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–421–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

July 27, 2007.

Take notice that on July 17, 2007, Southern Star Central Gas Pipeline, Inc (Southern Star), 4700 Highway 56, Owensboro, Kentucky 42301, filed in Docket No. CP07–421–000 a prior notice request pursuant to sections 157.205 and 157.211 of the Commission's regulations under the Natural Gas Act (NGA) to construct and operate a new 12-inch delivery meter station and interconnecting facilities to serve as a bypass of a local distribution company. The proposed facilities would serve Aquila, Inc. (Aquila) d/b/a Aquilia Networks at Aquila's electric generating plant Buchanan County, Missouri, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Southern Star proposes to install a side valve, an 8-inch lateral pipeline approximately 59 feet long, a flow computer and communications equipment necessary for the new interconnection with Aquila. Aquila will construct associated metering facilities within its electric generation plant site. The new meter station will be known as the Aquila-St. Joe/Lake Road Delivery Measurement setting #16911. The cost of the facilities is estimated to be $296,000.

Aquila currently receives its natural gas service from Missouri Gas Energy (MGE), a local distribution company. Aquila wishes to receive its primary gas service from Southern Star and would maintain its connection with MGE in order to serve as backup gas delivery service. Aquila has requested Southern Star to provide interruptible natural gas delivery service to its electric generating plant of up to 17,500 Mcf per day through the delivery point described above. Southern Star states that it has notified MGE of the proposed delivery point directly.

Any questions concerning this application may be directed to David N. Roberts, Manager of Regulatory Affairs, Southern Star Central Gas Pipeline, Inc., 4700 Highway 56, Owensboro, Kentucky 42301, or telephone (270) 852–4654.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be

authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15072 Filed 8–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–73–000]

Southwest Power Pool, Inc.; Notice of Institution of Proceeding and Refund Effective Date

July 30, 2007.

On June 29, 2007, the Commission issued an order that instituted a proceeding in the above-referenced docket, pursuant to section 206 of the Federal Power Act (FPA) 16 U.S.C. 824e, concerning the justness and reasonableness of the use of Violation Relaxation Limit values in the Southwest Power Pool, Inc.'s energy imbalance service market. *Southwest Power Pool, Inc.,* 119 FERC ¶ 61,342 (2007).

The refund effective date in the above-docketed proceeding, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15090 Filed 8–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–536–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 27, 2007.

Take notice that on July 25, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Thirty-Seventh Revised Sheet No. 28, to become effective August 1, 2007.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission, LP under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. This filing is being made pursuant to tracking provisions under section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15071 Filed 8–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 27, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–774–004.

Applicants: Eagle Energy Partners I, L.P.

Description: Eagle Energy Partners I, LP notifies FERC of a change in status that reflects a departure from the characteristics upon which FERC relied in granting it authorization to sell wholesale power at market rates.

Filed Date: 07/25/2007.

Accession Number: 20070727–0052.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 15, 2007.

Docket Numbers: ER03–1413–005.

Applicants: Sempra Energy Trading Corp.

Description: Sempra Energy Trading Corp submits its response to the Motion to Intervene Out-of-Time and Comments of ISO New England Inc.

Filed Date: 07/25/2007.

Accession Number: 20070726–0100.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 15, 2007.

Docket Numbers: ER04–208–004; ER07–589–001; ER06–1228–002.

Applicants: Citigroup Energy Inc., Citigroup Energy Canada ULC, Phibro LLC.

Description: Citigroup Energy Inc et al submit a notice of a non-material change in status in compliance with the reporting requirements adopted by FERC in Order 652 etc.

Filed Date: 07/23/2007.

Accession Number: 20070727–0014.

Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER04–817–002.

Applicants: Indeck Maine Energy, L.L.C.

Description: Indeck Maine Energy, L.L.C's Triennial Market Power update pursuant to the Commission's 7/22/04 letter order.

Filed Date: 07/23/2007.

Accession Number: 20070727–0013.

Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER04–831–003.
Applicants: Calpine Newark, LLC.
Description: Calpine Newark, LLc submits updated market analysis in accordance with FERC's letter order dated 7/21/04.
Filed Date: 07/23/2007.
Accession Number: 20070724–0200.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER05–1420–003.
Applicants: Lehman Brothers Commodity Services, Inc.
Description: Lehman Brother Commodity Services, Inc notifies of a change in status of a non-material departure from the characteristics relied upon by FERC in its order authorizing to engage in sales of electric power.
Filed Date: 07/25/2007.
Accession Number: 20070727–0051.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 15, 2007.

Docket Numbers: ER06–451–000.
Applicants: Southwest Power Pool, Inc., Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits revised tables for February through May to its EIS Market Report.
Filed Date: 07/17/2007.
Accession Number: 20070720–0084.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 07, 2007.

Docket Numbers: ER07–87–002.
Applicants: ISO New England Inc.
Description: ISO New England Inc et al submits proposed amendments to the ISO OATT in compliance with the Commission's Order issued on 6/21/07.
Filed Date: 07/23/2007.
Accession Number: 20070727–0012.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–869–001; ER07–475–002; ER06–615–008.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits proposed tariff revisions pursuant to the orders issued by FERC.
Filed Date: 07/20/2007.
Accession Number: 20070727–0011.
Comment Date: 5 p.m. Eastern Time on Friday, August 10, 2007.

Docket Numbers: ER07–921–001.
Applicants: ISO New England Inc.
Description: ISO New England, Inc submits their compliance filing as required by the June 21, 2007 letter order.
Filed Date: 07/23/2007.
Accession Number: 20070727–0018.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–1018–000.
Applicants: SIG Energy, LLLP.
Description: SIG Energy LLLP resubmits its 7/20/07 filing of a supplement to its 6/8/07 ''Notice of Succession'' re Susquehanna Energy Products LLC.
Filed Date: 07/24/2007.
Accession Number: 20070726–0145.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 14, 2007.

Docket Numbers: ER07–1184–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc agent for Entergy Arkansas, Inc submits a notice of cancellation of the Power Coordination, Interchange and Transmission Service Agreement w/ the City of Campbell, Arkansas.
Filed Date: 07/24/2007.
Accession Number: 20070727–0016.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 14, 2007.

Docket Numbers: ER07–1185–000.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Allegheny Energy Supply Company, LLC submits this petition requesting authorization to make wholesale power sales to its affiliate Potomac Edison Co pursuant to section 205 of the FPA.
Filed Date: 07/24/2007.
Accession Number: 20070727–0009.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 14, 2007.

Docket Numbers: ER07–1186–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits amendments to Schedule 12–Appendix of the PJM Tariff to reflect the assignments of cost responsibility for five baseline upgrades.
Filed Date: 07/23/2007.
Accession Number: 20070726–0208.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–1187–000.
Applicants: Louisville Gas & Electric Company.
Description: Louisville Gas and Electric Co and Kentucky Utilities submit Exhibit A as Amendment No. 1 to the Service Agreement with Illinois Municipal Electric Agency.
Filed Date: 07/23/2007.
Accession Number: 20070726–0207.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–1188–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits a Notice of Termination of the SWPL Operations Agreement.
Filed Date: 07/23/2007.
Accession Number: 20070726–0204.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–1189–000.
Applicants: Calpine Parlin, LLC.
Description: Calpine Parlin, LLC submits a Notice of Cancellation of Rate Schedules No. 1 and 2.
Filed Date: 07/23/2007.
Accession Number: 20070726–0205.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–1190–000.
Applicants: American Electric Power Service Corp.
Description: The American Electric Power Service Corp on behalf of the AEP Operating Companies submit an original Interconnection and Local Delivery Service Agreement with the City of Shelby, Ohio.
Filed Date: 07/23/2007.
Accession Number: 20070726–0206.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–1191–000.
Applicants: Xcel Energy Operating Companies.
Description: Xcel Energy Services Inc on behalf of Southwestern Public Service Co submits a Connection Agreement with Golden Spread Electric Cooperative, Inc.
Filed Date: 07/23/2007.
Accession Number: 20070726–0203.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–1192–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Co submits a filing for authorization to distribute to wholesale customers certain decommissioning funds.
Filed Date: 07/23/2007.
Accession Number: 20070726–0202.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–1193–000.
Applicants: CPV Liberty, LLC.
Description: CPV Liberty, LLC submits an application market-based rate authorization, related waivers and preapprovals.
Filed Date: 07/23/2007.
Accession Number: 20070726–0201.
Comment Date: 5 p.m. Eastern Time on Monday, August 13, 2007.

Docket Numbers: ER07–1194–000.
Applicants: Castlebridge Energy Group LLC.
Description: Castlebridge Energy Group LLC's Application for *Acceptance of Initial Rate Schedule, Waivers and Blanket* Authority.
Filed Date: 07/24/2007.
Accession Number: 20070726–0212.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 14, 2007.

Docket Numbers: ER07–1195–000.

Applicants: Mittal Steel USA, Inc.
Description: Application of Mittal Steel USA, Inc for acceptance of Initial Rate Schedule, Waiver and Blanket Authority.
Filed Date: 07/24/2007.
Accession Number: 20070726–0213.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 14, 2007.

Docket Numbers: ER07–1196–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits First Revised Sheet 3 et al to FERC Electric Tariff, Second Revised Volume No. 6, to be effective 7/26/07.
Filed Date: 07/25/2007.
Accession Number: 20070726–0193.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 15, 2007.

Docket Numbers: ER07–1197–000.
Applicants: American Electric Power Service Corp.
Description: American Electric Power Service Corporation agent for AEP Operating Companies submits the First Revised Interconnection & Local Delivery Service Agreement No. 1249 with Elk Power Company.
Filed Date: 07/25/2007.
Accession Number: 20070727–0050.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 15, 2007.

Docket Numbers: ER07–1198–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits a Facilities Agreement with Brigham City Light & Power.
Filed Date: 07/25/2007.
Accession Number: 20070727–0048.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 15, 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. E7–15087 Filed 8–2–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–470–000; CP06–471–000; CP06–472–000; CP06–473–000; CP06–474–000]

Southern LNG, Inc.; Elba Express Company, LLC; Southern Natural Gas Company; Notice Accepting in Part and Rejecting in Part Landowner Intervenors' Additional Filings in Support of Comments to the Draft Environmental Impact Statement for the Proposed Elba III Project

July 27, 2007.

On July 12, 2007, Latha Anderson, et al., and certain Landowner Intervenors (Intervenors) submitted six DVDs in support of Intervenors' Comments to the Draft Environmental Impact Statement for the Proposed Elba III Project in the above referenced dockets.

After receipt of the filing, the staff of the Federal Energy Regulatory Commission (FERC or Commission) has determined that the two of the six DVDs (Comments to Draft Environmental Impact Statement [previously submitted as Second Supplemental Comments on Draft EIS by Landowner Intervenors] and ''photographs from individual property owners) are acceptable submittals which will be considered in the Final Environmental Impact Statement. However, the remaining four DVDs (''Elbert, Wilkes, and McDuffie County USGS Topographic Maps'', ''Elbert, Wilkes, and McDuffie County Aerial Photographs'', ''Eastern and Western Georgia Digital Elevation Models'', and ''GIS, Historical Documents, and List of Property Owners and Parcel IDs'') are hereby rejected for failure to comply with the Commission's Submission Guidelines for CDs, DVDs, and Other Electronic Media (Guidelines),[1] as outlined below:

- The data files on the DVDs include files that exceed the 50–MB limit per file;
- There are 7 unacceptable file types submitted (constituting over 60 files) which prohibit both FERC staff and the public from viewing the DVDs; and
- There are 18 file names which contain more than one period in the name (a double file extension).

Accordingly, the four specified DVDs of Intervenors' July 12, 2007 submission to the Commission are hereby rejected without prejudice to Intervenors' resubmitting this portion of its filing in accordance with the Guidelines.

Kimberly D. Bose,
Secretary.
[FR Doc. E7–15076 Filed 8–2–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 2850–013; Hampshire Paper Company; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification Issues and Associated Study Requests

July 30, 2007.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.
b. *Project No.:* 2850–013.
c. *Date Filed:* May 31, 2007.

[1] The Guidelines appear online at: *http://www.ferc.gov/help/submission-guide.asp.*

d. *Submitted by:* Hampshire Paper Company.

e. *Name of Project:* Emeryville Hydroelectric Project.

f. *Location:* On the Oswegatchie River in the hamlet of Emeryville, in St. Lawrence County, New York. No federal lands are involved.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Michael R. McDonald, Emeryville Hydroelectric Project, P.O. Box 339, Gouverneur, NY 13642, (315) 287–1990.

i. *FERC Contact:* Patrick Murphy, *patrick.murphy@ferc.gov,* (202) 502–8755.

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Hampshire Paper Company as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Hampshire Paper Company filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations. The Commission issued its Scoping Document on July 30, 2007.

n. A copy of the PAD and the scoping document are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and the scoping document, as well as study requests. All comments on the PAD and the scoping document, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and the scoping document, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, Emeryville Hydroelectric Project) and number (P–2850–013), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or the scoping document, and any agency requesting cooperating status must do so by September 28, 2007.

Comments on the PAD and the scoping document, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the National Environmental Policy Act scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Tuesday, August 28, 2007.
Time: 6 p.m. (EST).
Location: Gouverneur Library, 60 Church Street, Gouverneur, New York 13642, (315) 287–0191.

Daytime Scoping Meeting

Date: Wednesday, August 29, 2007.
Time: 1 p.m. (EST).
Location: Gouverneur Library, 60 Church Street, Gouverneur, New York 13642, (315) 287–0191.

The scoping document, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of the scoping document will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Depending on the extent of comments received, Scoping Document 2 may or may not be issued.

Site Visit

Hampshire Paper Company will conduct a site visit of the project at 3 p.m. on Tuesday, August 28, 2007. All participants should meet at the Emeryville Project dam on Route 58N, in Emeryville, New York. Those wishing to participate should meet at the Emeryville Project dam on Route 58N, in Emeryville, New York. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Mr. Michael R. McDonald, Emeryville Hydroelectric Project, P.O. Box 339, Gouverneur, NY 13642, (315) 287–1990.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review

and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and the scoping document are included in item n of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–15089 Filed 8–2–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6689–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20060514, ERP No. D–NPS–K65324–CA, Big Lagoon Wetland and Creek Restoration Project, To Restore a Functional, Self-Sustaining Ecosystem, including Wetland, Riparian, and Aquatic Components, Golden Gate National Area, Muir Beach, Marin County, CA.

Summary: EPA supports the proposed project goals to restore ecosystem functions and values and does not object to this project. Rating LO.

EIS No. 20070151, ERP No. D–BLM–K05064–NV, White Pine Energy Station Project, Construction and Operation, Coal-fired Electric Power Generating Plant, White Pine County, NV.

Summary: EPA expressed environmental objections because of potential adverse impacts to water quality, including wetlands, and requested for additional information to determine the least environmentally damaging practicable alternative. In addition, EPA requests information about groundwater withdrawal, air quality, potential mercury emissions, and mitigation. Rating EO2.

EIS No. 20070153, ERP No. D–BLM–G65105–NM, Socorro Resource Management Plan Revision, Implementation, Socorro and Catron Counties, NM.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20070196, ERP No. D–AFS–L05240–AK, Angoon Hydroelectric Project, Construction and Operation, Special-Use-Authorization, Thayer Creek, Admiralty Island National Monument, Tongass National Forest, AK.

Summary: EPA expressed environmental objections because of the potential for adverse impacts to water quality and aquatic resources, including the potential to exceed water quality standards, and the lack of a detailed cumulative impacts analysis. The Final EIS should provide additional information regarding environmental impacts and mitigation. Rating EO2.

EIS No. 20070197, ERP No. DR–AFS–K65303–CA, Phoenix Project, Proposes to Use a Combination of Contract and Forest Service Crew to Treat Poor Forest Health and High Fire Hazard Conditions, Develop a Network Defensible Fuel Profile Zones (DFPZs), Sierraville Ranger District, Tahoe National Forest, Sierra and Nevada Counties, CA.

Summary: EPA expressed environmental concerns about impacts to watershed resources and recommended coordination with the California Regional Water Quality Control Boards, adoption of Alternative 4, and rapid implementation of road improvements. Rating EC2.

Final EISs

EIS No. 20070094, ERP No. F–COE–K59006–CA, Cajon Third Main Track, Construction from Summit to Keenbrook, Special Use Permit and U.S. Army COE 404 Permit, San Bernardino County, CA.

Summary: EPA continues to have environmental concerns about air quality and aquatic resources impacts.

EIS No. 20070204, ERP No. F–FRC–K05062–CA, Oroville Facilities Project, Issuing a New Federal License to Continue Hydroelectric Power (FERC No. 2100), Feather River, Sierra Nevada, Butte County, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070237, ERP No. F–BLM–K65308–00, Surprise Field Office Project, Resource Management Plan, Implementation, Cedarville; Modoc and Lassen, CA and Washoe and Humboldt Counties, NV.

Summary: EPA continues to have environmental concerns about water quality, soil condition, and rangeland habitat. EPA requested that BLM focus on relieving grazing pressure in Category 1 rangelands until these areas improve. EPA also requested the closure of OHV route segments adjacent to waters to improve soil conditions, habitat, and water quality.

EIS No. 20070244, ERP No. F–FRC–K03029–00, North Baja Pipeline Expansion Project, Docket Nos. CP06–61–000 and CP01–23–000, Construction and Operation a Natural Gas Pipeline System, Land Use Plan Amendment, Right-of-Way Grant, Temporary Use Permits and U.S. Army COE Section 10 and 404 Permits, La Paz County, AZ and Riverside and Imperial Counties, CA.

Summary: EPA continues to have environmental concerns about the scope of the air quality analysis, indirect impacts on air quality, water resources impacts, and lack of mitigation for impacts on air quality and water resources.

EIS No. 20070258, ERP No. F–COE–F09803–MN, Minnesota Steel Project, Construction and Operation of an Open Pit Taconite Mine Facilities, Concentrator, Pellet Plant, Direct Reduced Iron Plant and Steel Mill Project, located west of Nashwauk, Itasca County, MN.

Summary: While some of EPA's previous concerns have been resolved, EPA continues to have environmental concerns about wetland mitigation (in particular, in-kind replacement and mitigation ratios).

Dated: July 30, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–15116 Filed 8–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6689–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed July 23, 2007 Through July 27, 2007. Pursuant to 40 CFR 1506.9.

EIS No. 20070315, Draft EIS, NOA, AK, Alaska Eskimo Whaling Commission for a Subsistence Hunt on Bowhead Whale for the Years 2008 through 2012 for Issuing Annual Quotas, Proposes to Authorize Subsistence Harvests of the Western Arctic Stock of Bowhead Whales, Bering, Chukchi and Beaufort Seas, AK.
Comment Period Ends: October 12, 2007.
Contact: Steven K. Davis, 907–271–3523.

EIS No. 20070316, Draft EIS, FHW, 00, Northern Corridor Interstate 73 Project, Proposes Construct from I–95 to Future Interstate 74, Marlboro and Dillion Counties, SC and Richmond County, NC.
Comment Period Ends: September 17, 2007.
Contact: Patrick Tyndall, 803–765–5460.

EIS No. 20070317, Draft EIS, FHW, NH, I–93 Exit 4A Interchange Study Derry-Londonderry Project, To Reduce Traffic Congestion Improve Safety for Public and Promote Economic Vitality, Rockingham County, NH, Comment Period Ends: September 17, 2007.
Contact: William F. O'Donnell, 603–228–3057 Ext. 101.

EIS No. 20070318, Final EIS, FHW, CA, Los Banos Bypass Project, Construct from CA–152 in Merced County beginning near Volta Road west to Los Banos, bypassing Los Banos, ending near the Santa Fe Grade Road, U.S. Army COE Section 404 Permit, Merced County, CA.
Wait Period Ends: September 4, 2007.
Contact: Mayela Sosa, 916–498–5057.

EIS No. 20070319, Final EIS, USN, FL, Boca Chica Field, Restoration of Clear Zones and Stormwater Drainage Systems, Implementation, Naval Air Station (NAS) Key West, Monroe County, FL.
Wait Period Ends: September 4, 2007.
Contact: Jim Reed, 843–820–45543.

EIS No. 20070320, Final EIS, WPA, AZ, San Luis Rio Colorado Project, Proposes to Construct a 26-Mile Long 230 Kilovolt Double-Circuit Transmission Line from the International Border with Mexico to Western and Arizona Public Service Substations near Yuma County, AZ.
Wait Period Ends: September 4, 2007.
Contact: Mark Wieringa, 720–962–7448.

EIS No. 20070321, Final EIS, NOA, 00, Amendment 27 to the Reef Fish Fishery Management Plan and Amendment 14 to the Shrimp Fishery Management Plan, To Address Stock Rebuilding and Overfishing of Red Snapper, Gulf of Mexico.
Wait Period Ends: September 4, 2007.
Contact: Roy E. Crabtree, 727–824–5305.

EIS No. 20070322, Draft EIS, NPS, AZ, Saguaro National Park General Management Plan, Implementation, Rincon Mountain District and Tucson Mountain District, Pima County, AZ.
Comment Period Ends: September 17, 2007.
Contact: Mary McVeigh, 303–969–2442.

EIS No. 20070323, Draft EIS, FHW/FTA, CO, US–36 Corridor, Multi-Modal Transportation Improvements between I–25 in Adams County and Foothills Parkway/Table Mesa Drive in Boulder, Adams, Denver, Broomfield, Boulder and Jefferson Counties, CO.
Comment Period Ends: September 17, 2007.
Contact: Douglas Bennett, 720–963–3030.
The DOT/FHW and DOT/FTA are Joint Lead Agencies for the above project.

EIS No. 20070324, Final EIS, FAA, 00, New York/New Jersey/Philadelphia Metropolitan Area Airspace Redesign Project, To Increase the Efficiency and Reliability of the Airspace Structure and Air Traffic Control System, NY, NJ and PA.
Wait Period Ends: September 4, 2007.
Contact: Steve Kelly, 718–553–2610.

EIS No. 20070325, Final EIS, NRC, MA, Generic—License Renewal of Nuclear Plants, Supplement 29 to NUREG–1437, Regarding the License Renewal of Pilgrim Nuclear Power Station, Cape Cod Bay, Town of Plymouth, Plymouth County, MA.
Wait Period Ends: September 4, 2007.
Contact: Alicia Washington 301–415–1878.

EIS No. 20070326, Draft EIS, FTA, TX, University Corridor Fixed Guideway Project, To Implement Transit Improvements from Hillcroft Transit Center to the Vicinity of the University of Houston (UH)—Central Campus or the Eastwood Transit Center, City of Houston, Harris County, TX.

Comment Period Ends: September 17, 2007.

Contact: John Sweek, 817–978–0550.

EIS No. 20070327, Draft EIS, FTA, TX, Denton to Carrollton Regional Rail Corridor Project, Transportation Improvements between Downtown Denton and the Dallas Area Rapid (DART) System, Right-of-Way Grant, Denton and Dallas Counties, TX, Comment Period Ends: September 19, 2007.

Contact: Robert C. Patrick, 817–978–0550.

Amended Notices

EIS No. 20070275, Draft EIS, FHW, CA, Eureka-Arcata Route 101 Corridor Improvement Project, Proposed Roadway Improvements on Route 101 between the Eureka Slough Bridge and 11th St. Overcrossing in Arcata, Humbolt County, CA, Comment Period Ends: September 28, 2007.

Contact: Lanh Phan, 916–498–5046.

Revision of FR Notice Published July 6, 2007.

Extending Comment from August 24, 2007 to September 28, 2007.

EIS No. 20070312, Draft EIS, USN, HI, Hawaii Range Complex (HRC) Project, To Support and Maintain Navy Pacific Fleet Training, and Research, Development, Test, and Evaluation (RDT&E) Operations, Kauai, Honolulu, Maui and Hawaii Counties, HI, Comment Period Ends: September 17, 2007.

Contact: Tom Clements, 866–767–3347.

Revision of FR Notice Published July 27, 2007.

Extending Comment Period from September 10, 2007 to September 17, 2007.

Dated: July 31, 2007.

Clifford Rader,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–15115 Filed 8–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8444–7; Docket ID No. EPA–HQ–OEI–2007–0464]

Draft EPA's 2007 Report on the Environment: Highlights of National Trends

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period.

SUMMARY: EPA is announcing a 45-day public comment period for the draft document entitled, *''EPA's 2007 Report on the Environment: Highlights of National Trends''* document (ROE HD). This public comment period is coincident to the public, scientific peer review of the draft document by The National Advisory Council on Environmental Policy and Technology and members of EPA's Science Advisory Board (SAB). Notice of public meetings of the NACEPT and SAB will be announced via separate **Federal Register** Notices.

The draft *''EPA's 2007 Report on the Environment: Highlights of National Trends''* document was prepared by EPA Program and Regional Offices, the Office of Environmental Information (OEI), the Office of Research and Development (ORD), the Office of Policy Economics and Innovation (OPEI), and the Office of the Chief Financial Officer (OCFO) with coordination by the Office of Information Analysis and Access within EPA's OEI.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 45-day public comment period begins August 3, 2007 and ends September 17, 2007. Comments should be in writing and must be received by EPA by September 17, 2007.

ADDRESSES: The draft *''EPA's 2007 Report on the Environment: Highlights of National Trends''* is available via the Internet on the EPA Web site at *http://www.epa.gov/roe.*

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *OEI.Docket@epa.gov.*

For technical information, contact Suzanne Annand, OIAA; telephone: 202–566–0639; facsimile: 202–566–0699; or e-mail: *annand.suzanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

The U.S. Environmental Protection Agency (EPA) developed *EPA's 2007 Report on the Environment* to help answer questions that are of critical importance to its mission to protect human health and the environment. The *Report on the Environment* documents trends in the condition of the nation's environment and human health and identifies significant gaps in our knowledge. It is not intended to be a report card on EPA's programs and activities.

Written for a general audience, this document, *EPA's 2007 Report on the Environment: Highlights of National Trends,* summarizes some of the more important findings from the more comprehensive companion report, EPA's 2007 *Report on the Environment: Science Report (ROE SR)* which was released in draft for public comment on May 10, 2007. The environmental indicators shown in the *ROE HD* were selected for inclusion based on their importance to the public and scientists, as well as their ability to answer a series of key questions about the environment. (For more information on the ROE SR, please see **Federal Register**: May 10, 2007 (72 FR 26629–26631) or visit *http://www.epa.gov/ncea*).

The ROE HD is organized around 25 topics that are important to EPA. Each topic page includes a brief summary of what we know—and don't know—about conditions and trends in the nation's air, water, land, ecological condition, and human health. The information on these topics comes from highly reliable indicators and is based on the most recent data available from a variety of governmental and non-governmental organizations.

The indicators for *EPA's 2007 ROE Science Report* that comprise the main content of the *ROE HD* underwent independent scientific peer review as well as public review and comment in the summer and fall of 2005 and are available at *http://www.epa.gov/roeindicators.*

II. How To Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–OEI 2007–0464 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OEI.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (*Mail Code:* 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building,1301 Constitution Ave., N.W.,Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2007–0464. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-

mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: July 18, 2007.

Richard A. Martin,

Deputy Director, Office of Information Analysis and Access.

[FR Doc. E7–15123 Filed 8–2–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Friday, August 10, 2007, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr., Conference Room on the ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

Matters to be Considered

Open Session

1. Announcement of Notation Votes,
2. Obligation of Funds for a National Contact Center Migration Study, and
3. Obligation of Funds for a Six-Month Extension of the National Contact Center Contract.

Closed Session

Agency Adjudication and Determination on Federal Agency Discrimination Compliant Appeals.

Note: In accordance with the Sunshine Act, a part of the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register,** the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. *Contact Person for More Information:* Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

This notice issued August 1, 2007.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 07–3827 Filed 8–1–07; 1:24 pm]

BILLING CODE 6570–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 20, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. CAP Voting Trust, Lafayette, Louisiana (the Trust); Patrick Oswell Patout, Abbeville, Louisiana, Paul D. Patout, Youngsville, Louisiana, and Raymond Paul Patout, Lafayette, Louisiana, as trustees of the Trust; Rae Meng Patout, Raymond Paul Patout, Barbara Rae Patout Landry, and Mary E. Patout Lacour, all of Lafayette, Louisiana; David Joseph Patout and Charles Arthur Patout, Jr., both of Baton Rouge, Louisiana; Patrick Oswell Patout, Abbeville, Louisiana; and Paul D. Patout, Youngsville, Louisiana; to retain voting shares of Gulf Coast Bancshares, Inc., Abbeville, Louisiana, and thereby indirectly retain voting shares of Gulf Coast Bank, Abbeville, Louisiana.

2. LF QFP, LLLP; BC Qualified Family Partnership LLLP; Mr. Paul J. Marinelli, Mr. Kevin C. Hale, Mr. Michael H. Morris, Mr. Ned C. Lautenbach, Premier Insurance, LLC; John M. Suddeth, Jr., Paul A. Belfore, HOward B. Gutman, all of Naples, Florida, and Mr. Erwin Greenberg, Owings Mills, Maryland; to acquire voting shares of Marco Community Bancorp, Inc., and thereby indirectly acquire voting shares of Marco Community Bank, both of Marco Island, Florida.

Board of Governors of the Federal Reserve System, July 31, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–15088 Filed 8–2–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the renewal of the generic information collection project: ''Voluntary Customer Surveys Generic Clearance for the Agency for Healthcare Research and Quality'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by October 2, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room # 5036, Rockville, MD 20850, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Voluntary Customer Surveys Generic Clearance for the Agency for Healthcare Research and Quality''

In response to Executive Order 12962, the Agency for Healthcare Research and Quality (AHRQ) plans to conduct voluntary customer surveys to assess strengths and weaknesses in agency program services. Customer surveys to be conducted by AHRQ may include readership surveys from individuals using AHRQ automated and electronic technology databases to determine satisfaction with the information provided or surveys to assess effect of the grants streamlining efforts. Results of these surveys will be used in future program planning initiatives and to redirect resources and efforts, as needed, to improve AHRQ program services. The current clearance will expire January 31, 2008. This is a request for a generic approval from OMB to conduct customer surveys over the next three years.

Methods of Collection

The data will be collected using a combination of methodologies appropriate to each survey. These methodologies include:

- Evaluation forms;
- Mail surveys;
- Focus groups;
- Automated and electronic technology (e.g., e-mail, Web-based surveys, instant fax, AHRQ Publication Clearinghouse customer feedback) and,
- Telephone surveys.

ESTIMATED ANNUAL RESPONDENT BURDEN

Type of Survey	No. of respondents	Average hour burden/response	Total hours of burden
Mail/Telephone Surveys	51,200	0.15	7,680
Automated/Web-based	52,000	0.163	8,476
Focus Groups	200	1.0	200
Totals	103,400	NA	16,356

This information collection will not impose a cost burden on the respondents beyond that associated with their time to provide the required data. There will be no additional costs for capital equipment, software, computer services, etc.

Estimated Annual Costs to the Federal Government

The mail and telephone surveys and focus groups will in some cases be carried out under contract. Assuming the contract cost per survey is $50,000–$100,000, and for each focus group is $20,000, total contract costs could be $720,000 per year.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 30, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–3813 Filed 8–2–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Chartering Value Exchanges for Value-driven Health Care.'' The information collection will take the form of narrative responses to semiannual Requests for Proposals to participate in a learning network of mature multi-stakeholder community health care collaboratives established to measure, report, and improve the quality and cost of available healthcare. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by September 4, 2007.

ADDRESSES: Written comments should be submitted to: Karen Matsuoka by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, application form, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''Charting Value Exchanges for Value-driven Healthcare''

This project proposes to twice annually post a public call for parties interested in becoming chartered as Value Exchanges for Value-driven Healthcare, described in the Background Section below. Anticipated benefits of being a chartered Value Exchange include (1) Participation in an AHRQ-managed Learning Network and (2) access to Medicare patient de-identified provider performance measurement results.

Background

The Secretary of Health and Human Services has created and is implementing a Value-driven Healthcare Initiative to enhance person and population-centered care by improving the quality of healthcare services and reducing healthcare costs. Related HHS goals and objectives reflect the President's Executive Order 13410: *Promoting quality and Efficient Health Care in Federal Government Administered or Sponsored Health Care Programs (August 2006)* and encompass (1) Promotion of the establishment of health information technology interoperability standards for exchanging price and quality healthcare data; (2) promotion of the availability and use of transparent, nationwide consensus based and endorsed quality measures; (3) promotion of the availability and use of transparent, nationwide consensus based and endorsed measures of price/cost; and (4) promotion of the use of provider and consumer incentives for high quality and cost efficient healthcare.

This Initiative's designed on three fundamental principles. The first is that at its care, healthcare is ''local''—provided in uniquely constituted cultural and market-based environments. As such, improving the value of healthcare requires a critical mass of community stakeholders: Public and private purchasers, health plans, providers, and consumers, as well as other relevant community entities (e.g., local health information exchange organizations, Quality Improvement Organizations, state data organizations) investing their time and resources toward shared cost and quality improvement goals. We refer to such representative community entities as local multi-stakeholder collaboratives. Scattered across the country there are community collaboratives in various stages of development ranging from mature multi-stakeholder collaboratives (defined as ongoing collaboration among representatives from purchasers, health plans, providers, and consumers) to communities where collaboration does not include representatives from all four groups.

The second principle is that broad access to accurate, meaningful information will improve the value of healthcare services by (1) stimulating provider improvement, (2) engaging consumers in provider selection and treatment choices, and (3) enabling purchasers to align consumer and provider incentives. Generating the information needed to accomplish this is maximized when performance measures can be calculated based on all payer data.

The third principle is that establishing a nation-wide learning network will accelerate market-based health care improvement. Learning networks are an evidence-based organizational mechanism to achieve rapid identification, dissemination and adoption of best practices. They are comprised of individuals or groups focused on achieving common broad goals.

Based on the above, AHRQ plans to (1) identify and designate qualified mature community-based multi-stakeholder groups as Chartered Value Exchanges and establish a nation-wide learning network for them.

Chartered Value Exchanges (CVEs)

AHRQ envisions Chartered Value Exchanges as having four core and three important non-core functions as described below.

Four (4) Core Functions

Engagement of Stakeholders in Collaboration:

Effectively engaging representatives from all four critical stakeholders: purchaser, health plan, provider, and consumer representatives as well as from Health Information Exchanges, Quality Improvement Organizations, state data organizations and other community stakeholders in *ongoing* collaboration is a core CVE function.

Use of Measures:

Getting nationwide consensus based and endorsed performance measures locally adopted and used is a core CVE function. Developing new measures is not. Measures could be generated nationally or generated locally based on clear protocols. Optimally, measures would be constructed by pooling information from all relevant sources and would ultimately address all six Institute of Medicine performance domains of safety, timeliness, effectiveness, efficiency, equitableness, and patient-centeredness.

Provider Engagement in Improvement:

Directly engaging providers to use performance information is a core CVE function and is not limited to informing providers of results. Engagement requires active ongoing dialogue that includes but is not limited to improving data accuracy and data interpretability. While provider engagement is anchored locally, CVEs will operate in a national environment and should encourage involvement, support and ongoing dialogue between national, regional, and local entities.

Consumer Engagement:

Engaging consumers to use performance information is a core CVE function and is not limited to reporting of information. This function may be met, however, by assuring usable information is made available to other entities that would use and distribute that information to consumers.

Three (3) Important (Non-core) Functions

Promoting HIT and HIE

The role of the CVE is to: (1) Facilitate the use of interoperable health information technologies and health information exchange either directly or through alignment with regional health information networks and (2) promote the ongoing migration of measure calculation based solely on aggregated claims data to measure calculation that includes aggregated electronic clinical data and fosters real time patient care improvement.

Facilitating Rewards for Better Performance

The role of the CVE is to *facilitate or enable* the use of performance measures to reward and foster better provider performance and consumer behavior. The function may be met by serving as a catalyst attempting to influence regional or national health plans and purchasers.

Supporting Knowledge Transfer and Conducting Ongoing Improvement of Efforts

Sharing discoveries and lessons learned within the CVE community, the CVE learning network, and interested public at large is an expectation of how a CVE conducts itself. Likewise, it is an expectation that a CVE will practice continues quality improvement in all that it does.

The Chartered Value Exchange designation will be applied to the collective work occurring within a

community regardless of how many organizations divide up the work. AHRQ does not plan, however, to impose a particular definition of community based on geography or population density. AHRQ recognizes the need to respect local culture, relationships, and priorities, and will maintain a flexible and inclusive approach to selection and designation. AHRQ does not require a Value Exchange to be an incorporated non-profit entity. AHRQ expects CVEs to adopt nationwide consensus based and endorsed principles and standards where they exist and as they are made available. To be eligible, interested parties must first be recognized by HHS Secretary Michael O. Leavitt as a Community Leader for Value-driven Healthcare. For additional information on Community Leader recognition, see *http://www.hhs.gov/transparency/communities/communityleaders/communities.html.*

Learning Network

Goals of the Learning Network will be to facilitate sharing of CVE experiences and lessons learned; identify and share promising practices that improve healthcare value; identify gaps where innovation is needed; raise issues to be addressed by national consensus-building organizations; and provide on-the-ground perspective to inform and participate in setting national priorities for healthcare quality and cost improvement. The Learning Network will provide technical assistance in such areas as collaborative production of public reports, effective pay for performance, and use of consumer incentives, and will ultimately work with CVEs to implement a core measure set derived from nationwide consensus based and endorsed measures.

Method of Collection

Each RFP will be posted on the AHRQ public Web site (*http://www.ahrq.gov*) with a link to the AHRQ site on the HHS transparency Web site as well. The RFP instructions will direct interested parties to electronically submit narrative information (maximum 3000 words) to AHRQ that describes their current activities and/or plans to perform the four core functions and three important non-core functions. In addition, applicants will be asked to describe their staff/consultant/in-kind resource arrangements to provide needed expertise; their ability to raise funds or in-kind support from multiple stakeholders; and their ability to manage projects and finances as indications of their organizational capacity to accomplish the four core functions. Review teams comprised of purchaser, health plan, provider, consumer, and federal representatives will be assembled. Review teams will include experts from Health Information Exchanges and the Quality Improvement Organization community. Each enrollment period will be open for two months. Applications will be assigned and scored as they are received at AHRQ. AHRQ staff will screen the application for Community Leader status, then distribute it to each member of the 5 member review team. The application will be individually scored by each of the review team members within two weeks. The completed scoring forms will be returned to AHRQ who will then generate the team's average scores per function for that applicant. The Scoring Form uses the following rating scale and definitions to guide the evaluations:

Evaluation Guide: To standardize the interpretation of the rating sale, please use the following definitions to guide your choices:

- *Excellent (5 points):* Clear demonstration of activity already in progress.
- *Very Good (4 points):* Activity partially in progress and effective plan to further mature articulated.
- *Average (3 points):* Effective plan articulated.
- *Fair (2 points):* Attempts to address but hasn't effectively articulated plan or success.
- *Poor (1 point):* Ignores issue.

Minimum *average* scores have been set for each function, and are weighted to reflect the importance of the particular function. Engagement of critical stakeholders has a minimum *average* score of 4.5 while engagement of others, use of performance measures, provider engagement and consumer engagement each have minimum *average* scores set at 3.0. Non-core functions including promotion of HIT and HIE, facilitation of rewards for better performance, participation in knowledge transfer, and ongoing improvement of efforts each have minimum *average* scores set at 2.0. Organizational capacity requires a minimum *average* score of 2.0 also. Individual application scores can range from a possible high of 27 to a low of 10, but the acceptance of any applicant will be based on meeting the minimum average score required for each function as well as organizational capacity. A grid of *all* applicants' average scores by function will be presented to the AHRQ Executive Leadership Team to make final decisions on how many and which applicants will be chartered at the end of the first month and at the close of the enrollment period. Attempts will be made to maximize geographical and population diversity. Successful applicants will be notified within one month of review.

Estimated Annual Respondent Burden

EXHIBIT 1.—ESTIMATE OF COST BURDEN TO RESPONDENTS

Data collection effort	Number of estimated respondents	Estimated time per respondent in hours	Estimated total burden hours	Average hourly wage rate	Estimated annual cost burden to respondents
Draft narrative response to RFP by Collaborative Manager	50	8	400	$34.67	$13,868
Narrative reviews by 1–2 members of Collaborative executive committee	75	1	75	57.90	4,342.50
Narrative revisions by Collaborative Manager	50	8	400	34.67	13,868
Assembly of narrative with any supporting documents by Collaborative Assistant	50	2	100	12.58	1,258
Total	225	.....	950	.....	33,336.50

This information collection will not impose a cost burden on the respondent beyond that associated with the above estimates of the time needed to provide the application-requested information. There will be no additional substantial costs to respondents anticipated, e.g. for capital equipment, software, computer services.

Estimated Costs to the Federal Government

The total cost to the government for its proposal review activity is estimated to be $500,000 annually.

Request for Comments

In accordance with the above-cited legislation, comments on the AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of health care improvement and information dissemination functions of AHRQ, including whether the information requested will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 30, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–3814 Filed 8–2–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Safety and Security Monitoring Project—Radiological Health; Availability of Cooperative Agreements Under a Limited Competition; Request for Applications: FD07–005; Catalog of Federal Domestic Assistance Number: 93.448

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

I. Funding Opportunity Description

The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Division of Federal-State Relations, is announcing the availability of cooperative agreements for equipment, supplies, personnel, training, and facility upgrades to Food Emergency Response Laboratory Network (FERN) radiological laboratories of State, local, and tribal governments. The cooperative agreements are to enable the analyses of foods and food products in the event that redundancy and/or additional laboratory surge capacity is needed by FERN for analyses related to radiological terrorism or other emergency situations. These cooperative agreements are also intended to expand participation in networks to enhance Federal, State, local, and tribal governmental food safety and security efforts. This notice supersedes the request for applications that published in the **Federal Register** of August 24, 2006 (71 FR 50068).

A. Background

ORA is the primary inspection and analysis component of FDA and has approximately 1,600 investigators, inspectors, and analysts who cover the country's approximately 95,000 FDA-regulated businesses. These investigators inspect more than 15,000 facilities per year and ORA laboratories analyze several thousand samples per year. ORA conducts special investigations, conducts food inspection recall audits, performs consumer complaint inspections, and collects samples of regulated products. Increasingly, ORA has been called upon to expand the testing program that addresses the increasing threat to food safety and security through intentional radiological terrorism events. Toward this end, ORA has developed radiological screening and analysis methodologies that are used to evaluate foods and food products in such situations. However, in the event of a large-scale emergent incident, analytical sample capacity in ORA field laboratories has a finite limit. Information from ongoing relationships with State partners indicates limited redundancy in State food testing laboratories; both in terms of analytical capabilities and analytical sample capacity. Several State food testing laboratories lack the specialized equipment to perform the analyses, and/or the specific methodological expertise in the types of analyses performed for screening foods and food products involving radiological terrorism events.

The events of September 11, 2001, reinforced the need to enhance the security of the U.S. food supply. Congress responded by passing the Bioterrorism Act, which President George W. Bush signed into law on June 12, 2002. The Bioterrorism Act is divided into the following five titles:

Title I—National Preparedness for Bioterrorism and Other Public Health Emergencies,
Title II—Enhancing Controls on Dangerous Biological Agents and Toxins,

Title III—Protecting Safety and Security of Food and Drug Supply,
Title IV—Drinking Water Security and Safety, and
Title V—Additional Provisions.

Subtitle A of the Bioterrorism Act, ''Protection of Food Supply,'' section 312, ''Surveillance and Information Grants and Authorities,'' amends part B of Title III of the Public Health Service Act to authorize the Secretary of Health and Human Services to award grants to States and Indian tribes to expand participation in networks to enhance Federal, State, and local food safety efforts. This may include meeting the costs of establishing and maintaining the food safety surveillance, technical, and laboratory capacity needed for such participation.

FDA will support the projects covered by this document under the authority of section 312 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Public Law 107–188). This program is described in the Catalog of Federal Domestic Assistance under number 93.448.

B. Program Research Goals

The goal of ORA's cooperative agreement program is to complement, develop, and improve State, local, and Indian tribal food safety and security testing programs. This will be accomplished through the provision of equipment, supplies, personnel, facility upgrades, training in current food testing methodologies, participation in proficiency testing to establish additional reliable laboratory sample analysis capacity, analysis of surveillance samples, and, in cooperation with FDA, participation in method enhancement activities designed to extend analytical capabilities. In the event of a large-scale radiological terrorism event affecting foods or food products, the recipient may be required to perform selected radiological analyses of domestic and imported food samples collected and supplied to the laboratory by FDA or other Federal agencies through FDA. These samples may consist of, but are not limited to, the following: Vegetables and fruits (fresh and packaged), juices (concentrate and diluted), grains and grain products, seafood and other fish products, milk and other dairy products, infant formula, baby foods, bottled water, condiments, and alcoholic products (beer, wine, scotch).

All grant application projects that are developed at State, local, and tribal governmental levels must have national implication or application that can enhance Federal food safety and security programs. At the discretion of FDA, successful project formats will be made available to interested Federal, State, local, and tribal government FERN laboratories.

There are two key project areas identified for this effort:

1. The use of gamma spectrometry analysis for the screening and identification of gamma-emitting radionuclides in foods, and

2. The use of beta spectrometry analysis for the screening and identification of beta-emitting radionuclides in foods.

It should be emphasized that in all of the projects, there is a particular desire to promote a continuing, reliable capability and capacity for laboratory sample analyses of foods and food products for the rapid detection and identification of radionuclides. With this in mind, it is desirable that sample analyses will be completed within 2 weeks of receipt, and the results will be reported to FERN. The format and reporting media will be established by FERN. Shorter timeframes may be sought for special testing such as proficiency tests or special assignments.

II. Award Information

Support will be in the form of cooperative agreements. Substantive involvement by the awarding agency is inherent in the cooperative agreement awards. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following: (1) How often samples will be sent, (2) directions on how tests should be executed, (3) onsite monitoring, (4) supply of equipment, (5) FDA training on processes, and (6) enhancement and extension of analytical methodology.

FDA will provide specific procedures and protocols for the two project areas (see section I of this document) to be used for the analysis of collected food samples. FDA will provide guidance on the specific foods to be collected and analyzed by the successful applicant. State personnel will be responsible for the collection and analysis of surveillance samples.

Proposed projects designed to fulfill the specific objectives of any one or more of the project areas will be considered for funding. Applicants may also apply for facility upgrades, personnel, training, and surveillance sample collection.

A. Award Amount

The total amount of funding available in fiscal year 2007 is $750,000. Cooperative agreements will be awarded up to $250,000 in total (direct plus indirect) costs per year for up to 3 years. It is anticipated that 3 awards will be made. Support of these cooperative agreements will be for the funding of supplies, facility upgrades, surveillance sample collection, personnel, the provision of training in current analytical methodology, and for the analysis of foods and food products. Funds may be requested in the budget to travel to FDA for meetings with program staff about the progress of the project and to travel for training. If the applicant does not have the necessary equipment available for these projects, all major needed equipment will be provided on loan from FDA and will not be included in the award amount.

B. Length of Support

The length of support is 3 years and all applicants must apply for the full 3 years of currently projected funding and program objectives. The initial competitive review and award process will provide all awardees with 1 year of funding. The second and third year of funding of noncompetitive continuation of support will based on performance during the preceding year and availability of Federal funds.

C. Equipment

FDA will purchase and have all needed major equipment for the two project areas delivered to the awardee's laboratory. The equipment purchased by FDA will remain the property of FDA under loan to the awardee's laboratory for a minimum of 5 years at which point in time it may or may not be released as surplus property. FDA may terminate the loan at any time. The equipment may not be transferred by the awardee's laboratory to a third party, and the awardee's laboratory assumes full responsibility and liability for any claims that may arise as a result of operation of this equipment for the period it is in the possession of the awardee's laboratory.

D. Funding Plan

It is anticipated that FDA will make three awards in fiscal year 2007 for this program. The number of projects funded will depend on the quality of the applications received and is subject to availability of Federal funds to support the projects.

III. Eligibility Information

A. Eligible Applicants

Due to the sensitive counterterrorism nature of this project it is imperative that only State government entities with the regulatory authority to conduct onsite inspections be participatory members of this cooperative agreement program. This is to ensure that any regulatory action and/or laboratory analysis that must be completed in an emergent situation can be carried out in the most expeditious manner. Therefore, this cooperative agreement program is available only to current FERN radiological laboratories at the time of the submission of this application also fall into one of the following categories: State laboratories, State regulatory agencies with the required lab capacity and university laboratories that are currently State adjunct laboratories connected to State laboratory and/or regulatory agencies with the required State regulatory authority.

B. Cost Sharing or Matching

Cost sharing is not required.

C. Other

The entity and/or any or all person(s) involved in any aspect of the design, implementation, and/or evaluation of a successful Food Safety and Security Monitoring Project—Radiological Health cooperative program application may at any time at FDA's discretion be subject to requirements under 42 CFR parts 72 and 73 (70 FR 13294, March 18, 2005), the Bioterrorism Act, and the USA Patriot Act, including but not limited to security risk assessments and security clearances.

Dun & Bradstreet Number (DUNS): As of October 1, 2003, applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a 9-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call 1–866–705–5711. Be certain that you identify yourself as a Federal grant applicant when you contact Dun & Bradstreet, Inc.

IV. Application and Submission

A. Addresses to Request Application

FDA is only accepting applications for this program electronically via Grants.gov by visiting the Web site *http://www.grants.gov*[1] and following

[1] (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the

the instructions under ''APPLY.'' In order to apply electronically, the applicant must have a DUNS number (see section III.C of this document) and register in the Central Contractor Registration (CCR) database as described in section IV.F of this document.

The required application, SF424 can be completed and submitted online. We strongly encourage using the ''Tips'' posted on *http://www.grants.gov*[1] under the announcement number when preparing your submission. If you experience technical difficulties with your online submission you should contact either the Grants.gov Customer Response Center at *http://www.grants.gov/contactus/contactus.jsp*[1] or Michelle Caraffa, Food and Drug Administration, 301–827–7025, e-mail: *michelle.caraffa@fda.hhs.gov*.

To comply with the President's Management Agenda, the Department of Health and Human Services (HHS) is participating as a partner in the new governmentwide Grants.gov application site. Users of Grants.gov will be able to download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov Web site. When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the Web site. In addition, this process is similar to the R01 Grant Application process currently used at the National Institutes of Health. You can visit the following Web site for helpful background on preparing to apply, preparing an application, and submitting an application to Grants.gov: *http://era.nih.gov/ElectronicReceipt/*.[1]

In unusual circumstances, additional information may be considered, on a case-by-case basis, for inclusion in the ad hoc expert panel review (see section V.A.2 of this document), however, FDA cannot assure inclusion of any information after the receipt date, other than evidence of final Institutional Review Board (IRB) approval, Federal-Wide Assurance (FWA), and certification of adequate supply of study product.

If an application for the same grant was submitted in response to a previous request for applications but has not yet been funded, an application in response to this document will be considered a request to withdraw the previous application. The applicant for a resubmitted application should address the issues presented in the summary statement from the previous review and include a copy of the summary statement itself as part of the resubmitted application.

The submitted electronic application package is posted under the ''APPLY'' section for this announcement at *http://www.grants.gov*.[1] The required application SF424, which is part of the PHS 5161–1 form, should be completed and submitted online.

B. Content and Form of Application

1. Content of Application

The ad hoc expert panel will review the application based on the following criteria that each applicant should address in their cooperative agreement application:

a. *The rationale and design to meet the goals of the cooperative agreement*. A full description of the prospective project's intended goals and objectives and how each will guide a full project plan. This section should lay a foundation for the entire program.

b. *Expertise in the use of gamma or beta spectroscopy in the analysis of foods or animal tissues*. Specifically address and provide the qualifications of all personnel that will be assigned to the project. Curriculum vitae/resumes for key laboratory personnel, including information on personnel that have experience in gamma and beta spectroscopy, must be provided.

c. *Sample analysis commitment*. The variety and number of samples analyzed in the current food or animal tissue programs. The laboratory will be required to analyze surveillance and emergency response food samples. Therefore, an estimate of the number of food samples that can be analyzed for radionuclides by each project area (i.e., gamma spectroscopy, beta spectroscopy), must be submitted. This estimate should be for a 3-year period. The estimate should also address the number of samples that can be analyzed in a 2-week period. The procedures to be used will be supplied by FDA. This information will be provided after the award is given, so recipients will be aware of requirements/responsibilities. In addition, if a cooperative agreement is awarded, awardees will be informed of any additional documentation that should be submitted to FERN.

d. *The adequacy of facilities, support services, and quality control and quality assurance procedures and practices for food and animal tissue analysis*. This section should include:

- A summary description of procedures in place to monitor sample workflow, including the tracking and monitoring of sample analyses and a description of the current quality assurance program.
- A discussion of the laboratory's ability to complete and report on a given sample analysis within the required 2-week time frame.
- The name and address of the laboratory facility where the equipment will be installed and the name of the responsible individual at the facility.
- A complete description of the laboratory facility, specifically addressing the following information:
  - Floor diagrams of the current laboratory;
  - A description of the envisaged space, to include a floor-plan diagram;
  - Area where the equipment is to be installed. The installation of equipment in a laboratory will require adequate and appropriate space and physical plant supplies, such as power, water, etc.;
  - A detailed description of the proposed facilities upgrade including drawings and cost estimates;
  - Operational support areas to be used for the project, including details about the availability of ancillary laboratory safety and support equipment and facilities, such as the numbers and types of chemical fume hoods available;
  - Details describing the sample receiving and sample storage areas and a description of any existing chain-of-custody procedures;
  - A detailed description of laboratory access procedures, including a description of practices and systems which limit access to laboratory space by unauthorized personnel. Additional procedures for access to the space(s) dedicated to the equipment provided, if any, should also be included.

e. *Laboratory management practices*. Abilities and procedures in place to recall personnel and establish extended work weeks and commitment to analyze emergency response samples. For the laboratory, the following management information must be provided:

- A summary description of any quality management system defined, in development, or in place as it relates to quality control and quality assurance procedures and practices;
- A summary description of staffing management, specifically to include abilities and procedures in place to recall personnel, establish extended work weeks, etc.; and
- A summary description of any security procedures or processes to evaluate the background of laboratory personnel. This should include any procedures to evaluate subcontractors who have access to laboratory space, such as cleaning personnel.

Web site after this document publishes in the **Federal Register**.)

2. Format for Application

All applications must be submitted electronically through Grants.gov. Paper applications will not be accepted. The application must be an SF424. The title of the proposed grant must include the name of the product and the investigational drug (IND)/ investigational device exemption (IDE) number. The narrative portion, excluding appendices, of the application may not exceed 100 pages in length and must be single-spaced in 12-point font. The appendices should also not exceed 100 pages in length (separate from the narrative portion of the application).

Data and information included in the application will generally not be available publicly prior to the funding of the application. After funding has been awarded, data and information included in the application will be given confidential treatment to the extent permitted by the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (including 21 CFR 20.61, 20.105, and 20.106). By accepting funding, the applicant agrees to allow ORA to publish specific information about the grant.

The requirements requested on form PHS 5161–1 (revised 7/00) have been sent by PHS to the Office of Management and Budget (OMB) and have been approved and assigned OMB control number 0248–0043.

C. Submission Dates and Times

The application receipt date is August 24, 2007. Applications must be received by the close of business on the established receipt date. Applications not received on time will not be considered for review and will generally be returned to the applicant. However, late applications may be accepted under extreme circumstances beyond the control of the applicant. No addendum material will be accepted after the receipt date.

D. Intergovernmental Review

The regulations issued under Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Programs and Activities (45 CFR part 100) apply to the Food Safety and Security Monitoring Project. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert the SPOC to the prospective application(s) and to receive any necessary instructions on the State's review process. A current listing of SPOCs is included in the application kit or at *http://www.whitehouse.gov/omb/grants/spoc.html*.[1] The SPOC should send any State review process recommendations to the FDA administrative contact (see section VII of this document). The due date for the State process recommendations is no later than 60 days after the application receipt date. FDA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cutoff.

E. Funding Restrictions

These grants are not to fund or conduct food inspections for food safety regulatory agencies. They may not be utilized for new building construction, however, remodeling of existing facilities is allowed, provided that remodeling costs do not exceed 25 percent of the grant award amount.

F. Other Submission Requirements

In anticipation of the Grants.gov electronic application process applicants are encouraged to register with the CCR database. This database is a governmentwide warehouse of commercial and financial information for all organizations conducting business with the Federal Government. Registration with CCR will eventually become a requirement and is consistent with the governmentwide management reform to create a citizen-centered Web presence and build e-gov infrastructures in and across agencies to establish a ''single face to industry.'' The preferred method for completing a registration is via the Internet at *http://www.ccr.gov*.[1] This Web site provides a CCR handbook with detailed information on data needed prior to beginning the online registration, as well as steps to walk applicants through the registration process. The applicant must have a DUNS number (see section III.C of this document) to begin registration.

In order to access Grants.gov an applicant will be required to register with the Credential Provider. Information about this requirement is available at *http://www.grants.gov/CredentialProvider*.[1]

V. Application Review Information

A. Criteria

1. General Information

FDA grants management and program staff will review applications sent in response to this document. To be responsive, an application must be submitted in accordance with the requirements of this document.

If an application is found to be nonresponsive, it will be returned to the applicant without further consideration. Applicants are strongly encouraged to contact FDA to resolve any questions about criteria before submitting an application. Please direct all questions of a technical or scientific nature to ORA program staff and all questions of an administrative or financial nature to the grants management staff (see section VII of this document).

To be a FERN radiological laboratory, an applicant institution must have an approval letter from the FERN National Program Office approving the applicant institution as a FERN Radiological laboratory prior to the application receipt date of August 24, 2007.

2. Scientific/Technical Review Criteria

Applications will be considered for funding on the basis of their overall technical merit as determined through the review process. Program criteria will include availability of funds and overall program balance in terms of geography with respect to existing and projected laboratory sample analysis and testing capacity and capability. Final funding decisions will be made by the Commissioner of Food and Drugs or his designee.

A responsive application will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Funding decisions will be made by the Commissioner or his designee.

A score will be assigned to each responsive application based on the scientific/technical review criteria. The review panel may advise the program staff about the appropriateness of the proposal to the goals of the Division of Federal-State Relations cooperative agreement.

3. Program Review Criteria

All grant application projects that are developed at State, local, and tribal levels must have national implication or application that can enhance Federal food safety and security programs. At the discretion of FDA, successful project formats will be made available to interested Federal, State, local, and tribal government FERN laboratories.

B. Anticipated Announcement and Award

It is anticipated that notification regarding the results of the review in the form of a summary statement will be sent to the applicant by September 26, 2007. It is anticipated that all awards will be made by September 30, 2007.

VI. Award Administration Information

A. Award Notices

FDA's grants management office will notify applicants who have been selected for an award. A Notice of Grant Award will be signed by the FDA Chief Grants Management Officer and be sent to the applicant by mail or transmitted electronically.

B. Administrative and National Policy

Please note as of October 1, 2006, the HHS Grants Policy Statement (GPS) (available at *http://www.hhs.gov/grantsnet/adminis/gpd/index.htm*[1]) supersedes in its entirety the Public Health Service (PHS) GPS, dated April 1, 1994, and addendum dated January 24, 1995.

Awards issued through this program are subject to the HHS GPS requirements that are applicable to you based on the type of organization and the purpose of the award. This includes any requirements in Parts I and II of the HHS GPS that apply to an award.

Although consistent with the HHS GPS and applicable statutory and regulatory requirements, these agreements will be subject to all policies and requirements that govern the research grant programs of PHS, including provisions of 42 CFR part 52, 45 CFR parts 74 and 92, and the HHS GPS.

Applicants must adhere to the requirements of this document. Special terms and conditions regarding FDA regulatory requirements and adequate progress of the study may be part of the awards notice.

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national effort designed to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a paper copy of the ''Healthy People 2010'' objectives, vols. I and II, for $70 ($87.50 foreign) S/N 017–000–00550–9, by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD–ROM format, S/N 017–001–00549–5 for $19 ($23.50 foreign) as well as on the Internet at *http://www.healthypeople.gov*[1] under ''Publications.''

C. Reporting

1. Reporting Requirements

The original and two copies of an annual Financial Status Report (FSR) (SF–269) must be sent to FDA's grants management officer within 90 days of the budget period end date of the grant. Failure to file the FSR in a timely fashion will be grounds for suspension or termination of the grant. A final FSR will be due 90 days after the expiration of the project period as noted on the Notice of Grant Award.

For continuing cooperative agreements, quarterly reports and an annual program progress report are also required. For such cooperative agreements, the noncompeting continuation application (PHS 5161–1) will be considered the program progress report for the fourth quarter of the budget period.

Quarterly progress reports must contain, but are not limited to the following:

- A status report on the installation, training, and operational readiness of any equipment that is provided;
- A summary report on any proficiency testing performed;
- A summary status of samples analyzed and time to complete individual sample testing; and
- A summary description of any other testing performed on the equipment.

A final program progress report, final FSR, and a final invention statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

The final program progress report must provide full written documentation of the project and summaries of laboratory operations, as described in the grant application. The documentation must contain sufficient detail such that other State, local, and tribal government FERN laboratories could reproduce the final project.

2. Monitoring Activities

The program project officer will monitor grantees periodically. The monitoring may be in the form of telephone conversations, e-mails, or written correspondence between the project office/grants management office and the principal investigator. Periodic site visits with officials of the grantee organization may also occur. The results of these monitoring activities will be recorded in the official grant file and will be available to the grantee upon request consistent with applicable disclosure statutes and with FDA disclosure regulations. Also, the grantee organization must comply with all special terms and conditions of the cooperative agreement, including those which state that future funding of the study will depend on recommendations from the project officer. The scope of the recommendation will confirm that: (1) There has been acceptable progress on the project; (2) there is continued compliance with all FDA regulatory requirements; (3) if necessary, there is an indication that corrective action has taken place; and (4) assurance that any replacement of personnel will meet the testing requirements.

VII. Agency Contacts

Regarding administrative and financial management aspects of this notice please contact: Michelle Caraffa, Office of Acquisition Support and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2105, Rockville, MD 20857, 301–827–7025, FAX: 301–827–7101, e-mail *Michelle.Caraffa@FDA.HHS.gov*.

Regarding the programmatic or technical aspects of this notice: April D. Kidd, Division of Federal-State Relations (HFC–150), Food and Drug Administration, 5600 Fishers Lane, rm. 12–07, Rockville, MD 20857, 301–827–2913, e-mail: *april.kidd@fda.hhs.gov*.

VIII. Other Information

Data included in the application may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act and FDA's implementing regulations (21 CFR 20.61).

Unless disclosure is required under the Freedom of Information Act as amended (5 U.S.C. 552), as determined by the freedom of information officials of HHS or by a court, data contained in the portions of the application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: July 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–15061 Filed 8ndash;2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0268]

Guidance for Industry and Food and Drug Administration Staff; ''Class II Special Controls Guidance Document: Absorbable Poly(hydroxybutyrate) Surgical Suture Produced by Recombinant DNA Technology;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Absorbable Poly(hydroxybutyrate) Surgical Suture Produced by Recombinant DNA Technology.'' This guidance document describes a means by which the absorbable poly(hydroxybutyrate) surgical suture produced by recombinant deoxyribonucleic acid (DNA) technology may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify these device types into class II (special controls).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Class II Special Controls Guidance Document: Absorbable Poly(hydroxybutyrate) Surgical Suture Produced by Recombinant DNA Technology'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance 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*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nada O. Hanafi, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3555.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance describes a means by which the absorbable poly(hydroxybutyrate) surgical suture produced by recombinant DNA technology may comply with the requirement of special controls for class II devices. An absorbable poly(hydroxybutyrate) surgical suture is an absorbable surgical suture made of material isolated from prokaryotic cells produced by recombinant DNA technology. The device is intended for use in general soft tissue approximation and ligation. This guidance describes FDA's recommendations regarding physical and performance characteristics, biocompatibility, sterility, expiration dating, and labeling.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on absorbable poly(hydroxybutyrate) surgical sutures produced by recombinant DNA technology. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Class II Special Controls Guidance Document: Absorbable Poly(hydroxybutyrate) Surgical Suture Produced by Recombinant DNA Technology,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1629 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR parts 56 and 50 have been approved under OMB control number 0910–0014.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 23, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–15063 Filed 8–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Application for the National Health Service Corps (NHSC) Scholarship Program (OMB No. 0915–0146): Revision

The National Health Service Corps (NHSC) Scholarship Program's mission is to ensure the geographic representation of physicians and other health practitioners in the United States. Under this program, health professions students are offered scholarships in return for service in a federally designated Health Professional Shortage Area (HPSA). The Scholarship Program provides the NHSC with the health professionals it requires to carry out its mission of providing primary health care to HPSA populations in areas of greatest need. Students are supported who are well qualified to participate in the NHSC Scholarship Program and who want to assist the NHSC in its mission, both during and after their period of obligated service.

The application form is being revised to streamline the application process and collect the most relevant information necessary to make determinations of award. Scholars are selected for these competitive awards based on the information provided in the application and supporting documentation. Awards are made to applicants who demonstrate a high potential for providing quality primary health care services.

ESTIMATED RESPONSE BURDEN

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	1800	1	2	3600
Total	1800			600

Written comments and recommendations concerning the proposed information collection should be sent within 60 days of this notice to: Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: July 27, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–15107 Filed 8–2–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children (ACHDGDNC).

Dates and Times: Sept 17, 2007, 9 a.m. to 5 p.m. Sept 18, 2007, 8:30 a.m. to 2 p.m.

Place: Ronald Reagan Building and International Trade Center, Rotunda Room, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

Status: The meeting will be open to the public with attendance limited to space availability.

Purpose: The ACHDGDNC was established to advise and guide the Secretary regarding the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and programs for effectively reducing morbidity and mortality in newborns and children having or at risk for heritable disorders. The ACHDGDNC also provides advice and recommendations concerning the grants and projects authorized under the Heritable Disorders Program.

Agenda: The meeting will include a presentation and continued discussions on the nomination/evaluation process for newborn screening candidate conditions. There will be reports from the Secretary's Advisory Committee on Genetics, Health and Society's Workgroup on Oversight of Genetic Tests and from the Advisory Committee on Heritable Disorders' Workgroup on Research Agenda, as well as the continued work and reports of the ACHDGDNC's subcommittees on laboratory standards and procedures, follow-up and treatment, and education and training. Proposed agenda items are subject to change.

Time will be provided for public comment. Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACHDGDNC Staff, Jill F. Shuger, M.S. (contact information provided below).

Contact Person: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jill F. Shuger, M.S., Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1080, *jshuger@hrsa.gov*. Information on the Advisory Committee is available at *http://mchb.hrsa.gov/programs/genetics/committee*.

Dated: July 26, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–15103 Filed 8–2–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: September 6, 2007, 2 p.m.–5 p.m.; September 7, 2007, 8:30 a.m.–5 p.m.; and September 8, 2007, 9 a.m.–5 p.m.

Place: Hilton Washington DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852.

Status: The meeting will be open to the public.

Agenda: The Council will be developing recommendations for the National Health Service Corps Program. Discussions will be focused on the impact of these recommendations on the program participants, communities served by these clinicians and in the administration of the program.

For Further Information Contact: Tira Patterson, Bureau of Clinician Recruitment and Service, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, MD 20857;
e-mail: *TPatterson@hrsa.gov*; telephone: (301) 594–4140.

Dated: July 27, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–15102 Filed 8–2–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: September 6, 2007, 8:30 a.m.—4:30 p.m. and September 7, 2007, 8 a.m.—2 p.m.

Place: Hilton Washington, DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852.

Status: The meeting will be open to the public.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. At this meeting the Advisory Committee will work on its seventh report on the topic of primary care providing a medical/dental home within the health care system. The report will be submitted to Congress and to the Secretary of the Department of Health and Human Services.

Agenda: The meeting on Thursday, September 6 will begin with opening comments from the Chair of the Advisory Committee and introductory remarks from senior management of the Health Resources and Services Administration. Several speakers will address the topic of patient-centered medical/dental home as a model for health care and training requirements for primary care practitioners. An opportunity will be provided for professional organizations to give comment on the topic. In both small groups and in the plenary session, the Advisory Committee will work on various parts of the report. An opportunity will be provided for public comment.

On Friday, September 7, the Advisory Committee will continue work on the seventh report in small groups and in the plenary session. The Advisory Committee will plan next steps in the report preparation process. An opportunity will be provided for public comment.

FOR FURTHER INFORMATION CONTACT: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., Ph.D., Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6785. The Web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd*.

Dated: July 26, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–15100 Filed 8–2–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Development of Dengue Virus Type 3 Vaccine Candidates Containing Either 1) Nucleotide Deletions in the 3′-UTR of the Genome Consisting of More Than 30 Contiguous Nucleotides in One or Multiple Regions, or 2) a 3′-UTR Derived From DEN4 and Containing the A30 Nucleotide Deletion

Description of Technology: The disease burden associated with dengue virus infection has increased over the past several decades in the tropical and semi-tropical regions of the world, where over 2 billion people live at risk of dengue infection. Annually, there are an estimated fifty (50) to one hundred (100) million cases of dengue fever, making development of an effective vaccine a priority. In addition, there is a need for a ''travelers vaccine'' to protect those visiting dengue virus endemic areas, similar in scope to other currently available ''travelers vaccines'', such as hepatitis A vaccine.

The previously identified Δ30 attenuating mutation, created in each dengue virus serotype by the removal of 30 homologous nucleotides from the 3′-UTR, is capable of attenuating wild-type strains of dengue virus type 1 (DEN1), type 4 (DEN4) and to a limited extent type 2 (DEN2). These DEN1Δ30 and

DEN4Δ30 viruses have been shown to be both safe and immunogenic in humans. However, the Δ30 mutation failed to have an attenuating effect on dengue virus type 3 (DEN3). To generate DEN3 vaccine candidates with a clearly attenuated phenotype, viruses were produced containing 3′-UTR deletions consisting of extensions of the original Δ30 mutation or additional mutations which remove stem-loop structures similar to those removed by Δ30. In addition, the entire 3′-UTR of DEN3 was replaced with the 3′-UTR derived from DEN4 and containing the Δ30 mutation. Studies in monkeys demonstrated that these newly developed viruses are highly attenuated, yet sufficiently immunogenic to warrant their further development for use as live attenuated vaccine candidates. Such viruses are anticipated to become the DEN3 component of a tetravalent vaccine formulation designed to immunize against all four dengue virus serotypes.

Application: Immunization against all four serotypes of Dengue Virus.

Developmental Status: Vaccine candidates have been synthesized and preclinical studies have been performed. The vaccine candidates of this invention are slated to enter Phase I clinical trials in the next year.

Inventors: Stephen S. Whitehead, Joseph E. Blaney, Brian R. Murphy (NIAID).

Patent Status: U.S. Provisional Application No. 60/837,723 filed 15 Aug. 2006 (HHS Reference No. E–139–2006/0-US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Infectious Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these vaccines. Please contact Dr. Brian Murphy at 301–594–1616 or *bm25f@nih.gov* for more information.

Dengue Tetravalent Vaccine Containing a Common 30-Nucleotide Deletion in the 3′-UTR of Dengue Types 1, 2, 3, and 4

Description of Technology: The invention relates to a dengue virus tetravalent vaccine containing a common 30-nucleotide deletion (Δ30) in the 3'-untranslated region (UTR) of the genome of dengue virus serotypes 1, 2, 3, and 4. The previously identified Δ30 attenuating mutation, created in dengue virus type 4 (DEN4) by the removal of 30 nucleotides from the 3′-UTR, is also capable of attenuating a wild-type strain of dengue virus type 1 (DEN1). Removal of 30 nucleotides from the DEN1 3′-UTR in a highly conserved region homologous to the DEN4 region encompassing the Δ30 mutation yielded a recombinant virus attenuated in rhesus monkeys to a level similar to recombinant virus DEN4Δ30. This established the transportability of the Δ30 mutation and its attenuation phenotype to a dengue virus type other than DEN4. The effective transferability of the Δ30 mutation establishes the usefulness of the Δ30 mutation to attenuate and improve the safety of commercializable dengue virus vaccines of any serotype.

A tetravalent dengue virus vaccine containing dengue virus types 1, 2, 3, and 4 each attenuated by the Δ30 mutation is being developed. The presence of the Δ30 attenuating mutation in each virus component precludes the reversion to a wild-type virus by intertypic recombination. In addition, because of the inherent genetic stability of deletion mutations, the Δ30 mutation represents an excellent alternative for use as a common mutation shared among each component of a tetravalent vaccine.

Inventors: Stephen S. Whitehead (NIAID), Brian R. Murphy (NIAID), Lewis Markoff (FDA), Barry Falgout (FDA), Kathryn A. Hanley (NIAID), Joseph E. Blaney (NIAID).

Patent Status: U.S. Patent Application No. 10/970,640 filed 21 Oct. 2004, claiming priority to 03 May 2002 (HHS Reference No. E–089–2002/1–US–02).

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Infectious Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these vaccines. Please contact Dr. Brian Murphy at 301–594–1616 or *bm25f@nih.gov* for more information.

Development of Mutations Useful for Attenuating Dengue Viruses and Chimeric Dengue Viruses

Description of Technology: Although flaviviruses cause a great deal of human suffering and economic loss, there is a shortage of effective vaccines. This invention relates to dengue virus mutations that may contribute to the development of improved dengue vaccines. Site directed and random mutagenesis techniques were used to introduce mutations into the dengue virus genome and to assemble a collection of useful mutations for incorporation in recombinant live attenuated dengue virus vaccines. The resulting mutant viruses were screened for several valuable phenotypes, including temperature sensitivity in Vero cells or human liver cells, host cell restriction in mosquito cells or human liver cells, host cell adaptation for improved replication in Vero cells, and attenuation in mice or in mosquitoes. The genetic basis for each observed phenotype was determined by direct sequence analysis of the genome of the mutant virus. Mutations identified through these sequencing efforts have been further evaluated by re-introduction of the identified mutations, singly, or in combination, into recombinant dengue virus and characterization of the resulting recombinant virus for phenotypes. In this manner, a menu of attenuating and growth promoting mutations was developed that is useful in fine-tuning the attenuation and growth characteristics of dengue virus vaccine candidates. The mutations promoting growth in Vero cells have usefulness for the production of live or inactivated dengue virus vaccines.

Inventors: Stephen S. Whitehead, Brian R. Murphy, Kathryn A. Hanley, Joseph E. Blaney (NIAID).

Patent Status: U.S. Patent No. 7,226,602 issued 05 Jun 2007 (HHS Reference No. E–120–2001/0–US–04); U.S. Patent Application No. 11/446,050 filed 02 Jun 2006 (HHS Reference No. E–120–2001/0–US–10).

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Infectious Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these vaccines. Please contact Dr. Brian Murphy at 301–594–1616 or *bm25f@nih.gov* for more information.

Dated: July 27, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–15054 Filed 8–2–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Immunogenic Peptides and Methods of Use for Treating Prostate and Uterine Cancers

Description of Technology: Cancer of the prostate is the most commonly diagnosed cancer in men and the second leading cause of cancer death in men. Despite the use of standard therapy, including surgery, radiotherapy, chemotherapy, and/or hormonal therapy more than 30,000 men will die from prostate cancer. Moreover, current therapy has limited success against metastatic androgen insensitive prostate cancer. A potential treatment for prostate cancer is immunotherapy, either alone or in combination with standard therapies.

PAGE4 is an X chromosome-linked cancer-testis antigen that is highly expressed in prostate and uterine cancers. To this end, Drs. Jeffery Schlom, Kwong Tsang, and Ira Pastan have identified and characterized novel PAGE4 cytotoxic T-cell lymphocyte (CTL) epitopes and enhanced agonist epitopes. Preclinical studies performed by Dr. Schlom and colleagues indicate that the PAGE4 agonist epitopes bind HLA–A2 molecules at lower peptide concentrations, form more stable peptide HLA–A2 complexes, induce higher levels of production of INF-gamma, Granzyme B, TNF-alpha, IL–2, and lymphotactin by PAGE4 specific T-cell lines, and T-cell lines generated against the agonist peptide were more efficient at lysing human tumor cells expressing native PAGE4. Thus, these agonist epitopes of PAGE4 could be incorporated into immunotherapy protocols, and may constitute an alternative and/or additional approach for the treatment of PAGE4 expressing prostate and uterine cancers.

Development Status: The Laboratory of Tumor Immunology and Biology plans to initiate clinical studies utilizing this technology and collaborative opportunities may be available.

Inventors: Jeffrey Schlom, Kwong-Yok Tsang, Ira H. Pastan (NCI).

Publications: Publications which may provide background information for this technology include:

1. J Yokokawa *et al.*, ''Identification of cytotoxic T-lymphocyte epitope(s) and its agonist epitope(s) of a novel target for vaccine therapy (PAGE4),'' *Int J Cancer.* 2007;121:595–605.
2. C Iavarone *et al.*, ''PAGE4 is a cytoplasmic protein that is expressed in normal prostate and in prostate cancers,'' *Mol Cancer Ther.* 2002 Mar;1(5):329–335.
3. L Prikler *et al.*, ''Adaptive immunotherapy of the advanced prostate cancer—cancer testis antigen (CTA) as possible target antigens,'' *Aktuelle Urol.* 2004 Aug;35(4):326–330. [article in German]

Patent Status: PCT Application No. PCT/US2007/004603 filed 21 Feb 2007 (HHS Reference No. E–104–2006/0–PCT–02), claiming priority to 24 Feb 2006, entitled ''Immunogenic Peptides and Methods of Use.''

Related Technology: U.S. Patent Application No. 11/704,714 filed 09 Feb 2007 (HHS Reference No. E–028–1999/0–US–08), claiming priority to 01 Sep 1998, entitled ''PAGE–4, An X-Linked GAGE-Like Gene Expressed in Normal and Neoplastic Prostate, Testis and Uterus, and Uses Therefor.''

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Michelle A. Booden, Ph.D.; 301/451–7337; *boodenm@mail.nih.gov.*

Collaborative Research Opportunity: The Laboratory of Tumor Immunology and Biology, Center for Cancer Research, NCI is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Kevin Chang, Ph.D. in the NCI Technology Transfer Center at *changke@mail.nih.gov* and/or 301–496–0477 for more information.

Diagnostic and Therapeutic Methods of Detecting and Treating Cancers of Reproductive Tissues

Description of Technology: PAGE–4 is a human X-linked gene that is strongly expressed in prostate and prostate cancer, and is also expressed in other male and female reproductive tissue (e.g., testis, fallopian tube, placenta, uterus, and uterine cancer). PAGE–4 shows similarity with the GAGE protein family, but it diverges significantly from members of the family so that it appears to belong to a separate family. This, and the existence of another gene, PAGE–2, that share more homology with PAGE–4 than with members of the GAGE family indicates that the PAGE–4 protein belongs to a separate protein family.

The specific detection of PAGE–4 might be valuable for the diagnosis of prostate and testicular tumors, as well as uterine tumors. There are sufficient differences between PAGE–4 and other members of the PAGE and MAGE proteins to produce specific antibodies. Analyses with such antibodies are needed to confirm by immunohistology the expression specificity that is seen in database and mRNA analyses, and to evaluate whether anti-PAGE–4 immunotherapy could be a promising therapeutic approach. One possibility of eliminating PAGE–4 expressing cells could be to use it as cancer vaccine. Among the many possible approaches to vaccination, one method is direct vaccination with plasmid DNA. In fact, Dr. Pastan's laboratory has been able to obtain good expression of the PAGE–4 protein with mammalian expression plasmids, and has demonstrated that DNA-immunization with such expression constructs leads to good immune responses. Hence, this method may generate anti-PAGE–4 responses, and allow us to analyze if ''PAGE–4-vaccination'' can eliminate PAGE–4 expressing cells, as a therapeutic approach towards neoplasms of the prostate, testis, and uterus.

Inventors: Ira H. Pastan, Ulrich Brinkmann, George Vasmatzis, Byungkook Lee (NCI).

Patent Status: U.S. Patent Application No. 11/704,714 filed 09 Feb 2007 (HHS Reference No. E–028–1999/0–US–08), claiming priority to 01 Sep 1998, entitled ''PAGE–4, An X-Linked GAGE-Like Gene Expressed in Normal and Neoplastic Prostate, Testis and Uterus, and Uses Therefor.''

Related Technology: PCT Application No. PCT/US2007/004603 filed 21 Feb 2007 (HHS Reference No. E–104–2006/

0–PCT–02), claiming priority to 24 Feb 2006, entitled ''Immunogenic Peptides and Methods of Use.''

Licensing Contact: Jesse S. Kindra, J.D.; 301/435–5559; *kindraj@mail.nih.gov;* or Michelle A. Booden, PhD.; 301/451–7337; *boodenm@mail.nih.gov.*

Dated: July 26, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–15056 Filed 8–2–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

ODS Analytical Methods and Reference Materials Program Stakeholders' Meeting Notice

Notice is hereby given of the National Institutes of Health (NIH) Office of Dietary Supplements (ODS) Analytical Methods and Reference Materials Program Stakeholders' Meeting to be held Monday, September 10, 2007, in the Lister Hill Auditorium on the NIH Campus in Bethesda, Maryland 20892. The meeting will begin at 9 a.m. and will be open to the public.

In fiscal year (FY) 2002, Congress addressed the need for support of analytical methods and reference materials development related to dietary supplements. The congressional appropriations language supported an increased ODS budget for several topics, including analytical methods and reference materials. The Senate language called for ''ODS to allocate sufficient funds to speed up an ongoing collaborative effort to develop and disseminate validated analytical methods and reference materials for the most commonly used botanicals and other dietary supplements.''

On February 8, 2002, ODS held a public meeting to solicit comments to assist ODS in designing an overall strategy for implementing the congressional mandate to foster development and validation of analytical methods and reference materials for dietary supplements.

In FY 2004 and 2005, Congress again used similar language supporting the Analytical Methods and Reference Materials (AMRM) program in the ODS appropriations.

The purpose of the proposed meeting on September 10, 2007, is to state the progress that has been made by the AMRM program since its inception five years ago and to receive comments on directions for the next five years. The meeting is intended to seek stakeholder comments that will assist us with the continued implementation of an overall strategy for research, development, validation, and dissemination of analytical methods and standard reference materials for dietary supplement ingredients. The sponsor of this meeting is the NIH Office of Dietary Supplements.

Registration: Ms. Channet Williams of the American Institutes of Research will be coordinating the registration for this meeting. To register, please forward your name and complete mailing address, including phone number, via e-mail to *cwilliams@air.org.* If you don't have access to e-mail, please call Ms. Williams at 301–592–2130. American Institutes for Research's mailing address is 10720 Columbia Pike, Silver Spring, Maryland 20901. Registration information, as well as background information about the AMRM program, is available at *http://www.ods.od.nih.gov.*

If you wish to make an oral presentation during the meeting, you must indicate this when you register and submit the following information: (1) A brief written statement of the general nature of the statement that you wish to present, (2) the names and addresses of the person(s) who will give the presentation, and (3) the approximate length of time that you are requesting for your presentation. Depending on the number of people who register to make presentations, we may have to limit the time allotted for each presentation.

Please Note: The NIH has instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm.*

Dated: July 25, 2007.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. E7–15048 Filed 8–2–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council,

Date: September 10–11, 2007.

Closed: September 10, 2007, 8:30 a.m. to 5 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892.

Open: September 11, 2007, 8:30 a.m. to adjournment.

Agenda: For the Discussion of Program Policies and Issues, Opening Remarks, Report of the Director, NIGMS, and Other Business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, PhD, Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499. *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles,

including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: July 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3775 Filed 8–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: September 20–21, 2007.

Closed: September 20, 2007, 10:30 a.m. to 3:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: September 20, 2007, 4 p.m. to 5 p.m.

Agenda: Discussion on NIMH program and policy issues.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: September 21, 2007, 8:30 a.m. to 12:30 p.m.

Agenda: Presentation of NIMH Director's Report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Building 31C, 31 Center Drive, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page *http://www.nimh.nih.gov/council/advis.cfm,* where an agenda and any additional information will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3777 Filed 8–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Conference Grant Review.

Date: August 9, 2007.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Bethesda, MD 20852, (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, MPH Chief, Scientific Review Branch, Division of Extramural Activities NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

This notice is being published less than 15 days prior to the meeting to the time limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deadness and Communicative Disorders, National Institutes of Health, HHS).

Dated: July 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3778 Filed 8–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Advisory Committee to the Director, NIH. The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended because the premature disclosure of grant applications and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: Advisory Committee to the Director, NIH.

Date: August 16, 2007.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Penny W. Burgoon, PhD, Senior Assistant to the Deputy Director, Office of the Director, National Institutes of Health, 1 Center Drive, Building 1, Room 114, Bethesda, MD 20892, 301–451–5870, *burgoonp@od.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Advisory Committee to the Director, NIH.

Date: August 22, 2007.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Penny W. Burgoon, PhD, Senior Assistant to the Deputy Director, Office of the Director, National Institutes of Health, 1 Center Drive, Building 1, Room 114, Bethesda, MD 20892, 301–451–5870, *burgoonp@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: July 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3776 Filed 8–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 9, 2007, 3 p.m. to August 9, 2007, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on July 24, 2007, 72 FR 40319.

The meeting will be held August 14, 2007. The meeting time and location remain the same. The meeting is closed to the public.

Dated: July 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3779 Filed 8–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Under Emergency Review by the Office of Management and Budget

The Substance Abuse and Mental Health Services Administration (SAMHSA) has submitted the following request (see below) for emergency OMB review under the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested by October 12, 2007. A copy of the information collection plans may be obtained by calling the SAMHSA Reports Clearance Officer on (240) 276–1243.

Title: 2008 National Survey on Drug Use and Health—(OMB No. 0930–0110).

OMB Number: 0930–0110.

Frequency: Annual.

Affected Public: Individuals or Households.

The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA), is a survey of the civilian, non-institutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

This **Federal Register** notice is revised to reflect additional information that will be collected for the 2008 NSDUH. At the request of the Office of National Drug Control Policy (ONDCP), additional questions are being developed to measure marijuana consumption in the general population. This information could be useful in evaluating drug control programs, as discussed in *''Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us,''* a report by the National Research Council.

Since the first **Federal Register** notice (published on May 3, 2007), a condensed version of the 16-item World Health Organization Disability Assessment Scale (WHO–DAS) has also been proposed for the Mental Health Module. A series of analyses was performed which examined the measurement properties of the 16-item scale with the goal of reducing the scale to a condensed version. [*Item Response Analyses of the World Health Organization Disability Assessment Schedule (WHODAS),* SAMHSA, 2007 (unpublished)] These analyses resulted in an 8-item scale which captures the information represented in the full scale. The questions for recruiting respondents for the follow-up clinical interview have also been revised to include a request for the respondent's e-mail address.

The Notice that was published on May 3, 2007 included the following information for the 2008 NSDUH. Additional questions are being planned regarding suicide ideation and impairment from mental health issues. An embedded split-sample study is being planned to determine which one of two mental health disability scales to include in future NSDUH survey years. The two disability scales will be evaluated by using the SCID–I/NP as a follow-up interview with a subsample of respondents.

Other questionnaire changes include deletion of questions about Hurricanes

Katrina and Rita, adoption of a reduced set of income questions which were tested in 2006 and 2007, and routing of Adderall, Ambien, Ketamine, DMT, AMT, ''Foxy'' and salvia divinorum users into the questions on drug dependence and abuse.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2008 will be sufficient to permit prevalence estimates for each of the fifty States and the District of Columbia. The respondent burden will remain at 60 minutes per interview. The total annual burden estimate is shown below:

Activity	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
Household Screening	182,250	1	.083	15,127
Interview	67,500	1	1.0	67,500
Clinical Follow-up Certification	150	1	1.0	150
Clinical Follow-up	1,500	1	1.0	1,500
Screening Verification	5,494	1	.067	368
Interview Verification	10,125	1	.067	678
Total	182,250			85,323

Emergency approval is being requested because ONDCP has asked SAMHSA to add questions to measure marijuana consumption in the general population. Because of these additional questions, this **Federal Register** notice is a revision from the one that was published on May 3, 2007.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delay in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: July 31, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–15126 Filed 8–2–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Voluntary Customer Satisfaction Surveys To Implement Executive Order 12862 in the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930–0197)—Revision

Executive Order 12862 directs agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' SAMHSA provides significant services directly to the public, including treatment providers and State substance abuse and mental health agencies, through a range of mechanisms, including publications, training, meetings, technical assistance and web sites. Many of these services are focused on information dissemination activities. The purpose of this submission is to extend the existing generic approval for such surveys.

The primary use for information gathered is to identify strengths and weaknesses in current service provisions by SAMHSA and to make improvements that are practical and feasible. Several of the customer satisfaction surveys expected to be implemented under this approval will provide data for measurement of program effectiveness under the Government Performance and Results Act (GPRA). Information from these customer surveys will be used to plan and redirect resources and efforts to improve or maintain a high quality of service to health care providers and members of the public. Focus groups may be used to develop the survey questionnaire in some instances.

The estimated annual hour burden is as follows:

Type of data collection	Number of respondents	Responses/ respondent	Hours/ response	Total hours
Focus groups	250	1	2.50	625
Self-administered, mail, telephone and e-mail surveys	89,750	1	.250	22,438
Total	90,000			23,063

Written comments and recommendations concerning the proposed information collection should be sent by September 4, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: July 31, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–15142 Filed 8–2–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Substance Abuse Prevention and Treatment Block Grant Synar Report Format, FFY 2008–2010—(OMB No. 0930–0222)—Revision

Section 1926 of the Public Health Service Act [42 U.S.C. 300x–26] stipulates that funding Substance Abuse Prevention and Treatment (SAPT) Block Grant agreements for alcohol and drug abuse programs for fiscal year 1994 and subsequent fiscal years require States to have in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18. This section further requires that States conduct annual, random, unannounced inspections to ensure compliance with the law; that the State submit annually a report describing the results of the inspections, describing the activities carried out by the State to enforce the required law, describing the success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18, and describing the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

Before making an award to a State under the SAPT Block Grant, the Secretary must make a determination that the State has maintained compliance with these requirements. If a determination is made that the State is not in compliance, penalties shall be applied. Penalties ranged from 10 percent of the Block Grant in applicable year 1 (FFY 1997 SAPT Block Grant Applications) to 40 percent in applicable year 4 (FFY 2000 SAPT Block Grant Applications) and subsequent years. Respondents include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Palau, Micronesia, and the Marshall Islands.

Regulations that implement this legislation are at 45 CFR 96.130, are approved by OMB under control number 0930–0163, and require that each State submit an annual Synar report to the Secretary describing their progress in complying with section 1926 of the PHS Act. The Synar report, due December 31 following the fiscal year for which the State is reporting, describes the results of the inspections and the activities carried out by the State to enforce the required law; the success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

SAMHSA's Center for Substance Abuse Prevention will request OMB approval of revisions to the current report format associated with section 1926 (42 U.S.C. 300x–26). The report format is changing significantly. Any changes in either formatting or content are being made to simplify the reporting process for the States and to clarify the information as the States report it; both outcomes will facilitate consistent, credible, and efficient monitoring of Synar compliance across the States and will reduce the reporting burden by the States. All of the information required in the new report format is already being collected by the States.

ANNUAL REPORTING BURDEN

45 CFR citation	Number of respondents[1]	Responses per respondents	Hours per response	Total hour burden
Annual Report (Section 1—States and Territories) 96.130(e)(1–3)	59	1	15	885
State Plan (Section II–States and Territories) 96.130(e)(4,5)96.130(g)	59	1	3	177
Total	59			1,062

[1] Red Lake Indian Tribe is not subject to tobacco requirements.

Written comments and recommendations concerning the proposed information collection should be sent by September 4, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: July 31, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–15143 Filed 8–2–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210, 615–255–2400. (Formerly: Aegis Analytical Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823. (Formerly: Laboratory Specialists, Inc.).

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130. (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 13112 Evening Creek Drive, Suite 100, San Diego, CA 92128, 858–668–3710/800–882–7272. (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180. (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700. (Formerly: NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

Meriter Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225. (Formerly: General Medical Laboratories).

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432.

(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521, (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400. (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E7–15149 Filed 8–2–07; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 3, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 26, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E7–14706 Filed 8–2–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Establishment of Rocky Flats National Wildlife Refuge, Colorado

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Establishment of Rocky Flats National Wildlife Refuge.

SUMMARY: In accordance with the provisions of the Rocky Flats National Wildlife Refuge Act of 2001 (Pub. L. 107–107, 115 Stat. 1012, 1380–1387) hereinafter referred to as the ''Refuge Act,'' the Secretary of Energy has transferred primary administrative jurisdiction over approximately 3,953.03 acres of real property at the former Rocky Flats Environmental Technology Site (RFETS), Jefferson and Boulder Counties, Colorado, to the Secretary of the Interior.

Pursuant to section 3177(d) of the ''Refuge Act,'' the Secretary of the Interior hereby provides notice of the establishment of the Rocky Flats National Wildlife Refuge (Refuge).

The ''Refuge Act'' provides that following environmental remediation of RFETS, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and other applicable provisions of law, the Secretary of Energy shall transfer administrative jurisdiction over real property comprising the Refuge to the Secretary of the Interior for establishment of the Rocky Flats National Wildlife Refuge.

Environmental remediation of the Rocky Flats National Priorities List Site has been completed, except for on-going operations and maintenance, pursuant to a Record of Decision signed by the Department of Energy, Environmental Protection Agency (EPA) and the State of Colorado in 2006. On May 25, 2007, the Regional Administrator of the EPA published notice in the **Federal Register** announcing deletion of the Peripheral Operable Unit and Operable Unit 3. On June 11, 2007, the Administrator of the EPA, acting through the Regional Administrator, Region 8, EPA, certified to the Secretary of Energy and the Secretary of the Interior that all response actions for the deleted areas have been completed, except for the operation and maintenance associated with response acting and that all response actions are operating properly and successfully.

Pursuant to the ''Refuge Act,'' administrative jurisdictions over portions of the deleted Peripheral Operable Unit, totaling approximately

3,953.03 acres were transferred from the Department of Energy to the Department of the Interior, through a Letter of Transfer dated July 12, 2007. This notice of establishment of the Refuge is required within 30 days of that transfer by section 3177(d) of the ''Refuge Act.''

FOR FURTHER INFORMATION CONTACT: Steve Berendzen, (303) 289–0350.

Dated: July 18, 2007.

Sharon R. Rose,

Acting Regional Director, Region 6, Denver, Colorado.

[FR Doc. 07–3773 Filed 8–2–07; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–220–1220–MA]

Notice of Temporary Closure/ Restriction Order of Castle Rocks State Park and Castle Rocks Inter-Agency Recreation Area Near Almo, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management announces the temporary closure/restriction order of certain public lands in Cassia County. This closure/restriction order prohibits bolting and placement of fixed anchors to rocks, and overnight camping. This is to allow further time to analyze a fixed anchor management plan, and to protect cultural resources, soils, wildlife, and vegetation that may be impacted by campers.

DATES: A temporary closure/restriction order of this area expired on June 1, 2007. The order published today will again prohibit bolting and placement of fixed anchors to rocks, and overnight camping.

Effective Date: This closure/restriction order is effective on August 3, 2007 and shall remain effective until August 4, 2008.

FOR FURTHER INFORMATION CONTACT: Dennis Thompson, Burley Field Office, 200 South 15 East, Burley, ID 83318. Telephone (208) 677–6641.

SUPPLEMENTARY INFORMATION: The public lands affected by this closure/ restriction order are all lands administered by the BLM within T. 15 S., R. 24 E., Sec. 8, Boise Meridian. This area is known as Castle Rocks State Park and Castle Rocks Inter-Agency Recreation Area. A closure/restriction order including time periods will be posted near the entry point at the Castle Rocks Ranch House and at the BLM Office located at 200 South, 15 East, Burley, Idaho.

Authority: This notice is issued under the authority of the 43 CFR 8364.1. Violations of this closure/restriction order are punishable by imprisonment not to exceed 12 months, and/or a fine not to exceed $1,000, and may be subject to the enhanced fines at 18 U.S.C. 3571.

Persons who are administratively exempt from the closure/restriction order contained in this notice include: Any Federal, State, or local officers or employees acting within the scope of their official duty, members of any organized rescue or fire-fighting force in the performance of their official duty, and any person holding written authorization from the BLM.

Kenneth E. Miller,

Burley Field Office Manager.

[FR Doc. E7–15080 Filed 8–2–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Chukchi Sea Oil and Gas Lease Sale 193

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Availability of the Proposed Notice of Sale.

SUMMARY: The MMS announces the availability of the Proposed Notice of Sale for Oil and Gas Lease Sale 193 in the Chukchi Sea. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the Proposed Notice. The Proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments of the size, timing, and location of the proposed Sale 193 are due from the State of Alaska within 60 days after its receipt of the Proposed Notice of Sale. The Final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for February 6, 2008.

SUPPLEMENTARY INFORMATION: The Proposed Notice of Sale for Sale 193 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained by mail from the Alaska OCS Region, Information Resource Center, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823; telephone: (907) 334–5200 or 1–800–764–2627. Certain documents may be viewed and downloaded from the MMS Web site at *http://www.mms.gov/alaska.*

Dated: July 27, 2007.

Walter D. Cruickshank,

Acting Director, Minerals Management Service.

[FR Doc. E7–15079 Filed 8–2–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Emergency Approval of a 6 Month Study Package; 60-Day Notice of Intent To Inform the Public of This Collection of Information; National Park Service's Evaluation of Pilot Interventions To Increase Healthful Physical Activity in Parks

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) has requested and received emergency approval on the collection of information: NPS' Evaluation of Pilot Interventions to Increase Healthful Physical Activity in Parks (OMB #1024–0253). The NPS invites public comments on the emergency approval of this currently approved collection.

DATES: Public comments on the proposed Information Collection Request (ICR) will be accepted on or before October 2, 2007.

ADDRESSES: *Send comments to:* Dr. James Gramann, NPS Social Science Program, 1201 Eye St., NW. (2300), Washington, DC 20005; or by e-mail at *igramann@tamu.edu.*, or by fax at 979/845–4792. Also, you may send comments to Leonard Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW. (2605), Washington, DC 20240, or by e-mail at *leonard_stowe@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Diana Allen, NPS Rivers, Trails and Conservation Assistance Program, 11 N. 4th St., St. Louis, Missouri 63102; phone: (314) 655–1625; fax: (314) 655–1646; e-mail: *Diana_Allen@nps.gov*.

You are entitled to a copy of the entire ICR package free-of-charge.

SUPPLEMENTARY INFORMATION:

Title: National Park Service's Evaluation of Pilot Interventions to Increase Healthful Physical Activity in Parks.

Form Number(s): None.

OMB Number: 1024–0253.

Expiration Date: 11/30/2007.

Type of Request: 6 Month Emergency Approval.

Description of Need: President George W. Bush's *HealthierUS* Initiative and Executive Order 13266 calls on Federal agencies to improve the flow and use of information on personal fitness and increase the accessibility of resources for physical activity. In March 2006, the Health and Recreation Committee of the National Park Service (NPS) Advisory Board recommended that the agency undertake seven pilot projects to determine how the NPS could effectively implement the key objectives of the *HealthierUS* Initiative. The reports and its recommendations were accepted by the NPS Director. The pilot interventions will employ quasi-experimental designs to evaluate a variety of methods for increasing healthful physical activity by park visitors and/or residents of communities near parks. The pilots include three ''destination'' parks (Sitka National Historical Park, Zion National Park, and Acadia National Park) and four ''urban'' parks (Cuyahoga Valley National Park, Chesapeake and Ohio Canal National Historical Park, Point Reyes National Seashore, and Timucuan Ecological and Historic Preserve). Data collection is set to take place at the different NPS units during the summer and into the early fall of 2007. Pilot projects include using surveys to measure activity levels both before and after healthy activity interventions, as well as focus groups to better understand decision-making and behavior related to physical participation.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that you 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.

Frequency of Collection: On occasion.

Description of Respondents: Respondents will include general recreation visitors, employees of businesses near NPS units, and youth in communities near NPS units.

Automated Data collection: This information will be collected via on-site surveys, interviews, and focus groups. No automated data collection will take place.

Estimated Average Number of Respondents: 3,892 per year.

Estimated Average Number of Responses: 3,892 per year.

Estimated Average Time Burden Per Response: 17 minutes per respondent

Frequency of Response: 1 time per respondent.

Estimated Total Annual Reporting Burden: 1,097 hours per year.

Dated: July 27, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–3809 Filed 8–2–07; 8:45 am]

BILLING CODE 4310–EM–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–447; 731–TA–1116 (Preliminary)]

Circular Welded Carbon-Quality Steel Pipe From China

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured [2] or threatened with material injury [3] by reason of imports from China of circular welded carbon-quality steel pipe, provided for in subheading 7306.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).[4]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in these investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 7, 2007, a petition was filed with the Commission and Commerce by Allied Tube & Conduit, Harvey, IL; IPSCO Tubulars, Inc., Camanche, IA; Northwest Pipe Co., Portland, OR; Sharon Tube Co., Sharon, PA; Western Tube & Conduit Corp., Long Beach, CA; Wheatland Tube Co., Collingswood, NJ; and the United Steelworkers, Pittsburgh, PA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and LTFV imports of circular welded carbon-quality steel pipe from China. Accordingly, effective June 7, 2007, the Commission instituted countervailing duty investigation No. 701–TA–447 (Preliminary) and

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Vice Chairman Shara L. Aranoff, Commissioner Charlotte R. Lane, and Commissioner Irving A. Williamson determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of circular welded carbon-quality steel pipe from China.

[3] Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of circular welded carbon-quality steel pipe from China.

[4] Commissioner Dean A. Pinkert recused himself to avoid any conflict of interest or appearance of a conflict.

antidumping duty investigation No. 731–TA–1116 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 14, 2007 (72 FR 32862). The conference was held in Washington, DC, on June 28, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 23, 2007. The views of the Commission are contained in USITC Publication 3938 (July 2007), entitled *Circular Welded Carbon-Quality Steel Pipe from China: Investigation Nos. 701–TA–447 and 731–TA–1116 (Preliminary).*

Issued: July 31, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. E7–15067 Filed 8–2–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Alaska Sutherlin Knolls*, Civ. No. 07–1084 AS (D.Or.), was lodged with the United States District Court for the District of Oregon on July 27, 2007.

This proposed Consent Decree concerns a complaint filed by the United States against Alaska Sutherlin Knolls, pursuant to Section 309 of the Clean Water Act to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants into waters of the United States that do not comply with a Clean Water Act permit. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore impacted areas and perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to David J. Kaplan, United States Department of Justice, P.O. Box 23986, Washington DC 20026–3986, and refer to *United States* v. *Alaska Sutherlin Knolls*, DJ No. 90–5–1–1–17836.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Oregon, 740 Mark O. Hatfield, United States Courthouse, 1000 Southwest Third Avenue, Portland, OR 97204–2802. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Russell M. Young,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 07–3792 Filed 8–2–07; 8:45 am]

BILLING CODE 4410–15–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Southern Nuclear Operating Company, Inc.; Notice of Receipt and Availability of Application for Renewal of Vogtle Electric Generating Plant, Units 1 and 2 Facility Operating Licenses Nos. NPF–68 and NPF–81 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application dated June 27, 2007, from Southern Nuclear Operating Company, Inc., filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* Part 54 (10 CFR Part 54), to renew the operating licenses for the Vogtle Electric Generating Plant (VEGP), Units 1 and 2. Renewal of the licenses would authorize the applicant to operate Unit 1 for an additional 20-year period beyond the period specified in its current operating license. For VEGP, Unit 2, the renewed license would authorize the applicant to operate for an additional 20 years beyond the period specified in the current operating license or 40 years from the date of issuance of the new license, whichever occurs first. The current operating license for VEGP, Unit 1, (NPF–68), expires on January 16, 2027. VEGP, Unit 1, is a Pressurized Water Reactor designed by Westinghouse. The current operating license for VEGP, Unit 2, (NPF–81), expires on February 9, 2029. VEGP, Unit 2, is a Pressurized Water Reactor designed by Westinghouse. Both units are located near Waynesboro, GA. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 or through the internet from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML071840360. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* Persons who do not have access to the internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, extension 4737, or by e-mail to *pdr@nrc.gov.*

A copy of the license renewal application for the VEGP, Units 1 and 2, is also available to local residents near the site at the Burke County Library, 130 Highway 24 South, Waynesboro, GA 30830.

Dated at Rockville, Maryland, this 26th day of July, 2007.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E7–15117 Filed 8–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974, as Amended; New Routine Use

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of New Routine Use.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to adopt a new routine use that will apply to all of its systems of records allowing disclosure to appropriate persons and entities for purposes of response and remedial efforts in the event that there has been a breach of data contained in the systems. This routine use will facilitate an effective response to a confirmed or suspected breach by permitting disclosure to those individuals affected by the breach, as well as to others who are in a position to assist in the NRC's response efforts, either by assisting in notification to affected individuals or by otherwise playing a role in preventing,

minimizing, or remedying harm from the breach.

DATES: This revision will become effective without further notice on September 12, 2007 unless comments received on or before that date cause a contrary decision. If changes are made based on NRC's review of comments received, a new final notice will be published. We note that the text of the proposed routine use is taken from the routine use that has already been published in final form by the Department of Justice after public comment at 72 FR 3410 (January 25, 2007).

ADDRESSES: Mail comments to the Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments can also be transmitted to the Chief of the Rulemaking, Directives, and Editing Branch by means of facsimile transmission to (301) 415–5144, or by e-mail to *nrcrep@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Sandra S. Northern, Privacy Program Officer, FOIA/Privacy Act Team, Records and FOIA/Privacy Services Branch, Information and Records Services Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6879; e-mail: *ssn@nrc.gov.*

SUPPLEMENTARY INFORMATION: NRC proposes to revise its Prefatory Statement of General Routine Uses to include a new routine use (7) that will apply to all of its current systems of records, published October 10, 2006 (71 FR 59614) and December 15, 2006 (71 FR 77072), allowing disclosure to appropriate persons and entities for purposes of response and remedial efforts in the event that there has been a breach of data contained in the systems. This routine use will facilitate an effective response to a confirmed or suspected breach by allowing disclosure to those individuals affected by the breach, as well as to others who are in a position to assist in the NRC's response efforts, either by assisting in notification to affected individuals or by otherwise playing a role in preventing, minimizing, or remedying harm from the breach. Accordingly, the proposed new routine will read:

* * * * *

7. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the NRC 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 NRC 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 NRC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

A report on this revision is being sent to the Office of Management and Budget (OMB), the Committee on Homeland Security and Governmental Affairs of the U.S. Senate, and the Committee on Government Reform of the U.S. House of Representatives as required by the Privacy Act and OMB Circular No. A–130, Appendix I, ''Federal Agency Responsibilities for Maintaining Records About Individuals.''

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

For the Nuclear Regulatory Commission.

Edward T. Baker III,

Director Office of Information Services.

[FR Doc. E7–15082 Filed 8–2–07; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Variance from the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; P&O Ports Florida, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from P&O Ports Florida, Inc. for a variance from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, *as amended,* with respect to the Tampa Maritime Association-International Longshoremen's Association Pension Plan (the ''Plan''). Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if the transaction meets certain conditions. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class variances or exemptions from this requirement. Before granting a variance or exemption, the statute and PBGC regulations require PBGC to give interested persons an opportunity to comment on the variance or exemption request. The purpose of this notice is to advise interested persons of the variance or exemption request and solicit their views on it.

DATES: Comments must be submitted on or before September 17, 2007.

ADDRESSES: Comments may be mailed to the Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be submitted electronically through the PBGC's Web site at *reg.comments@pbgc.gov* or by fax to 202–326–4112. The PBGC will make all comments available on its Web site, *http://www.pbgc.gov.* Copies of the comments and the non-confidential portions of the request may be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 1200 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Eric Field, Attorney, Office of the Chief Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4020. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020.)

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA'' or ''the Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to covered operations for substantially the

same number of contribution base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the statute be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, *The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations* 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of a variance or exemption from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 4204), a request for a variance or exemption from the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 & 4204.13) is to be made to the plan in question. The PBGC will consider variance or exemption requests only when the request is not based on satisfaction of one of the four regulatory tests under regulation sections 4204.12 and 4204.13 or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. section 552(b)(4) (Freedom of Information Act).

Under section 4204.22(a) of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register,** and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from P&O Ports Florida, Inc., (the ''Purchaser'') for a variance from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of SSA Gulf, Inc., d/b/a Harborside Refrigeration and Garrison on May 26, 2006. In the request, the Purchaser represents among other things that:

1. The Seller was obligated to contribute to the Tampa Maritime Association-International Longshoremen's Association Pension Plan (the ''Plan'') for the purchased operations.

2. The Purchaser has agreed to assume the obligation to contribute to the Plan for substantially the same contribution base units as the Seller.

3. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Purchaser withdraw from the Plan and fail to pay its withdrawal liability.

4. The estimated amount of the withdrawal liability of the Seller with respect to the operations subject to the sale is $1,191,462.

5. The amount of the bond/escrow established under section 4204(a)(1)(B) is $421,864.

6. On April 9, 2007, the Purchaser established an escrow account for $421,864 on behalf of the Plan through Bank of America. Although the escrow account was established after the date required by section 4204(a)(1)(B), the Plan has agreed to accept the escrow while the variance request is pending with the PBGC.

7. In support of its request for a variance, the Purchaser has submitted a copy of its consolidated financial statements for 2005 and 2006, but has asserted that the information therein is privileged and confidential within the meaning of 552(b)(4) of the Freedom of Information Act.

8. A complete copy of the request was sent to the Plan and the collective bargaining representative of the Seller's employees by certified mail, return receipt requested.

Comments

All interested persons are invited to submit written comments on the pending variance request to the above address. All comments will be made a part of the record. The PBGC will make the comments received available on its Web site, *www.pbgc.gov.* Copies of the comments and the non-confidential portions of the request may be obtained by writing or visiting the PBGC's Communications and Public Affairs Department (CPAD) at the above address or by visiting that office or calling 202–326–4040 during normal business hours.

Issued at Washington, DC, on this 26th of July, 2007.

Charles E. F. Millard,

Interim Director.

[FR Doc. E7–15060 Filed 8–2–07; 8:45 a.m.]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27917; 812–13290]

Medallion Financial Corp.; Notice of Application

July 30, 2007.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an Application for an Order Under Section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, Medallion Financial Corp., requests an order approving a proposal to grant certain stock options to directors who are not also employees or officers of the applicant (the ''Eligible Directors'') under its 2006 Non-Employee Director

Stock Option Plan (the ''2006 Director Plan'').

DATES: The application was filed on May 10, 2006 and amended on July 30, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 24, 2007, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicant, 437 Madison Avenue, 38th Floor, New York, New York, 10022.

FOR FURTHER INFORMATION CONTACT: Shannon Conaty, Senior Counsel, at (202) 551–6827, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0102 (telephone 202–551–5850).

Applicant's Representations

1. Applicant, a Delaware corporation, is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Applicant is a specialty finance company that has a leading position in originating, acquiring and servicing loans that finance taxicab medallions and various types of commercial businesses. Applicant operates its businesses through five wholly-owned subsidiaries, Medallion Funding Corp., Medallion Capital, Inc., Medallion Business Credit, LLC, Freshstart Venture Capital Corp. and Medallion Bank. Applicant is managed by its executive officers under the supervision of its board of directors (''Board''). Applicant's investment decisions are made by its executive officers under authority delegated by the Board. Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving its proposal to grant certain stock options under the 2006 Director Plan to its Eligible Directors.[2] Applicant has a nine member Board. Six of the seven current Eligible Directors on the Board are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of the applicant. The Board approved the 2006 Director Plan at a meeting held on February 15, 2006 and Applicant's stockholders approved the 2006 Director Plan at the annual meeting of stockholders held on June 16, 2006.[3] The 2006 Director Plan will become effective on the date on which the Commission issues an order on the application (the ''Approval Date'').[4]

3. Applicant's Eligible Directors are eligible to receive options under the 2006 Director Plan. Under the 2006 Director Plan, a maximum of 100,000 shares of applicant's common stock, in the aggregate, may be issued to Eligible Directors. There is no limit on the number of applicant's common stock which may be issued to any one Eligible Director. Each of the Eligible Directors elected at the annual meeting of the Board on June 16, 2006 and on June 1, 2007 will be granted options to purchase 9,000 shares of applicant's common stock on the Approval Date. The 2006 Director Plan also provides that (i) at each annual shareholders' meeting after the Approval Date, each Eligible Director elected or re-elected at that meeting to a three-year term will be granted options to purchase 9,000 shares of applicant's common stock; and (ii) upon the election, reelection or appointment of an Eligible Director to the Board other than at the annual shareholders' meeting, that Eligible Director will be granted an option to purchase that number of shares of common stock determined by multiplying 9,000 by a fraction, the numerator of which is equal to the number of whole months remaining in the new director's term and the denominator of which is 36. The options issued under the 2006 Director Plan will become exercisable at each annual meeting of applicant's shareholders with respect to one-third the number of shares covered by such option.

4. Under the terms of the 2006 Director Plan, the exercise price of an option will not be less than 100% of the current market value of, or if the stock is not quoted on the date of the grant, the current net asset value per share of, applicant's common stock on the date of the issuance of the option as determined in good faith by the members of the Board not eligible to participate in the 2006 Director Plan (the ''Director Plan Committee'').[5] Options granted under the 2006 Director Plan will expire ten years from the date of grant and may not be assigned or transferred other than by will or the laws of descent and distribution. Any Eligible Director holding exercisable options under the 2006 Director Plan who ceases to be an Eligible Director for any reason, other than permanent disability, death or removal for cause, may exercise the rights the director had under the options on the date the director ceased to be an Eligible Director for a period of up to three months following that date. No additional options held by the director will become exercisable after the three month period. In the event of removal of an Eligible Director for cause, all outstanding options held by such director shall terminate as of the date of the director's removal. Upon the permanent disability or death of an Eligible Director, those entitled to do so under the director's will or the laws of descent and distribution will have the right, at any time within twelve months after the date of permanent disability or death, to exercise in whole or in part any rights which were available to the

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The Eligible Directors receive a $35,000 per year retainer payment, $3,500 for each Board meeting attended, $1000 for each telephonic Board meeting, from $1,500 to $3,000 for each committee meeting attended, and reimbursement for related expenses.

[3] On May 31, 2007, the Company's Board of Directors amended the 2006 Director Plan by unanimous board consent. The Company and its legal counsel have determined that such changes did not necessitate a shareholder vote under Section 10 of the 2006 Director Plan or pursuant to the provisions to the Act and the rules promulgated thereunder.

[4] Applicant previously obtained similar relief for its 1996 Amended and Restated Non-Employee Director Stock Option Plan (the ''1996 Director Plan'', and together with the 2006 Director Plan, the ''Director Plans''). See Medallion Financial Corp., Investment Company Act Rel. Nos. 22350 (Nov. 25, 1996) (notice) and 22417 (Dec. 23, 1996) (order), as amended by Medallion Financial Corp., Investment Company Act Rel. Nos. 24342 (Mar. 17, 2000) (notice) and 24390 (Apr. 12, 2000) (order). The 1996 Director Plan expired on May 21, 2006. Applicant intends to implement the 2006 Director Plan to replace the 1996 Director Plan.

[5] Under the 2006 Director Plan, ''current market value'' (defined as ''fair market value'') is the closing sales price of applicant's common shares as quoted on the NASDAQ Global Select Market on the date of the grant, as reported in the Wall Street Journal (Northeast Edition).

director at the time of the director's permanent disability or death.

5. Applicant's officers and employees, including employee directors, are eligible or have been eligible to receive options under applicant's 1996 Employee Stock Option Plan (the ''1996 Employee Plan''), which expired on May 21, 2006, and the 2006 Employee Stock Option Plan (the ''2006 Employee Plan'', and, together with the 1996 Employee Plan, the ''Employee Plans''). Eligible Directors are not eligible to receive stock options under the Employee Plans. The remaining 2,061,304 shares of applicant's common stock subject to issuance to officers and employees under the Employee Plans represent 11.78% of the 17,502,515 shares of applicant's common stock outstanding as of June 30, 2007. Eligible Directors are eligible or have been eligible to participate in applicant's Director Plans under which 175,749 shares of applicant's common stock remain for issuance, representing 1.00% of shares of applicant's common stock outstanding as of June 30, 2007. The 100,000 shares of applicant's common stock that may be issued to Eligible Directors under the 2006 Director Plan represent 0.57% of shares of applicant's common stock outstanding as of June 30, 2007. Therefore, the maximum number of applicant's voting securities that would result from the exercise of all outstanding options issued and all options issuable to directors, officers, and employees under the Director Plans and the Employee Plans would be 2,237,053 shares of applicant's common stock, or approximately 12.78% of shares of applicant's common stock outstanding as of June 30, 2007. Applicant has no outstanding warrants, options, or rights to purchase its voting securities, other than the options granted or to be granted to its directors, officers, and employees under the Director Plans and the Employee Plans.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3). Section 61(a)(3)(B) provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that its proposal to grant certain stock options to Eligible Directors under the 2006 Director Plan meets all the requirements of section 61(a)(3)(B). Applicant states that the Board is actively involved in the oversight of applicant's affairs and that it relies extensively on the judgment and experience of its Board. In addition to their duties as Board members generally, applicant states that the Eligible Directors provide guidance and advice on financial and operational issues, credit and loan policies, asset valuation and strategic direction, as well as serving on committees. Applicant believes that the availability of options under the 2006 Director Plan will provide significant at-risk incentives to Eligible Directors to remain on the Board and devote their best efforts to ensure applicant's success. Applicant states that the options will provide a means for the Eligible Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with those of applicant and its stockholders. Applicant asserts that by providing incentives such as options, applicant will be better able to maintain continuity in the Board's membership and to attract and retain the highly experienced, successful and motivated business and professional people who are critical to applicant's success as a BDC.

4. Applicant states that the maximum amount of voting securities that would result from the exercise of all outstanding options issued or issuable to the directors, officers, and employees under the Director Plans and Employee Plans would be 2,237,053 shares of applicant's common stock, or approximately 12.78% of applicant's shares of common stock outstanding as of June 30, 2007, which is below the percentage limitations in the Act. Applicant asserts that, given the relatively small amount of common stock issuable to Eligible Directors upon their exercise of options under the 2006 Director Plan, the exercise of such options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of applicant's common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E7–15058 Filed 8–2–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56159; File No. SR–Amex–2007–76]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to an Extension of the Penny Quoting Pilot Program

July 27, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Amex. On July 27, 2007, the Exchange filed Amendment No. 1 to the proposal. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Act[3] and Rule 19b–4(f)(6) thereunder,[4] which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through September 27, 2007 the current pilot program that permits quoting of a limited number of options classes in pennies (the ''Penny Quoting Pilot Program''). The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to extend the current Penny Quoting Pilot Program through September 27, 2007. The Exchange believes that an extension of the Penny Quoting Pilot Program is appropriate for the purpose of further studying the effects of penny quoting. In this manner, a measured and deliberate expansion of the Penny Quoting Pilot Program, if warranted, can be better implemented by the options exchanges.

As approved by the Commission, the current Penny Quoting Penny Quoting Pilot Program consists of thirteen (13) options classes.[5] The quoting requirements in connection with the Penny Quoting Pilot Program provide for: (i) A minimum price variation (''MPV'') of $0.01 for options with premiums of up to $3; or (ii) a MPV of $0.05 for options with premiums of $3 or greater, except for QQQQ options which trade at an MPV of $0.01 for all premiums. As required by the Commission's approval order, the Amex previously filed its pilot report (the ''Amex Pilot Report'') comparing quotation and trading activity in the three (3) months prior to the Penny Quoting Pilot Program to the first three (3) months of the Penny Quoting Pilot Program.

As part of the Penny Quoting Pilot Program, the Exchange also implemented a quote mitigation strategy due to concerns regarding system capacity. The Exchange believes that the quote mitigation strategies in place since the introduction of the Penny Quoting Pilot Program have been effective. Therefore, in this filing, the Exchange is also proposing to extend the effectiveness of the quote mitigation strategies through September 27, 2007.

The Amex Pilot Report made the following findings: (1) Spreads narrowed meaningfully in all series in the Pilot classes with the greatest effect occurring in the lowest premium options; (2) Quoted size at the top of the book decreased sharply in all series and the most in the series with $.01 MPVs; (3) Volume growth, while difficult to accurately analyze, was largely limited to 2 of the 13 Pilot classes; (4) Quote traffic grew at very significant rates; and (5) Only 3 of the 13 Pilot classes achieved the ''most beneficial results'' of tighter spreads and higher volume and all 3 were ''index-based'' products (SMH, QQQQ, and IWM). The Exchange believes that an extension of the Penny Quoting Pilot Program is warranted so that the Commission and the options exchanges may better study and understand the effects of penny quoting.

Based on the experience to date, the Exchange believes that an extension of the Penny Quoting Pilot Program through September 27, 2007 is appropriate.

2. Statutory Basis

The Exchange believes that its proposed rule change 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 prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder,[9] because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30-days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[11] The Exchange has requested that the Commission waive the 5-day pre-filing requirement and the 30-day operative delay. The Commission believes that waiving the 5-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will ensure continuity of the Exchange's rules and will allow the Penny Quoting Pilot Program to remain in effect without interruption. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.[12]

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the

Continued

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.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2007–76 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–Amex–2007–76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–76 and should be submitted on orbefore August 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

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proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 27, 2007, the date on which Amex submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56167; File No. SR–BSE–2007–33]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 To Extend the Linkage Fee Pilot Program

July 30, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 9, 2007, Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On July 25, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend the Fee Schedule of the Boston Options Exchange (''BOX''), the options trading facility of the BSE, to extend until July 31, 2008, the current pilot program applicable to the options intermarket linkage (''Linkage'') fees and to make some technical changes to the Fee Schedule. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.bostonstock.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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's fees for Principal (''P'') and Principal Acting as Agent (''P/A'') Orders[3] executed on BOX currently operate under a pilot program scheduled to expire on July 31, 2007.[4] The BSE proposes to extend the current pilot program for such Linkage fees through July 31, 2008. Because all Linkage Orders received by BOX are for the account of a market maker on another exchange, Linkage fees that are applicable to P Orders and P/A Orders are the same as fees applicable to market makers on other exchanges that submit orders to BOX outside of Linkage. The side of a BOX trade opposite a P Order or P/A Order would be billed normally as any other BOX trade. Consistent with the Plan for the Purpose of Creating and Operating Linkage, no fees will be charged to a party sending a Satisfaction Order to BOX. Rather, a fee will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under Chapter XII, Section 1(j) of the BOX Rules, a ''Linkage Order'' means an Immediate or Cancel order routed through Linkage. There are three types of Linkage Orders:

(i) ''P/A Order,'' which is an order for the principal account of a Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the Market Maker is acting as agent;

(ii) ''P Order,'' which is an order for the principal account of a market maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and

(iii) ''Satisfaction Order,'' which is an order sent through Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[4] *See* Securities Exchange Act Release No. 54225 (July 27, 2006), 71 FR 44056 (August 3, 2006) (SR–BSE 2006–26).

charged to the BOX Options Participant that was responsible for the trade-through that caused the Satisfaction Order to be sent.

The BSE believes that extending the Linkage fee pilot program until July 31, 2008 will give the Exchange and the Commission additional time and opportunity to evaluate the appropriateness of Linkage fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(4) of the Act,[6] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2007–33 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–BSE–2007–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2007–33 and should be submitted on or before August 24, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and, in particular, the requirements of section 6(b) of the Act[8] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[9] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2008 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission continue considering the appropriateness of Linkage fees.

Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Exchange Act,[10] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–BSE–2007–33), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15095 Filed 8–2–07; 8:45 am]

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4)

[7] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56154; File No. SR–CBOE–2007–85]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to CBOE's Delisting Policy

July 27, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 23, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its delisting policy. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary and at the Commission.

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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 23, 2007, the Commission approved CBOE's rule filing (SR–CBOE–2006–92) to permit thirteen option classes to trade in penny increments in connection with the Penny Pilot Program.[5] In its rule filing, CBOE discussed the various quote mitigation strategies that it had already implemented and intended to implement. One of the quote mitigation strategies was to adopt a delisting policy. CBOE's delisting policy currently provides that CBOE will delist any equity option class with national average daily volume (''ADV'') of less than 20 contracts.

Because CBOE's rule filing relating to the Penny Pilot Program was only approved on a six-month pilot basis, including apparently the delisting policy, CBOE requests that its delisting policy be approved on a permanent basis.[6]

CBOE also proposes to amend its delisting policy to provide that CBOE may make exceptions to its delisting policy in appropriate circumstances. For example, if an option class that otherwise would qualify to be delisted (due to having a national ADV of less than 20 contracts) experiences a significant increase in trading volume, CBOE could choose not to delist the option class. To qualify, the option class would need to have a national ADV of 20 or more contracts in the month immediately preceding its scheduled delisting, or in the twenty trading days prior to its scheduled delisting.

2. Statutory Basis

The Exchange believes 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) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) Act[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received comments on the proposal.

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) of the Act[9] and Rule 19b–4(f)(6) thereunder,[10] because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30-days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[12] The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay to allow the Exchange's delisting policy as it currently exists to continue on a permanent basis is consistent with the protection of investors and the public interest because such waiver will ensure continuity of the Exchange's policy and will allow the Exchange's quote mitigation strategy to remain in effect without interruption. However, with regard to CBOE's proposal to amend its policy, the Commission does not believe that waiver of the operative delay is warranted. Therefore, the Commission designates the proposal seeking to make the delisting policy effective on a permanent basis to be operative upon filing with the Commission.[13] The proposed amendments to the policy will become operative after the 30-day operative delay.

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.[14]

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:

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007).

[6] CBOE believes it is unclear from the approval order whether the delisting policy was intended to be approved only on a six-month pilot basis, as opposed to the changes to the minimum increments for the thirteen option classes participating in the Penny Pilot Program.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. CBOE has satisfied the five-day pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* 15 U.S.C. 78s(b)(3)(C).

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–2007–85 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–2007–85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the 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–2007–85 and should be submitted on or before August 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15066 Filed 8–2–07; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56156; File No. SR–ISE–2007–66]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension for the Price Improvement Mechanism Pilot Program

July 27, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 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 and II below, which Items have been substantially prepared by the ISE. The ISE has designated the proposed rule change as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend two pilot programs related to its Price Improvement Mechanism (''PIM'') contained in paragraphs .03 and .05 of the Supplemental Material to Rule 723. The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com,* at ISE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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. The ISE 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 currently has two pilot programs related to its PIM.[5] The current pilot period provided in paragraphs .03 and .05 of the Supplementary Material to Rule 723 was due to expire on July 18, 2007 and was extended until July 25, 2007.[6] The Exchange now proposes to extend the two pilot programs until July 18, 2008. Paragraph .03 provides that there is no minimum size requirement for orders to be eligible for the Price Improvement Mechanism. Paragraph .05 concerns the termination of the exposure period by unrelated orders. The Exchange proposes to extend these pilots until July 18, 2008 to give the Exchange and the Commission additional time to evaluate the effects of the provisions before requesting permanent approval of the rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5) of the Act,[8] in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Since the PIM has only been operating for a relatively short period of time, the Exchange believes it is appropriate to extend the pilot periods to provide the Exchange and Commission more data upon which to evaluate the rules.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (approving the PIM Pilot (the ''Approval Order'')); and 52027 (July 13, 2005), 70 FR 41804 (July 20, 2005) (extending the PIM Pilot for an additional Year).

[6] *See* Securities Exchange Act Release No. 56106 (July 19, 2007), 72 FR 40914 (July 25, 2007) (Notice of Filing and Immediate Effectiveness of SR–ISE–2007–62).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[12] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot periods to continue without interruption until July 18, 2008.[13] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

[9] The Exchange has requested that the Commission waive the five-day pre-filing notice requirement, and the Commission has agreed to waive the requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2007–66 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–2007–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2007–66 and should be submitted on or before August 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15068 Filed 8–2–07; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56155; File No. SR–ISE–2007–67]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Directed Orders System Change

July 27, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 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 ISE. The proposed rule change has been filed by the ISE as effecting a change in an existing order-entry or trading system pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend the pilot period for the system change that identifies to a Directed Market Maker (''DMM'') the identity of the firm entering a Directed Order until January 31, 2008.

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 ISE included statements concerning the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

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 ISE 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

On January 5, 2006, the ISE initiated a system change to identify to a DMM the identity of the firm entering a Directed Order. The ISE filed this system change on a pilot basis under section 19(b)(3)(A) of the Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b–4(f)(5) thereunder [5] so that it would be effective while the Commission considered a separate proposed rule change filed under section 19(b)(2) of the Exchange Act to amend the ISE's rules to reflect the system change on a permanent basis (the ''Permanent Rule Change'').[6] The current pilot expires on July 31, 2007,[7] but the Commission has not yet taken action with respect to the Permanent Rule Change. Accordingly, the Exchange proposes to extend the pilot until January 31, 2008, so that the system change will remain in effect while the Commission continues to evaluate the Permanent Rule Change.[8]

2. Statutory Basis

The Exchange believes that the basis under the Act is found in section 6(b)(5), in that the propose rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Extension of the pilot program will allow the Exchange to continue operating under the pilot while the Commission considers the Permanent Rule Change.

[5] *See* Securities Exchange Act Release No. 53104 (January 11, 2006), 71 FR 3142 (January 19, 2006) (Notice of Filing and Immediate Effectiveness for SR–ISE–2006–02).

[6] *See* Securities Exchange Act Release No. 53103 (January 11, 2006), 71 F.R. 3144 (January 19, 2006) (Notice of Filing for SR–ISE–2006–01).

[7] *See* Securities Exchange Act Release No. 55144 (January 22, 2007), 72 FR 3890 (January 26, 2007) (Notice of Filing and Immediate Effectiveness for SR–ISE–2007–05).

[8] The ISE anticipated that extension of the pilot might be necessary and included this in the filing for the initial pilot. *See supra* note 5, at footnote 5.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change effects a change in an existing order entry or trading system that (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(5) thereunder.[10]

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–2007–67 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–2007–67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2007–67 and should be submitted on or before August 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15070 Filed 8–2–07; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 19b–4(f)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56165; File No. SR–ISE–2007–64]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

July 30, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on July 24, 2007, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') 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 Exhange. 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 establish fees for transactions in options on 3 Premium Products.[3] The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the principal office of the 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, the 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. The ISE 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 amend its Schedule of Fees to establish fees for transactions in options on the following 3 Premium Products: First Trust ISE Chindia Index Fund (''FNI''), iShares MSCI Brazil Index Fund (''EWZ'') and the iShares MSCI Korea Index Fund (''EWY'').[4] The Exchange represents that FNI, EWZ and EWY are eligible for options trading because they constitute ''Fund Shares,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on FNI, EWZ and EWY.[5] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders[6] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[7] Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be $0.37 and $0.03 per contract, respectively. Further, since options on EWZ and EWY are multiply-listed, the Payment for Order Flow fee shall apply only to these two products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the Act,[8] in general, and furthers the objectives of section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its 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 unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2007–64 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–2007–64. This file

[3] ''Premium Products'' is defined in the Schedule of Fees as the products enumerated therein.

[4] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a wholly owned subsidiary of Barclays Bank PLC. ''MSCI Korea Index'' and ''MSCI Brazil Index'' are service marks of Morgan Stanley Capital International (''MSCI'') and have been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. Neither EWY nor EWZ are sponsored, endorsed, issued, sold or promoted by MSCI. BGI and MSCI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on EWY and EWZ or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on EWY and EWZ or with making disclosures concerning options on EWY and EWZ under any applicable federal or state laws, rules or regulations. BGI and MSCI do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[5] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900). *See* Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR–ISE–2006–38).

[6] ''Public Customer Order'' is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. ''Public Customer'' is defined in Exchange Rule 100(a)(38) as a person that is not a broker or dealer in securities.

[7] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f)(2).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2007–64 and should be submitted on or before August 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15093 Filed 8–2–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56153; File No. SR–NASDAQ–2007–057]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Waive Risk Management Workstation Fees

July 27, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 6, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') 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 Nasdaq. Pursuant to section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective immediately upon filing.

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 the Substance of the Proposed Rule Change

Nasdaq proposes to offer free access to its enhanced Risk Management workstation functionality to clearing firms that elect to use Nasdaq's away market execution drop copy service for a trial period extending through third quarter 2007. Nasdaq will implement this rule change immediately.

The text of the proposed rule change is below. Proposed new language is in italics.[5]

7015. Access Services.

The following charges are assessed by Nasdaq for connectivity to the Nasdaq Market Center (NMC), the NASD/NASDAQ Trade Reporting Facility, and the NASD's OTCBB Service. The fees established under Rule 7015 for non-Nasdaq members using Nasdaq services for connectivity to the NMC, the NASD/NASDAQ Trade Reporting Facility, or the NASD's OTCBB Service shall be the fees established for members under this Rule 7015, as in effect on the date of Nasdaq's registration as a national securities exchange and as amended by SR–NASDAQ–2006–024 and SR–NASDAQ–2006–025, and as applied to non-members by SR–NASDAQ–2006–026.

(a)–(d) No Change

(e) Specialized Services Related to NASD/NASDAQ Trade Reporting Facility

CTCI fee	$575/month.
WebLink ACT or Nasdaq Workstation Post Trade..	$375/month (full functionality) or $200/month (up to an average of twenty transactions per day each month) (For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.) *For a trial period ending September 30, 2007, the above fee shall not be imposed on any number of workstations equal to, or less than, the number of away market centers from which a clearing firm elects to have Nasdaq's Risk Management System receive execution drop copies,*
ACT Workstation.	$525/logon/month

(f)–(g) 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, 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. Nasdaq 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

Nasdaq is proposing to offer free access to its enhanced Risk Management workstation functionality to clearing firms that elect to use Nasdaq's away market execution drop copy service for a trial period extending through the third quarter of 2007. Nasdaq Risk Management is a credit risk management tool that allows clearing firms to view in real time the dollars engaged by their correspondents (executing brokers) by side and security in U.S. equity transactions. Historically, this product was able to capture only

[12] 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] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaq.complinet.com*.

Nasdaq Market Center trading activity. Recently, however, Nasdaq enhanced the Risk Management product to allow drop copies of execution reports on trades taking place in other market centers to be delivered to a clearing firm's Nasdaq Risk Management workstation.

Nasdaq has decided to provide access to this enhanced Risk Management workstation functionality free of charge to clearing firms for each away market center from which the clearing firm elects to have Nasdaq's Risk Management system receive execution drop copies for a trial period ending September 30, 2007 to provide an incentive for clearing firms to take advantage of this new Risk Management functionality, and to enhance the exposure of the new Risk Management functionality to the marketplace. At the end of the promotional trial period, clearing firms will have the option to discontinue their use of this new Risk Management functionality or begin paying for it at the normal $375 per-month per-workstation rate.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[6] in general, and with section 6(b)(4) of the Act,[7] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. In particular, Nasdaq believes that its proposal to waive this fee for a trial period provides appropriate incentives to encourage clearing firms' use of Nasdaq's enhanced Risk Management workstation functionality and drop copy service on an equitable basis.

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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

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 subparagraph (f)(2) of Rule 19b–4 thereunder because it establishes or changes a due, fee, or other charge imposed by Nasdaq on its members.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–057 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–2007–057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–2007–057 and should be submitted on or before August 24,2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15069 Filed 8–2–07; 8:45 am]

BILLING CODE 8010–01–P

[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. 34–56169; File No. SR–NYSE–2007–69]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Information Memorandum That Reflects the Changes to Disciplinary Proceedings at NYSE Regulation, Inc. as a Result of the Regulatory Consolidation With the National Association of Securities Dealers, Inc.

July 30, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the NYSE. The NYSE has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal

[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).

effective upon receipt of this filing by 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

This filing consists of an NYSE Regulation, Inc. (''NYSE Regulation'') Information Memo that reflects the changes to disciplinary proceedings at NYSE Regulation as a result of the regulatory consolidation with the National Association of Securities Dealers, Inc (''NASD''). The text of the proposed rule change, including the Information Memo, is available on the NYSE's Web site (*http://www.nyse.com*), at the principal office of the NYSE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 28, 2006, NYSE Regulation and NASD announced a plan to consolidate their member regulation operations into a combined organization, which will be known as the Financial Industry Regulatory Authority (''FINRA''). FINRA will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public (the ''Transaction''). The purpose of this filing is to submit to the Commission an Information Memo concerning changes to disciplinary proceedings at NYSE Regulation because of the Transaction.

As explained in the Information Memo, FINRA will incorporate certain NYSE rules that pertain to member conduct, including rules relating to financial and operational standards of member organizations, books and records, and other non-trading functions of firms (''NYSE Member Firm Rules'').[5] However, NASD will not be incorporating NYSE Rules 475, 476, and 476A, which are the Exchange's rules that govern disciplinary procedures at the Exchange (the ''NYSE Disciplinary Rules'').

In particular, in connection with the Transaction, certain staff and functions of NYSE Regulation's Division of Enforcement will transfer to FINRA, which will assume responsibility for all investigations and disciplinary proceedings relating to violations of NYSE Member Firm Rules by NYSE member organizations and members. However, whether FINRA will conduct existing NYSE Regulation Enforcement actions pursuant to FINRA Code of Procedure or the NYSE Disciplinary Rules will depend on the status of the investigation as of the closing date.[6]

The Information Memo advises NYSE members and member organizations how NYSE Regulation disciplinary actions will be handled following the close of the Transaction. In particular, the Information Memo explains how the status of the investigation as of the closing date will govern which procedures will apply to a particular investigation, as follows:

If NYSE Regulation asserted jurisdiction over an individual or member organization pursuant to NYSE Rule 477 before the closing date of the Transaction, for those investigations relating to NYSE Member Firm Rules, depending on the date of termination from the industry, FINRA may have jurisdiction after the closing date of the Transaction to continue any investigation noticed in such letter and to bring a disciplinary proceeding at the conclusion of such investigation if it is deemed appropriate. If FINRA does not have jurisdiction, FINRA may continue to investigate such matters, but any resulting disciplinary proceedings will be subject to the NYSE Disciplinary Rules.[7]

The applicable disciplinary rules and forum for any disciplinary proceedings that may result from a current NYSE Regulation investigation will depend on whether NYSE Regulation has already filed a Charge Memorandum or Stipulation of Facts and Consent to Penalty (''Stipulation and Consent'') as of the closing date of the Transaction.

If NYSE Regulation has filed a Charge Memorandum or Stipulation and Consent as of the date of the closing, such matter (including any later appeals) will be adjudicated in accordance with the NYSE Disciplinary Rules and before the NYSE Hearing Board. Pursuant to the RSA, NYSE Regulation staff who will be transferring to FINRA may continue to participate in such proceedings.

If NYSE Regulation has not filed a Charge Memorandum or Stipulation and Consent as of the date of the closing in connection with an investigation relating to NYSE Member Firm Rules, the matter (including any later appeals) would be adjudicated by FINRA, pursuant to the FINRA (currently NASD) Code of Procedure, which includes FINRA's Acceptance, Waiver, and Consent process.

NYSE Hearing Board decisions that have been, or could be, appealed under NYSE Rule 476 will be addressed pursuant to the current NYSE disciplinary rules. Matters initiated by FINRA pursuant to its Code of Procedure following the closing date, even if initiated as the result of an investigation that began at NYSE Regulation, would be appealed in accordance with FINRA's rules and procedures for such appeals.

The applicable rule and forum for summary proceedings that are currently adjudicated pursuant to NYSE Rule 475 will depend on whether NYSE Regulation has notified the person or entity in writing of the summary action before the date of closing. If the

[5] NASD's incorporation of the NYSE Member Firm Rules is the subject of SR–NASD–2007–054. *See* Securities Exchange Act Release No. 56147 (July 26, 2007). Pursuant to Section 17(d) of the Act and Rule 17d–2 thereunder, FINRA and NYSE Regulation have agreed on a plan to allocate regulatory responsibility relating to the NYSE Member Firm Rules to FINRA (the ''17d–2 Agreement''). *See* Securities Exchange Act Release No. 56148 (July 26, 2007) (File No. 4–544).

[6] In connection with the Transaction, the Exchange has filed with the Commission a proposed rule filing to amend NYSE Rule 2 to require FINRA membership as a prerequisite to becoming an NYSE member organization. *See* SR–NYSE–2007–67. In addition, NASD has filed with the Commission amendments to its membership requirements to provide for a waive-in process to approve current NYSE member organizations that are not also NASD members (''NYSE-only member organizations'') as FINRA members. *See* SR–NASD–2007–56. If these two filings are approved and NYSE-only member organizations are then approved as FINRA members, FINRA will be responsible for disciplinary proceedings described herein pursuant to the 17d–2 Agreement. In that interim period before the two filings are approved, FINRA will have authority to conduct disciplinary proceedings relating to the NYSE Member Firm Rules pursuant to a Regulatory Services Agreement among FINRA, NYSE Regulation, and the NYSE (the ''RSA'').

Prior to the date that an NYSE-only member organization is approved as a FINRA member, it will continue to be subject to NYSE Regulation disciplinary procedures. Accordingly, whether NYSE Regulation or FINRA procedures will govern disciplinary proceedings will be based on the date that the NYSE-only member organization is approved as a FINRA member, and not on the closing date.

[7] FINRA will have the authority to conduct such disciplinary proceedings pursuant to the RSA.

notification in writing has occurred before the date of closing, the matter will be adjudicated pursuant to NYSE Disciplinary Rules. If no such notification has occurred, the matter will be addressed by FINRA, pursuant to FINRA rules.

Minor violations of Member Firm Rules that are currently adjudicated under NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules) (also known as summary fines) will be handled as follows: If a summary fine notice relating to any violation, including violations of Member Firm Rules, is issued before the date of closing, the matter will be adjudicated pursuant to NYSE rules. With respect to matters arising after the date of closing, NASD expects to file a rule change to modify its Minor Rule Violation Plan (''MRVP'') to include the NYSE Member Firm Rules that, as of the date of such filing, are listed in NYSE Rule 476A. If the Commission approves that filing, after the closing, FINRA will be authorized to impose fines under FINRA's MRVP for minor violations by dual members of the NYSE Member Firm Rules enumerated in FINRA's MRVP.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6[9] of the Act[10] in general and furthers the objectives of section 6(b)(5)[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[8] Pending approval of SR–NASD–2007–55, FINRA will have the authority to impose MRVP fines that relate to the NYSE Member Firm Rules pursuant to the RSA.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78a.

[11] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(1)[13] thereunder 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 such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–69 and should be submitted on or before August 24, 2007.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15096 Filed 8–2–07; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56166; File No. SR–Phlx–2007–52]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Transaction Charges Applicable to Linkage ''P'' and ''P/A'' Orders

July 30, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for a one-year period, a pilot relating to transaction fees applicable to the execution of Principal Acting as Agent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Orders (''P/A Orders'')[3] and Principal Orders (''P Orders'')[4] sent to the Exchange via the Intermarket Option Linkage (''Linkage'') under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Plan'').[5] The Exchange proposes to extend the pilot through July 31, 2008. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.phlx.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 III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program for one year, through July 31, 2008.[6]

The Exchange currently charges $0.25 per option contract for P Orders sent to the Exchange via Linkage under the Plan. The Exchange currently charges $0.15 per option contract for P/A Orders.

By extending the current pilot program, the Exchange should remain competitive with other exchanges that charge fees for P Orders and P/A Orders.[7] Consistent with current practice, the Exchange will charge the clearing member organization of the sender of P Orders and P/A Orders. Also, consistent with current practice, the Exchange will not charge for the execution of Satisfaction Orders sent through Linkage.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees among Exchange members.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2007–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–52. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–52 and should be submitted on or before August 24, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[11] and, in particular, the requirements of section 6(b) of the Act[12] and the rules and regulations thereunder. The

[3] A P/A Order is an order for the principal account of a specialist reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i).

[4] A P Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order. *See* Exchange Rule 1083(k)(ii).

[5] *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (amendment to Plan to conform the Plan to the requirements of Securities Exchange Act Rule 11Ac1–7); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving an amendment to the Plan to add Phlx as a Participant); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving the Plan).

[6] The Exchange filed a separate proposed rule change to extend, for a one-year period through July 31, 2008, the Exchange's current pilot program relating to an option transaction charge credit of $0.21 per contract for Exchange options specialist units that incur Phlx option transaction charges when a customer order is delivered to the limit order book via the Exchange's Options Floor Broker Management System and is then sent to an away market and executed via Linkage under the Plan. This separate proposal will be in effect for the same time period as fees for Linkage P Orders and P/A Orders. *See* Securities Exchange Act Release No. 56101 (July 19, 2007), 72 FR 40920 (July 25, 2007) (SR–Phlx–2007–50).

[7] *See* Securities Exchange Act Release Nos. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR–ISE–2006–38); 54225 (July 27, 2006), 71 FR 44056 (August 3, 2006) (SR–BSE–2006–26); 54272 (August 3, 2006), 71 FR 45865 (August 10, 2006) (SR–CBOE–2006–59); 54230 (July 27, 2006), 71 FR 44757 (August 7, 2006) (SR–NYSEArca–2006–41).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] The Exchange clarified that Section 6(b)(4) of the Act requires equitable allocation of reasonable fees among Exchange members and issuers and other persons using its facilities. *See* Telephone conversation between Richard Rudolph, Vice President and Counsel, Phlx to Ronesha A. Butler, Special Counsel, Division of Market Regulation, Commission, dated July 27, 2007.

[11] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b).

Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[13] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2008 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission continue considering the appropriateness of Linkage fees. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Exchange Act,[14] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Phlx–2007–52), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E7–15094 Filed 8–2–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 5873]

30-Day Notice of Proposed Information Collection: DS 4079, Questionnaire-Information for Determining Possible Loss of United States Citizenship, (New-OMB No.1405–XXXX)

ACTION: Notice of request for public comments and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection: Questionnaire:* Information for Determining Possible Loss of United States Citizenship.
- *OMB Control Number:* New-OMB No.1405–XXXX.
- *Type of Request:* New Information Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS 4079.
- *Respondents:* United States Citizens.
- *Estimated Number of Respondents:* 2,298.
- *Estimated Number of Responses:* 2,298.
- *Average Hours per Response:* 15 minutes.
- *Total Estimated Burden:* 575 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to obtain or retain benefits.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from August 3, 2007.

ADDRESSES: *You may submit comments by any of the following methods:* Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520, who may be reached on (202) 736–9028 or *ASKPRI@state.gov.*

SUPPLEMENTARY INFORMATION: *We are soliciting public comments to permit the Department to:*

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The purpose of the DS–4079 questionnaire is to determine current citizenship status and the possibility of loss of United States citizenship. The information provided in the questionnaire assists consular officers and the Department of State in determining if the U.S. citizen has lost his or her nationality by voluntarily performing an expatriating act with the intention of relinquishing United States nationality.

Methodology

The information is collected in person, by fax, or via mail. The Bureau of Consular Affairs is currently exploring options to make this information collection available electronically.

Dated: July 18, 2007.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E7–15132 Filed 8–2–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5874]

Notice of Finding of No Significant Impact from Construction of a New Livestock Crossing near San Luis, Arizona

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is publishing a Finding of No Significant Impact (FONSI) for the proposed construction of a new livestock crossing (the ''San Luis Cattle Crossing'') at the United States-Mexican border 2,500 feet (approximately half a mile) east of an existing livestock crossing near San Luis, Arizona. The closing of the existing livestock crossing and its relocation to this new location is necessitated by construction of the new San Luis II commercial border crossing

(scheduled to begin in the summer of 2007) at the location of the existing livestock crossing.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Darrach, Coordinator of Border Affairs, Office of Mexican Affairs, Bureau of Western Hemisphere Affairs. U.S. Department of State, 2201 C Street NW., Washington, DC 20520, phone 202–647–8529, or e-mail: *DarrachDD@state.gov.*

SUPPLEMENTARY INFORMATION: The following represents the text of the State Department approved FONSI—The Greater Yuma Port Authority (''GYPA'') has submitted an application for a Presidential permit to relocate the existing livestock crossing at the United States-Mexico border near San Luis, Arizona and San Luis Rio Colorado, Sonora to a location about one half of a mile east. Some 60,000 steers and several hundred horses pass through the existing livestock crossing annually, mostly in winter. The Department of State (the ''Department'') has determined that under Executive Order 11423, as amended, a Presidential permit is required for the relocated livestock crossing since it would involve a new piercing of the United States-Mexico border.

The closing of the existing livestock crossing and its relocation 2,500 feet to the east is required as a result of the planned construction of the new San Luis II commercial port of entry (''POE''), on the site of the original livestock crossing. On June 13, 2007, the Department issued a Presidential permit for the San Luis II POE.

The National Environment Policy Act (''NEPA'') requires that a No Action alternative be considered in the environmental review process. The result of the No Action alternative would be that the existing livestock crossing would impede the construction of the commercial border crossing itself and the pre-primary queuing area of the San Luis II POE. Odors emanating from the existing livestock crossing would also cause unpleasant conditions at the San Luis II POE.

The affected natural environment consists of water sources, landforms, plants, and animals native to the Sonoran Desert ecosystem. One threatened plant species, the sand food, and one threatened animal species, the flat-tailed horned lizard (''FTHL'') inhabit the project area. There are no unique geological resources or sources of surface water within the project area and no plans to drill for groundwater. The affected human environment consists of the nearby cities of San Luis, Arizona and San Luis Rio Colorado, Sonora. No prehistoric or historic remains were found within the project area.

In order to provide optimal conditions for the transient traveling public and employees stationed at the San Luis II POE, a new livestock crossing must be an adequate distance from the San Luis II POE. The site of the proposed new livestock crossing takes account of wind direction and building orientation. Distance is the primary factor in mitigating odors. The new livestock crossing would be about 2,500 feet from the closest occupied building on the land containing the San Luis II POE. For the few states with setback standards for odors, a distance of more than 1,500 feet for facilities with up to 3,000 cattle is considered sufficient protection against odors. There is no problematic odor associated with horses.

How manure is managed (how often the pens are cleaned, how manure is stored, where and when manure is spread, whether straw is put down, etc.) has a dramatic effect on how much odor is present. Whatever odor is generated will rise directly above the pens in a plume the width of the combined areas of the pens. During the day, the sun warms the surface soil, and the rising air currents disperse the odor plume. Odor complaints usually arise during the night or early morning when the air is still. The direction and dissipation of odor depends largely on wind direction and velocity and air drainage, which are linked to topography and climate.

The prevailing winds for the site tend to be from the north in October–February, from the west in March–May, and from the south-southeast in June–September. The proposed site of the new livestock crossing, one half-mile east of the San Luis II POE, appears to be a favorable location since it is typically downwind of the POE and is relatively flat. Flat sites with good air movement tend to be appropriate locations to build livestock facilities.

No major adverse environmental effects are expected from the Proposed Action alternative if proper mitigation measures are implemented. The project could affect biological resources, undiscovered cultural resources, growth, and other environmental factors. However, the project must comply with federal law, including any conditions of approval, which would consequently mitigate any potential adverse effects. The conditions of approval (mitigation measures) are described below.

As described above, the No Action alternative is not feasible.

In 2000, the Bureau of Reclamation (''BoR'') of the Department of the Interior relied on an Environmental Assessment (EA) prepared by Barton-Aschmann Associates, Inc. in reaching a finding that the transfer of land from the BoR to the GYPA for construction of the San Luis II commercial POE would have No Significant Impact on the environment (''FONSI''). The 2000 BoR FONSI included a requirement that the GYPA implement conservation measures recommended by the U.S. Fish and Wildlife Service (''USFWS'') in its Conference Opinion for the FTHL by retaining an onsite biological monitor during construction and operation of the POE. In 2002, the GYPA and BoR requested modification of the original Conference Opinion regarding this monitoring requirement. As a result of the modified Conference Opinion, and in lieu of hiring a full-time biological monitor, the GYPA agreed to implement the conservation measures included in the Conference Opinion with respect to the parcel acquisition, construction and subsequent operation of the proposed commercial POE and the paving and subsequent use of the Yuma County Avenue E access road. The Department had concluded that the GYPA will be required to implement these conservation measures as a condition of approval of the Presidential permit for the livestock crossing.

Findings

1. The General Services Administration has previously published in the **Federal Register** (72 FR 7658–01, February 16, 2007) its determination that a new commercial POE on the United States-Mexico border near San Luis, Arizona and San Luis Rio Colorado, Sonora to accommodate current and future regional transportation requirements will not significantly affect the quality of the human environment.

2. All NEPA procedural requirements have been met, including a 30-day public notice period and coordination with federal, state, and local government agencies, as well as with Native Americans tribes.

3. The environmental commitments (mitigation measures) will offset any negative impacts identified by the BoR EA (referenced above).

4. No disputes or controversies have arisen regarding the accuracy or presentation of environmental effects, as documented in the BoR EA.

5. Relocation of the existing livestock crossing will not result in cumulative significant impacts.

6. The Department has been advised by the Arizona State Historic Preservation Officer that the Officer concurs with the finding of ''no effect''

regarding the project's impact on significant cultural resources.

7. Implementation of the project will not adversely affect any threatened or endangered species as long as the conservation measures for the flat-tailed horned lizard and sand food are implemented during relocation of the livestock crossing.

8. All soil disturbance and shrub removal will be minimized during relocation.

9. Implementation of this action will have no adverse impact on any Indian Trust Assets.

10. Implementation of this action will not violate federal, state, or local law.

Mitigation Measures

1. The relocation of the existing livestock crossing to the site specified in the application obviates the need for further mitigation measures with respect to odors emanating from the transient presence of livestock through and at the new livestock crossing.

2. Mitigation measures for the San Luis II POE are applicable in so far as relevant to the relocated livestock crossing. The mitigation measures listed in the final FONSI (signed April 15, 2007) can be viewed on the GSA Web site at *http://www.gsa.gov/nepa.*

In accordance with NEPA (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR 1500–1508), and the Department's implementing regulations (22 CFR Part 161, and in particular 22 CFR 161.7(c)), the Department finds that the project described in the attached EA is not a federal action significantly affecting the quality of the human environment. Therefore, no Environmental Impact statement will be prepared.

The Finding of No Significant Impact will become final thirty (30) days after the publication of this notice, provided that no information leading to a contrary finding is received or comes to light during this period.

Dated: July 27, 2007.

Daniel D. Darrach,

Acting Director, Office of Mexican Affairs, Department of State.

[FR Doc. E7–15136 Filed 8–2–07; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventh Meeting: Special Committee 209, EUROCAE WG–49 Joint Plenary Session ATCRBS/Mode S Transponder MOPS Maintenance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 209, EUROCAE WG–49 Joint Plenary Session ATCRBS/Mode S Transponder MOPS Maintenance.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 209, EUROCAE WG–49 Joint Plenary Session ATCRBS/Mode S Transponder MOPS Maintenance.

DATES: The meeting will be held August 20, 2007 from 10 a.m.–5 p.m. and August 21–24 from 9 a.m.–5 p.m.

ADDRESSES: Eurocontrol Headquarter, Brussels Belgium, Sirius Conference Room.

FOR FURTHER INFORMATION CONTACT: Host Contact: Eric Potier; telephone +322–729–3504, e-mail *eric.potier@eurocontrol.int* (2) Secretary Contact: Gary Furr; telephone (609) 485–4254, e-mail *gary.ctr.furr@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 209 meeting. *The agenda will include:*

August 20–24:

- Host/Co-Chairs Welcome, Introductions and Remarks
- Review and Approval of the Agenda (SC209–WP07–01)
- Review and Approval of the Minutes form SC–209WG #1, Mtg (SC209 WP07–02)
- Review and Approval of the Minutes from WG–49 Meeting #10 (WG49N10)
- Summary of the Status of EUROCAE WG–49 Activities
- Summary of the Status of RTCA SC–209 Activities
- Summary of ''Airborne Monitoring Results'' from CASCADE Program Office (Scheduled for Thursday, 23 August @ 1 p.m.)
- Discussion on harmonization of DO–181/ED–73 document organization
- Organization of the Appendices (WG19N11–02)
- ED–73, Chapter 3 and Chapter 5
- Review of Final Proposal for TCAS Version Number and 735B Comments
- Ronald Mallwitz Comments to AEEC
- Discussion of Potential Changes in Comm–B Protocol Requirements and Tests
- Previously submitted Working Papers (ModeS–WP01–05, ModeS–WP01–06)
- Discussion of Issues resulting from review of Differences in DO–181/ED–73
- Differences potentially impacting ED–73 (WG49N11–09, ModeS–WP01–06)
- Differences potentially impacting DO–181 (WG49N11–10)
- Maximum Mode A/C Reply Rate Requirement
- Discuss the Harmonization of ELS and EHS Requirements and Test Procedures
- Draft v1.0 of Do–181D containing integrated ELS/EHS (SC209–WP07–07)
- Review of SARPs changes that have resulted in potential changes to both MOPS
- List SARPs CPs going to Annex 10 Amendment 82 (SC209–WP07–05)
- Discuss the Environmental Test Philosophies between DO–181–D & ED–73C
- WG–49 Agreed upon Reduced Tests Modifications (WG19N11–03)
- WG–49 Agreed upon Reorganization of ED–73C, Chapter 4 (WG49N11–04)
- WG–49 Proposed Environmental Test List (WG49N11–08)
- NTSB Recommendation Regarding Standby Mode Indication for TCAS/ACAS and Transponder (SC209–SP07–08)
- Status of the ED–73B/DO–181 Requirements Comparison data base
- (SC209–WP07–__)
- Discussion on the Status of the update of the ATCRBS MOPS (DO–144)
- (SC209–WP07–__)
- Review of Identified Open Issues in DO–181D (SC209–WP07–09)
- Review Status of Action Items and Joint Plenary Agreements
- Closing Plenary Session (Date, Place and Time of Future Meetings, Discussion of Agenda topic for Next Meeting(s), Other Business, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, July 27, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–3780 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting, Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries.

DATES: The meeting will be held August 28–29, 2007 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc. 1828 L Street, NW., Suite 805, Washington, DC 20036. MacIntosh-NBAA and Hilton-ATA Rooms.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org* for directions.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 211 meeting. The agenda will include:

- August 28–29:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Agenda Overview).
- Review/Approval of the Fourth Meeting Summary, RTCA Paper No. 185–07/SC211–012.
- Continue working with the development of Lithium MOPS (Minimum Operational Performance Standards).
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on July 25, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–3793 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2007, there were three applications approved. Additionally, 22 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Colorado Springs, Colorado.

Application Number: 07–11–C–00–CPS.

Applications Type: Impose and Use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $758,359.

Earliest Charge Effective Date: May 1, 2009.

Estimated Charge Expiration Date: August 1, 2009.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate portions of taxiways E and G (phase 1).

Vehicle service road—east side perimeter (phase 1).

Fleet improvements (2007) (snow removal equipment).

Ramp panel study.

Decision Date: July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Kearney, Nebraska.

Application Number: 07–02–C–00–EAR.

Application Type: Impose and Use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $153,893.

Earliest Charge Effective Date: September 1, 2007.

Estimated Charge Expiration Date: October 1, 2009.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Runway 18/36 rejuvenation.

Snow removal equipment building.

Apron taxilane reconstruction.

Apron lighting.

Decision Date: July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Lorna Snadridge, Central Region Airports Division (816) 329–2641.

Public Agency: Maryland Aviation Administration, Baltimore, Maryland.

Application Number: 07–06–U–00–BWI.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue to be Used in This Decision: $64,272,000.

Charge Effective Date: June 1, 2011.

Estimated Charge Expiration Date: January 1, 2016.

Class of Air Carriers Not Required to Collect PFC'S:

No change from previous decision.

Brief Description of Project Approved for Use:

Terminal area D/E baggage handling system upgrades (construction).

Decision Date: July 17, 2007.

FOR FURTHER INFORMATION CONTACT: Luis Loarte, Washington Airports District Office, (703) 661–1365.

AMENDMENTS TO PFC APPROVALS

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
01–05–C–01–MLB, Melbourne, FL	06/28/07	$1,193,528	$1,164,323	10/01/03	10/01/03
97–02–C–01–CSG, Columbus, GA	07/09/07	199,000	168,968	09/01/05	09/01/95
97–01–C–02–PVG, Greenville, NC	07/09/07	494,986	494,486	07/01/01	07/01/01
97–04–C–01–MHT, Manchester, NH	07/11/07	527,500	527,070	02/01/98	02/01/98

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–04–ILM, Wilmington, NC	07/12/07	1,669,168	1,526,487	09/01/96	09/01/96
97–02–U–01–ILM, Wilmington, NC	07/12/07	NA	NA	09/01/96	09/01/96
05–01–C–01–EAR, Kearney, NE	07/16/07	150,000	0	03/01/10	09–01/07
94–01–C–03–AVL, Asheville, NC	07/17/07	5,645,711	5,622,844	10/01/02	10/01/02
95–04–C–01–HSV, Huntsville, AL	07/18/07	16,174	22,676	02/01/03	02/01/03
04–02–C–01–RDU, Raleigh-Durham, NC	07/18/07	595,223,253	765,251,376	07/01/32	09/01/32
00–09–C–01–OAK, Oakland, CA	07/19/07	38,409,000	33,380,000	02/01/03	02/01/03
02–05–C–01–HDN, Hayden, CO	07/19/07	1,052,470	1,009,039	12/01/05	12/01/05
03–07–C–02–RNO, Reno, NV	07/19/07	9,426,597	5,556,400	12/01/04	12/01/04
*93–01–I–01–CWA, Mosinee, WI	07/19/07	7,725,600	7,725,600	11/01/12	07/01/10
97–02–U–01–CWA, Mosinee, WI	07/19/07	NA	NA	11/01/12	07/01/10
*97–03–C–01–CWA, Mosinee, WI	07/19/07	3,529,500	3,529,500	07/01/19	04/01/16
98–03–C–02–FAR, Fargo, ND	07/20/07	1,468,938	1,468,928	07/01/02	08/01/02
01–05–C–01–FAR, Fargo, ND	07/20/07	1,387,328	1,475,152	07/01/04	07/01/04
92–01–I–01–STT, St. Thomas, VI	07/24/07	3,871,005	3,808,574	08/01/95	08/01/95
94–02–U–01–STT, St. Thomas, VI	07/24/07	NA	NA	08/01/95	08/01/95
96–04–U–01–STT, St. Thomas, VI	07/24/07	NA	NA	08/01/95	08/01/95
97–02–C–02–ERI, Erie, PA	07/25/07	1,216,914	1,216,914	05/01/01	05/01/01

NOTES: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Mosinee, WI, this change is effective on September 1, 2007.

Issued in Washington, DC on July 31, 2007.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 07–3816 Filed 08–2–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). *The actions relate to*: the proposed State Route 46 highway project, in the City of Wasco between Kilo Posts 74.03/82.43 (Post Miles 46.00/51.22) in Kern County, State of California; and, the proposed Westside Parkway Project between Heath Road and SR–99 in Bakersfield, Kern County, State of California. Those actions grant approvals for the two proposed projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 30, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mayela Sosa, Project Development Team Leader, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, CA 95814; weekdays 7 a.m. to 4 p.m.(Pacific time); telephone (916) 498–5057; e-mail: *mayela.sosa@fhwa.dot.gov*. Juergen Vespermann, Senior Environmental Planner, California Department of Transportation (Caltrans), 2015 E. Shields Avenue #100, Fresno, CA 93726; weekdays 7 a.m. to 4 p.m. (Pacific time); telephone (559) 243–8157; e-mail: *juergen_vespermann@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway projects in the State of California. It is proposed to widen State Route 46 from a two-lane conventional highway to a four-lane conventional highway, four-lane expressway, or combination of the two between the Jumper Avenue alignment (along the west side of the Wasco State Prison) and ''J'' Street (State Route 43–North), from kilometer posts 74.03 to 82.43 (post mile 46.00 to 51.22), in the City of Wasco in Kern County, California. Additionally, the Westside Parkway facility is proposed as an 8.1-mile-long eight-lane freeway from approximately Heath Road to a point near SR–99 at Truxtun Avenue in the City of Bakersfield and an unincorporated portion of Kern County. The project would cross a number of existing features such as other roadways, canals, and the Kern River. The project also includes the extension of Mohawk Street south from Rosedale Highway, across the Kern River, to Truxtun Avenue. In addition to connecting to Stockdale Highway and Truxtun Avenue, interchanges would be provided at Allen Road, Calloway Drive, Coffee Road, and Mohawk Street. Grade-separations would be constructed at Jewetta Avenue and Renfro Road to carry local roadways over the Westside Parkway.

The actions by the Federal agencies and the laws under which such actions were taken on the proposed State Route 46 project are described in the Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved on November 14, 2006 and in other documents in the FHWA administrative record. For the Westside Parkway facility, the actions by the Federal agencies, and the laws under which such actions were taken, are described in the Tier 2 Environmental Assessment/Final Environmental Impact Report (EA/FEIR) with Finding of No Significant Impact (FONSI) for the project, approved on January 9, 2007 and in other documents in the FHWA administrative record. The EAs/FONSIs and other documents are available by contacting FHWA or Caltrans at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date

of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; and Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wetlands and Water Resources:* Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; and Wetlands Mitigation [23 U.S.C. 103(b)(6)(m) and 133(b)(11)].

5. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; and Migratory Bird Treaty Act [16 U.S.C. 703–712].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470 *et seq.*]; and Native American Graves Protection and Repatriation Act [25 U.S.C. 3001–3013].

7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; and The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986; and Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O.12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of the Cultural Environment; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; and E.O. 13112 Invasive Species.

(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: July 26, 2007.

Maiser Khaled,

Director, Project Development and Environment, Sacramento, California.

[FR Doc. E7–15098 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Capital Metropolitan Transportation Authority

[Docket Number FRA–2006–25040]

Capital Metropolitan Transportation Authority (CMTA), located in Austin, TX, seeks a Conditional Test Waiver of compliance from certain parts of Title 49 of the CFR as part of its ongoing efforts to test and eventually commission new non-FRA compliant diesel multiple units for its start-up commuter rail service linking the City of Leander with downtown Austin, TX.

CMTA is seeking a permanent waiver of compliance from the provisions of 49 CFR Part 219, *Drug and Alcohol;* Part 221, *Rear End Marking Devices;* Part 223, *Safety Glazing Standards;* Part 225, *Accident and Incident Reporting;* Part 229, *Railroad Locomotive Safety Standards;* Part 231, *Railroad Safety Appliance Standards;* Part 238, *Passenger Equipment Safety Standards;* Part 239, *Passenger Train Emergency Preparedness;* and Part 240, *Qualification and Certification of Locomotive Engineers.* In order to begin revenue operation in the fall of 2008, CMTA would like this Conditional Test Waiver in order to meet the system commissioning and testing requirements of the Texas Department of Transportation (TxDOT) System Safety and Security Certification process. Lastly, CMTA posits this Conditional Test Waiver is needed to successfully complete system integration, vehicle acceptance, training, and equipment familiarization. The testing will be conducted consistent with the operating principles of temporal separation set forth in the original petition for permanent waiver. Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2006–25040) and must be submitted to the Docket Clerk, DOT Docket Management Facility, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on July 30, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–15157 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Kansas City Southern Railway Company

[Docket Number FRA–2007–28700]

Kansas City Southern Railway Company (KCS) seeks a waiver of compliance from certain requirements

of 49 CFR Part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment: End-of Train Devices;* and 49 CFR Part 215, *Railroad Freight Car Safety Standards,* for freight cars received in interchange at Laredo, Texas (International Bridge), from Kansas City Southern de Mexico (KCSM). Specifically, KCS seeks a waiver to postpone performing pre-departure inspections and Class I brake tests until the trains move from the border crossing to KCS's Laredo Yard (a distance of approximately 9 miles).

According to the petitioner, all required inspections will be performed at the rail yard rather than at the International Bridge interchange point. KCS proposes to inspect all cars received in interchange from KCSM and perform all regulatory brake tests at Laredo Yard prior to the train's further movement in the United States. Before departing the International Bridge border crossing, KCS will perform a Class III brake test-trainline continuity inspection in accordance with 49 CFR 232.211 and at a minimum, inspect the lead locomotive to verify that the headlight, horn, and bell function correctly. The current KCS timetable identifies the method of operation over this portion of railroad (Milepost 0.1 to Milepost 10.0) as ''Yard Limits,'' therefore, train movement will be made at ''restricted speed'' as required by rule. KCS will also ensure compliance with rear-end marking device regulations.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2007–28700), and must be submitted to Docket Clerk, DOT Docket Management Facility, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on July 30, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–15150 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance.

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Maryland Transit Administration

[Modification to Waiver Petition Docket Number FRA–2000–7054/7286]

This Notice supersedes the **Federal Register** Notice published July 5, 2007, (Volume 72, Number 128; Pages 36752–53) concerning the above Docket Number, which included an erroneous statement.

As a modification to Maryland Transit Administration's (MTA) existing Shared Use/Temporal Separation waiver originally granted by FRA on January 19, 2001, MTA requests that FRA modify the original terms and conditions of its permanent waiver of compliance from certain sections of Title 49 of the CFR for operation of its Cockeysville Light Rail Line (CLRL) due to changes that have recently occurred. (See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000). See also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).)

In this regard, the Norfolk Southern Railway Company (NS), the freight railroad sharing track temporally with the CLRL, is ceasing freight service on the CLRL from a point at Chain Marker 122 continuing northward to the end of the line. The sole exception to this is at Chain Marker 122, where NS continues to cross the CLRL via a diamond crossover to service the NS Flexi-Flo facility. With regard to this, NS filed a Petition for Exemption for authority to abandon the freight service on the CLRL (See Surface Transportation Board (STB) Docket No. AB–290, Sub No. 237X, Norfolk Southern Ry. Co.—Abandonment Exemption—In Baltimore Co., MD). Because of procedural questions raised during the proceeding, the STB denied the Petition for Exemption. MTA has commenced a proceeding with the STB to address and clarify those questions. Upon receipt of that clarification, NS will resubmit its Petition for Exemption with respect to the abandonment. In the interim, no freight service is operating on the line.

MTA is requesting that FRA determine that there is no longer shared use on the CLRL and that waivers are no longer necessary because the statutes and regulations covered in the Shared Use Policy Statement no longer apply to the CLRL north of Chain Marker 122, due to the cessation of NS freight service on the CLRL from that point. Also, MTA agrees that the waivers that were approved in the January 19, 2001, Decision Letter are relevant at the diamond crossing, and that they should remain in effect. In addition, Standard Operating Procedure LR.07.02.04 that replaced MTA Procedure No. 6.33, provides sufficient protection at the interlocked diamond crossover. Lastly, MTA requests that, to the extent FRA regulations apply in any manner, FRA waive the requirements of 49 CFR Part 219, Control of Alcohol and Drug Abuse, for MTA employees who control the operation of NS trains across the diamond because it is adopting the FTA's Drug and Alcohol Policy, which provides an equivalent level of oversight.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a

hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2000–7054/7286) and must be submitted to the Docket Clerk, DOT Docket Management Facility, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on July 30, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–15140 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Maryland Transit Administration

[Docket Number FRA–2007–28611]

The Maryland Transit Administration (MTA) seeks a permanent waiver of compliance from certain provisions of the *Passenger Equipment Safety Standards* of 49 CFR part 238, regarding the required periodic tests of locomotive brake equipment. This waiver is being requested for MTA's Maryland Area Rail Commuter (MARC) trains. Specifically, MARC requests that the electronic brake equipment used on their six HHP–8 electric locomotives be subject to the same provisions that are outlined in a waiver (FRA–2000–7367) that was granted to the National Railroad Passenger Corporation (Amtrak) for their KE–3.9 brake equipment (Computer Controlled Brake-brake equipment variant). This waiver extended the time requirements for the cleaning, repairing, and testing of brake components listed in section 238.309(c)(2) to a period not to exceed 5 years or 1,840 days.

MARC claims that the electronic brake equipment used on their HHP–8 locomotives is similar to the brake equipment installed on the Amtrak HHP–8 locomotives that have benefitted from a waiver similar to the one mentioned above for the past 5 years.

The six MARC locomotives for which the current waiver is being requested are operated and maintained by Amtrak. All tests and inspections of these locomotives are performed by Amtrak employees in Amtrak facilities. The MARC HHP–8 locomotives are equipped with an air quality (dryers and filters) system that meets current industry standards.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2007–28611) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590–0001.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on July 30, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–15148 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Docket Number FRA–2007–28339]

Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain requirements of 49 CFR Part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment, End-of-Train Devices*; and from 49 CFR Part 215, *Railroad Freight Car Safety Standards*. Specifically, UP seeks relief to permit trains received at the U.S./Mexico border at Laredo, Texas, from the Kansas City Southern de Mexico Railway to move from the interchange point without performing the regulatory tests and inspections specified in Part 215 and section 232.205(a)(1) at that location. UP proposes moving the trains from the border at Milepost 412.5 on the Laredo subdivision to the UP yard at Port Laredo, Texas (a distance of 11.6 miles), where FRA-required inspections will be performed. According to UP, they have been operating in this fashion since October 1996, under the authority of a letter from the Director of FRA's Office of Safety Assurance and Compliance.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2007–28339) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590–0001.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC, on July 30, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–15144 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

[Docket Number FRA–2007–28699]

Applicant: Canadian National-Illinois Central Railroad, Mr. Mark Ryon, Manager, Signals & Communication, 102 Commerce Park Drive, Jackson, Mississippi 39217.

The Canadian National-Illinois Central Railroad (CN) seeks approval of the proposed discontinuance and removal of the automatic block signal (ABS) system on the Central Division, Memphis Subdivision (Milepost 394.7 to 397.5), and on the Grenada Subdivision (Milepost 397.5 to 398.2) in and around Memphis, Tennessee.

The reason given for the proposed changes is that the ABS is no longer necessary. The signal system is now located wholly within the Memphis Terminal Yard Limits, where all movement must be coordinated with the person in charge of the yard at Memphis, Tennessee.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2007–28699 and may be submitted by one of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or
- *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

Issued in Washington, DC, on July 30, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–15151 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

[Docket Number FRA–2007–28575]

Applicant: CSX Transportation, Incorporated, Mr. C.M. King, Chief

Engineer, Communications and Signals, 500 Water Street, SC J–350, Jacksonville, Florida 32202.

CSX Transportation, Incorporated (CSX) seeks approval of the proposed modification of an interlocking, discontinuance and removal of traffic control system signals, and the conversion of power-operated switches to hand-throw operation, from Gladstone (Milepost CAB–119.2) to Clifton Forge, Virginia (Milepost CAB–229.4), on the Huntington Division, James River Subdivision. The #168L Signal on #1 Main Track will be discontinued and removed. The interlocking at Lynchburg (Milepost CAB–146.1) was originally configured of two tracks crossing one track at-grade and two turnouts; the crossings at-grade, along with the turnout off of #2 Main Track have been removed. The #165 power-operated switch off #1 Main Track will be converted to hand-throw operation, and the governing signals will be discontinued and removed. The #116L and #116R controlled signals at major Milepost CAB–167.3 will be discontinued and removed. The #109 power-operated switch off of #1 Main Track at Balcony Falls (Milepost CAB–175.0) will be converted to hand-throw operation, and the governing signals will be discontinued and removed. The #107 power-operated switch off of #1 Main Track at K Cabin (Milepost CAB–175.3) will be converted to hand-throw operation and the governing signals will be discontinued and removed. The #68R and #66L controlled signals at WAS Springwood (Milepost CAB–198.9) will be discontinued and removed. The #58L and #58R controlled signals at Lyle (Milepost CAB–202.3) will be discontinued and removed. The electric lock switch off of single main track at Milepost CAB–212.93 will be converted to a no clear location and the electric lock mechanism will be removed.

Pole line elimination and the installation of a microprocessor-based signal system are the reasons given for the proposed changes. Furthermore, CSX contends that present-day operations do not warrant retaining the power-operated switches and controlled signals.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2007–28575 and may be submitted by one of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or
- *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

Issued in Washington, DC on July 30, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–15133 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

[Docket Number FRA–2007–28574]

Applicant: Union Pacific Railroad, Mr. Thomas T. Ogee, AVP Engineering Design, 1400 Douglas Street, Stop 0910, Omaha, Nebraska 68179.

The Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance and removal of the rail locks on the Mississippi River moveable bridge, located near Clinton, Iowa, on the UP Geneva Subdivision at Milepost 136.7. The installation of new self-aligning lift rails with solid operating linkage will eliminate the need for the rail locks.

The reason given for the proposed changes is that the remaining appliances on the bridge will provide required protection.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2007–28574 and may be submitted by one of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or

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

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Issued in Washington, DC on July 30, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–15129 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Alternatives Analysis/Environmental Impact Statement for High-Capacity Transit Improvements in the Central Mesa Corridor

AGENCY: Federal Transit Administration, U.S. Department of Transportation.

ACTION: Notice of intent to prepare an Alternatives Analysis/Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and Valley Metro Rail, Inc. (METRO) intend to prepare an Alternatives Analysis (AA) and Environmental Impact Statement (EIS) on proposed high capacity transit improvements, including a potential light rail transit (LRT) and/or bus rapid transit (BRT) in the Central Mesa Corridor between the LRT Starter Line eastern terminus and Power Road (a distance of approximately 13 miles) in the City of Mesa in Maricopa County, Arizona. The proposed study area is bounded on the west by the LRT Starter Line eastern terminus at Main Street/Sycamore; University Boulevard to the north; Power Road to the east; and the Superstition Freeway (US 60) on the south. The AA/EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) and its implementing regulations. The AA/EIS process will be initiated with a scoping process that provides opportunities for the public to comment on the scope of the project and proposed alternatives to be considered in the AA and Draft Environmental Impact Statement (DEIS). This input will be used to assist decisionmakers in determining a locally preferred alternative (LPA) for the Central Mesa Corridor. Upon selection of an LPA, METRO will request permission from FTA to enter into preliminary engineering per requirements of New Starts regulations 49 CFR part 611. The Final Environmental Impact Statement (FEIS) will be issued after FTA approves entrance into preliminary engineering.

The purpose of this notice is to alert interested parties regarding the intent to prepare the AA/EIS, to provide information on the nature of the proposed project and possible alternatives, to invite public participation in the AA/EIS process, including comments on the scope of the alternatives proposed in this notice, to announce that public scoping meetings will be conducted, and to identify participating agency contacts.

DATES: Written and e-mailed comments on the scope of study, including the alternatives to be considered, and the impacts to be assessed, should be sent to Valley Metro Rail, Inc. (METRO) on or before September 13, 2007. See **ADDRESSES** below for the street address and e-mail address to which written comments may be sent. Public scoping meetings to accept comments on the scope of the study will be held on the following dates:

• Thursday, August 23, 2007, at 6 p.m., Mesa City Plaza, Training Room 170, 20 E. Main Street, Mesa, Arizona 85201.

• Thursday, August 30, 2007, at 6 p.m., Jefferson Elementary School, Recreation Center, 120 S. Jefferson Avenue, Mesa, AZ 85208.

An interagency scoping meeting will be held on the following date:

• Tuesday, August 21, 2007, at 10 a.m., Valley Metro Rail, Inc. (METRO), 101 North 1st Avenue, Suite 1300, Phoenix, AZ 85003.

The project's purpose and need and the initial set of alternatives proposed for study will be presented at these meetings. The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Jodi Sorrell, City of Mesa, 600 SE. Sixth Street, Mesa, AZ 85211 (Telephone 480–644–5541) at least 48 hours in advance of a meeting in order for METRO and the City of Mesa to make the necessary arrangements.

Scoping materials wil be available at the meetings and through the project's Web site at *http://www.metrolightrail.org/centralmesa.* Hard copies of the scoping materials are also available from Mr. Marc Soronson whose contact information is given in **ADDRESSES** below.

ADDRESSES: Written comments should be sent to the attention of Mr. Marc Soronson, Valley Metro Rail, Inc., 101 North 1st Avenue, Suite 1300, Phoenix, AZ 85003. E-mail *centralmesa@metrolightrail.org.* Phone: (602) 744–5545, Fax: (602) 252–7453. The locations of the public scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Mr. Hymie Luden, Office of Planning and Program Development, Federal Transit Administration, 201 Mission Street, Room 1650, San Francisco, CA 94105. Phone: (415) 744–2732.

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and Valley Metro Rail, Inc. (METRO) invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the alternatives analysis and the EIS, including the project's preliminary statement of purpose and need, the alternatives to be studied and the impacts to be evaluated. Comments should focus on the purpose and need for the proposed project; alternatives that may be less costly or have less environmental or community impacts while achieving similar transportation objectives; and the identification of any significant social, economic, or environmental issues relating to the alternatives.

Purpose and Need for the Project

The draft statement of the project purpose is currently under review by METRO and the City of Mesa, and will be refined further. In its current state, the purpose is defined as follows:

1. Identify a transit alternative that increases efficient access to employment

opportunities throughout the Central Phoenix/East Valley region for City of Mesa residents.

2. Identify a transit alternative that provides improved travel times in a congested environment over local bus.

3. Identify a transit improvement alternative, with a recommended alignment and technology, to connect the western and central segments of the City of Mesa with the Central Phoenix/East Valley Light Rail System currently under construction.

4. Identify a widely-supported transit improvement alternative that would facilitate continued development of a comprehensive and inter-connected regional transit network that is multi-modal, that offers a range of effective mobility choices for current and future transit riders, and that attracts new transit riders onto the growing regional system.

5. Identify a transit alternative that supports economic development, and ensures enhanced connectivity among existing and planned regional and local activity centers and attractions.

Additional considerations supporting the project's need include:

The City of Mesa, which spans approximately 132 square miles, is the third largest city in Arizona. Today's estimated population of 455,100 is expected to increase by approximately 25% by 2020. In general, travel on highways and arterials is expected to increase by approximately 30% between 2004 and 2030 within Maricopa County; peak period travel to work is expected to grow by about 40%; similar trends are anticipated for the City of Mesa.

Growth in the City of Mesa has caused substantial increases in traffic congestion on the existing roadway network, and has generated the need for new public transportation service. Even with implementation of the projects included in the Maricopa Association of Governments (MAG) Regional Transportation Plan (RTP), service levels in 2030 on both the area freeways and arterials is expected to deteriorate substantially due to increased travel demand, resulting in a significant increase in delay. Based on MAG model results, daily freeway congestion appears to be highest on the freeways in the general project vicinity in 2004 and 2030, in comparison to other areas, such as the downtown Phoenix area, Sky Harbor Airport vicinity, and downtown Tempe area. In 2030, daily congestion is expected on 93% of lane miles on arterials in the Mesa project corridor, a growth of 66% over current levels.

The AA/EIS will analyze the potential for the proposed high capacity transit improvement to address increased demand for travel by connecting the project corridor with the LRT Starter Line eastern terminus at Main Street/Sycamore.

Several major attractions are located in the City. In addition, other attractions of regional magnitude are in varying stages of development throughout the City. These will provide significant employment, commercial, entertainment and retail resources, and are expected to generate even greater demand for travel and access, both within the City limits and between the City and regionally significant areas west and northwest of the City, such as the City of Tempe, the Phoenix Central Business District (CBD)/Washington Corridor, and the Spectrum Mall vicinity.

Alternatives

Central Phoenix/East Valley Light Rail LPA: The 2002 Final EIS for the Central Phoenix/East Valley Light Rail Transit Project (the LRT Starter Line that is currently under construction and scheduled to open in December 2008) identified four LRT alignment options that were outside the Build Alternative project studied in that Final EIS. These options extended from the eastern terminus of the LRT Starter Line and continued into the Mesa Town Center. All options used either Main Street 1st Avenue, 1st Street, or some combination thereof. Recent growth in the vicinity of Mesa Drive has narrowed opportunities for adequate park-and-ride facilities in that area; therefore, it is suggested that park-and-ride facilities be located further east near Horne where a park-and-ride facility could be provided.

BRT Alternative: The City of Mesa recently conducted a study to evaluate new and improved bus rapid transit (BRT) in the study area. The study recommended a phased BRT project that would initially connect the eastern terminus of the LRT Starter Line to Superstition Springs Mall via Main Street and Power Road, a total of 13 miles. Phase 1 of the BRT project is scheduled to coincide with the opening of the LRT Starter Line in 2008. Future operating and service characteristics for the BRT project are subject to change pending the results of the AA/EIS and public and agency input. In addition, the 2002 Final EIS showed the LRT extension options to Mesa Town Center terminating just west of Mesa Drive.

Other AA Alternatives: At a minimum, the alternatives to be considered include the following:

- No-Build—implements a modified existing and committed road and transit improvements as defined by the Regional Transportation Plan and coordinated with the City of Mesa. The No-Build includes the Mesa BRT project on Main Street scheduled for operation in December 2008.
- Transportation System Management (TSM)—includes reasonable cost-effective transit service improvements short of a major capital investment in fixed guideway. The TSM implements all of the projects in the No-Build Alternative.
- Bus Rapid Transit—includes projects defined in the No-Build Alternative and programmed bus service expansion. BRT options under consideration extend at-grade from the LRT Starter Line to Superstition Springs Mall and include:
- BRT via Main Street and Power Road.
- BRT via Main Street, Mesa Drive, and Southern Avenue.
- BRT via Main Street, Gilbert Road, and Southern Avenue).
- BRT in the Mesa Town Center include:
  - Main Street through downtown Mesa.
  - Main Street to 1st Street Loop in downtown Mesa.
  - Main Street to 1st Street double fixed guideway in downtown Mesa.
- Light Rail Transit—includes projects included in the No-Build Alternative plus consideration of a LRT extension from the CP/EV end of line station at Sycamore to the Mesa Town Center at Horne Avenue. LRT suboptions in the Mesa Town center include:
  - Main Street through downtown Mesa.
  - Main Street to 1st Street diversion in downtown Mesa.
  - Main Street to 1st Avenue diversion in downtown Mesa.
  - Main Street to 1st Street/1st Avenue couplet in downtown Mesa.
  - A supporting bus component would include BRT service connecting the LRT terminus at approximately Horne and would extend to Superstition Springs Mall.

These alternatives will be developed further during preparation of the AA/EIS. Additional reasonable Build Alternatives suggested during the scoping process that meet the purpose and need for the project may also be considered.

The EIS Process and the Role of Participating Agencies and the Public

The purpose of the NEPA process is to explore, in a public setting, the effects of the proposed project and its alternatives on the physical, human, and natural environment. The FTA and METRO will evaluate all significant

environmental, social and economic impacts of the construction and operation of the proposed project. Impact areas to be addressed include: Land use; development potential; secondary development; land acquisition and displacements and relocations; cultural resources (including impacts on historical and archaeological resources); parklands and recreation areas; visual and aesthetic qualities; air quality; noise and vibration; ecosystems (including threatened and endangered species); energy use; business and neighborhood disruptions; environmental justice; changes in traffic and pedestrian circulation and congestion; and changes in transit service and patronage. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified and evaluated.

The methodology for evaluation of impacts will focus on the areas of investigation mentioned above. As the public involvement and agency consultation process proceeds, additional evaluation criteria and impact assessment measures will be included in the analysis. Potential alternatives will be developed to a conceptual level, and will be screened and ranked against these evaluation criteria and local community considerations. Travel time savings, potential for congestion reduction and improved mobility options for City of Mesa residents will be assessed for the transportation alternatives considered. The public involvement program and agency coordination plan discussed below will provide the vehicle through which these evaluation analyses will be conducted.

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and METRO do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become ''participating agencies''; (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in and comment on the environmental review process.

An invitation to become a participating agency, with the scoping information packet appended, will be extended to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project. It is possible that we may not be able to identify all Federal and non-Federal agencies and Indian tribes that may have such an interest. Any Federal or non-Federal agency or Indian tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify, at the earliest opportunity, the person identified above under **ADDRESSES**.

A comprehensive Public Involvement Program will be developed, and a public and agency involvement Coordination Plan will be created. The Public Involvement Program will include a full range of involvement activities. Activities will include outreach to local and county officials and community and civic groups; a public scoping process to define the issues of concern among all parties interested in the project; organizing periodic meetings with various local agencies, organizations and committees; a public hearing on release of the Draft Environmental Impact Statement (DEIS); and development and distribution of project newsletters. There will be additional opportunities to participate in the scoping process in addition to the public meetings announced in this notice. Specific mechanisms for involvement will be detailed in the Public Involvement Program.

Valley Metro Rail, Inc. (METRO) may seek New Starts funding for the proposed project under 49 U.S.C. 5309 and will therefore be subject to New Starts regulations (49 CFR part 611). The New Starts regulation requires a planning Alternatives Analysis that leads to the selection of a locally preferred alternative and the inclusion of the locally preferred alternative as part of the long-range transportation plan adopted by the Maricopa Association of Governments. The New Starts regulation also requires the submission of certain project-justification information in support of a request to initiate preliminary engineering, and this information is normally developed in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the Final EIS.

The AA/EIS will be prepared in accordance with the NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5301(e), 5323(b), and 5324), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), the Section 404(b)(1) guidelines of EPA (40 CFR part 230), the regulation implementing section 106 of the National Historic Preservation Act (36 CFR part 800), the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402), section 4(f) of the Department of Transportation Act (23 CFR 771.135), and Executive Orders 12898 on environmental justice, 11988 on floodplain management and 11990 on wetlands.

Issued on: July 25, 2007.

Leslie T. Rogers,

Regional Administrator, FTA Region IX.

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Federal Register

Friday,
August 3, 2007

Part II

Department of Transportation

Federal Transit Administration

49 CFR Part 611

Major Capital Investment Projects; Proposed Rule

Notice of Availability of Proposed Policy Guidance on Evaluation Measures for New Starts/Small Starts; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

[Docket No. FTA–2006–25737]

RIN 2132–AA81

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) provides interested parties with the opportunity to comment on proposed changes to the Federal Transit Administration's (FTA's) New Starts program and a new proposed Small Starts program category. The new Small Starts program category is a discretionary grant program category for public transportation capital projects that run along a dedicated corridor or a fixed guideway, have a total project cost of less than $250 million, and are seeking less than $75 million in Small Starts program funding. This NPRM addresses comments on the Advanced Notice of Proposed Rulemaking (ANPRM) on Small Starts issued on January 30, 2006 and the draft Guidance on New Starts Policy and Procedures issued on January 19, 2006, and makes proposals for the New Starts and Small Starts programs which take into account these comments. FTA is concurrently issuing policy guidance for comment that describes the factors and measures used in its evaluation process, which are not described in the NPRM.

DATES: Comments must be received by November 1, 2007.

ADDRESSES: *Written Comments:* Submit written comments to the Docket Management System, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590.

Comments. You may submit comments identified by the docket number (FTA–2006–25737) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under **SUPPLEMENTARY INFORMATION.**

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management System (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Ron Fisher, Office of Planning and Environment, telephone (202) 366–4033. FTA is located at 1200 New Jersey Ave., SE., East Building, Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU). Section 3011 of SAFETEA–LU made a number of changes to 49 U.S.C. 5309, which authorizes the Federal Transit Administration's (FTA's) fixed guideway capital investment grant program known as ''New Starts.'' This Notice of Proposed Rulemaking (NPRM) implements those changes and proposes a number of other changes that FTA believes will improve the New Starts program.

In addition to the changes made to the New Starts program, SAFETEA–LU amended 49 U.S.C. 5309 to add a new capital investment program category for projects requesting less than $75 million in Section 5309 Capital Investment funds and having a total project cost of less than $250 million. That new capital investment program, which will be referred to as the ''Small Starts'' program, is the other subject of this NPRM. Based on comments received on this NPRM, FTA plans to issue a final rule in the future that will finalize the proposed changes to the existing New Starts program, as well as proposed rules for the Small Starts program.

This NPRM is the culmination of two public involvement initiatives for the New Starts and Small Starts programs—the Small Starts Advance Notice of Proposed Rulemaking (ANPRM) (71 FR 4864, Jan. 30, 2006) and the Guidance on New Starts Policies and Procedures (Notice of availability and request for comments, 71 FR 3149, Jan. 19, 2006). These separate pre-rule public involvement processes are being consolidated into this one rulemaking so that issues of overlap and coordination between these two aspects of FTA's discretionary capital investment program may be addressed. This NPRM closes the dockets for both of these pre-rule activities and creates a new docket for comments on the NPRM.

FTA provided further opportunity for public involvement by holding a number of listening sessions throughout the country. Those listening sessions were held at the following dates and locations:

—San Francisco, CA—February 15–16, 2006, Hyatt Regency San Francisco.
—Ft. Worth, TX—March 1–2, 2006, Radisson Plaza Hotel Fort Worth.
—Washington, DC—March 9–10, 2006, Wardman Park Marriott Hotel.

FTA is planning to conduct similar outreach activities on both this NPRM and the policy guidance that FTA is issuing concurrently. Details on these activities will be announced in a **Federal Register** notice at a later date and on FTA's Web site.

The Response to Comments section of this notice summarizes and responds to comments received on each of the questions raised in the Small Starts ANPRM and the Guidance on New Starts Policies and Procedures. It begins by restating each question, then summarizes the comments received on that question, as well as our response to the comments and concludes with FTA's proposal for addressing those comments in our proposed regulatory language. The Response to Comments portion of the Preamble is broken down by the following subjects: Eligibility, Evaluation and Ratings, and Procedures for Planning and Project Development, first with respect to the Guidance on New Starts Policies and Procedures and then with respect to the APRM on Small Starts and concludes with a section entitled ''Additional Discussion Items for Comment'' where FTA specifically seeks feedback on several new issues that it would like to address in the final rule. The Section-by-Section Analysis in this notice explains our rationale for the

language proposed for the regulation, as well as suggesting alternative proposals to some provisions.

In order to make the regulation more understandable, FTA is proposing to divide it into four subparts that will cover General Provisions, ''New Starts,'' ''Small Starts,'' and ''Very Small Starts.'' Subpart A would include General Provisions that apply to all projects seeking Section 5309 Capital Investment funds. Subpart B would include those provisions that apply to New Starts (projects of $250 million or more in total cost *or* requesting $75 million or more in New Starts funds). Subpart C would cover Small Starts projects (projects of less than $250 million in total cost *and* requesting less than $75 million in Small Starts funds but not qualifying as a Very Small Start). Subpart D would cover Very Small Starts (a subset of Small Starts projects which are less than $50 million in total cost and $3 million per mile (excluding vehicles) and which meet other specified characteristics). FTA has chosen this approach, even though there is a lot of similarity in the requirements of each subpart, in order to assist a project sponsor in finding all of the applicable procedures and evaluation criteria in a single subpart, depending on the size and nature of the proposed project.

II. Response to Comments

The following is a summary of the comments received in response to our questions raised in Part 2 of the Guidance on New Starts Policies and Procedures and in the Small Starts ANPRM, our response to the comments received and our proposal for addressing the issue raised by the questions in the proposed NPRM.

Guidance on New Starts Policies and Procedures

Eligibility

1. How might FTA determine whether a Bus Rapid Transit (BRT) project is a ''fixed guideway'' project?

Comment: Nine comments were received in answer to this question. The range of BRT eligibility requirements suggested in the comments highlights the inherent difficulty in determining whether a BRT project is a ''fixed guideway'' project. Some commenters suggested that eligible BRT projects should operate in an exclusive right-of-way (ROW) or that certain percentages of project length should be in an exclusive ROW. Others stated that eligibility should be based on percentage of length subject to certain features or ''intensity'' of usage, such as ridership or vehicles per unit of time. Finally, some thought that eligibility should be determined on a case-by-case basis.

Response: There is no statutory requirement that a fixed guideway project must operate in its entirety in a separate or exclusive ROW. The varied responses indicate the difficulty in strictly defining the parameters that should apply to BRT when it does not include a fixed guideway for its full length. FTA has previously made eligibility determinations on a case-by-case basis and has allowed eligibility for projects that include a significant fixed guideway portion, *e.g.*, a dedicated busway, but also include some mixed-traffic sections.

Proposal: FTA proposes to define a BRT project as a ''fixed guideway'' if the project operates on a fixed guideway that is dedicated to transit or high occupancy vehicle use for at least 50 percent of its length during the peak period, or when congestion inhibits transit system performance. In making this determination it is not necessary that the 50 percent of its length be contiguous as long as the 50 percent that is dedicated is designed to provide significant travel times savings.

In addition, for the purposes of funding design and construction of New Starts and Small Starts, FTA proposes to revise the definition of a ''fixed guideway'' to include projects meeting certain other conditions. FTA is asking for specific comment, under a section entitled ''Additional Discussion Items for Comment'' on this revised definition that would include a transportation facility that, by means of pricing and other enhancements, replicates the benefits of ''free-flow'' conditions for transit users historically achieved by a physically separated right-of-way available solely for transit and high-occupancy vehicles. To make such projects eligible for New Starts or Small Starts funding, FTA proposes to incorporate into the regulatory definition of ''fixed guideway system'' a provision that deems such a facility, subject to certain limitations, to be ''a separate right-of-way reserved for the exclusive use of public transportation.'' The operation of the new provision would be limited strictly to defining eligibility for discretionary funding under New Starts (49 U.S.C. 5309(d)) and Small Starts (49 U.S.C. 5309(e)), and would not alter the definition of ''fixed guideway mile'' for purposes of calculating the distribution of funds under formula programs administered by FTA.

The practical effect of amending the definition of ''fixed guideway'' in this way is that it would allow FTA to fund a portion of the construction of high occupancy toll (HOT) lanes, on which transit vehicles would run, with money from the Section 5309 Capital Investment program. This has the advantage of providing more flexibility to project sponsors with creative ideas for potentially building cost effective transit projects.

Specifically, FTA proposes to revise the definition of ''fixed guideway system'' to include the following clause at the end of the definition:

> ''Additionally, a transportation facility shall be deemed a fixed guideway system solely for the purposes of funding eligibility under New Starts (49 U.S.C. 5309(3) if the project is designed so that in any given month (i) transit vehicles utilize the transportation facility on a barrier-separated right-of-way; and (ii) by means of tolling or other enhancements, 95 percent of the transit vehicles using the facility will be able to maintain an average speed of not less than 5 miles per hour below the posted speed limit for the time they are on the facility.''

In applying this definition FTA intends to limit the amount of New Starts and Small Starts funds that can be used for constructing the facility to that portion which benefits transit. FTA could calculate the ''total project cost'' of a fixed guideway made eligible under this proviso as follows: (i) The total project cost of the fixed guideway in its entirety, multiplied by (ii) a ratio, (a) the numerator of which would be the expected peak transit vehicle-miles traveled on the fixed guideway and (b) the denominator of which would be the expected total peak vehicle-miles traveled on the fixed guideway. The product of the calculation would be deemed the total project cost attributable to a transit project eligible for funding under New Starts or Small Starts. Eligible fixed guideway costs, in other words, would be proportionate to the transit use of the facility. Alternatively, FTA and the applicant may designate a mutually agreeable amount as the total project cost. In either case, the Federal share, if any, contributed toward such project costs would be made available subject to full compliance with the standard rating criteria for New Starts (or Small Starts) projects, as provided by applicable statutes, regulations, and FTA guidance.

2. Should FTA fund HOV projects to the degree that they provide benefits to public transit riders?

Comment: Sixteen comments were received in answer to this question. Responses to this issue were equally mixed, with similar numbers of commenters supporting and opposing the concept. Those who favored support for HOV projects cited minimum service

levels and ridership as necessary conditions. Those opposed were concerned that the already limited FTA funding for New Starts projects would be further reduced by those funds being diverted to projects traditionally funded by the FHWA.

Response and Proposal: FTA has not participated in HOV projects through the New Starts program for the last decade and FTA does not propose to change that policy. However, as stated in the response above, FTA is considering revising the definition of a fixed guideway system, to allow for funding a portion of a new HOT facility that meets certain conditions.

Project Evaluation and Ratings

3. How might the New Starts evaluation framework be changed to better support informed decision-making? Is there a preference for Option 1, Option 2, or something different?

Note: Option 1 was described as an extension of the current framework with the two new criteria in SAFETEA–LU, economic development and reliability of the forecast of costs and ridership, added to the project justification criteria currently used. The project justification rating would result from weights applied to the ratings for each of the component criteria. The project justification rating described in Option 2 relied on ratings of the problem or opportunity that the New Start was intended to address, the effectiveness of the project as a response, and the project's cost effectiveness. The rating for effectiveness would be based on ratings for mobility for all users, mobility for transit dependents, environmental benefits, and economic development. The rating for reliability would be used to raise or lower ratings for project justification and local financial commitment.

Comment: Seventeen comments were received in answer to this question. Of those commenters who chose between Options 1 and 2, the majority favored the Option 2 framework, stating that it allows FTA to more fully understand and appreciate the merits of a particular project. However, these commenters suggested some slight modifications to Option 2, specifically with regard to the treatment of land use. The commenters stated that the treatment of land use solely as a risk/uncertainty measure rather than as a benefit measure under project effectiveness is inconsistent with the intent of SAFETEA–LU.

Those commenters favoring Option 1 stated that it has the benefit of continuity and keeps the rating process stable for project sponsors. One of these commenters wrote that because Option 2 involves the simultaneous introduction of numerous complex factors and includes subjective appraisals by FTA or its contractors for some of the proposed measures, it is less desirable than Option 1. Several of the commenters favoring Option 1 stated that Option 2 overemphasized the role of reliability in the evaluation of projects relative to what was intended by SAFETEA–LU.

A number of commenters suggested that neither Option 1 nor Option 2 is preferred, but rather a new framework should be developed in consultation with the transit industry. However, few commenters provided specifics on how the framework could be structured. Most stated that analytical perfection should not be the goal, and that an overemphasis on quantification of measures misses the need for judgment about some factors that are important yet inherently subjective. One commenter suggested a point system be developed, similar to the one proposed in the Transit Cooperative Research Program Quick Response Project J–06 on the Small Starts program.

Response: FTA has striven to make its evaluations understandable, consistent, and fair, and has emphasized that quantifiable measures best achieve these goals. Nevertheless, qualitative measures have been used when sufficient quantitative measures cannot be identified. Each option relies on a combination of quantitative and qualitative measures.

Given the myriad of benefits associated with New Starts projects, it is difficult to create a New Starts evaluation process to effectively capture all of them. Further, it is not necessary to evaluate all the benefits in order to distinguish the merits of projects. Option 2 allows for a more complete organization of the key project evaluation factors that address different perspectives of a project's merits. These include the nature of the problem/opportunity in the area where the project has been proposed, the project's effectiveness as a response, the degree to which the project generates benefits commensurate with its costs (cost effectiveness), the strength of the local financial commitment, and the uncertainty in the evaluation measures. This organization facilitates a more coherent description of the worthiness of a project for New Starts funding in language that is more understandable to decision makers. In addition, SAFETEA–LU emphasizes the need for more reliable ridership and cost information, adding ''the reliability of forecasting methods'' as a new evaluation consideration, codifying the ''before and after'' study requirement, and requiring FTA to produce an annual report on contractor performance in the development of ridership forecasts and cost estimates. Option 2 responds to SAFETEA–LU by directly incorporating an evaluation of the reliability of the forecasts when FTA evaluates and rates proposed projects.

Proposal: FTA proposes to advance the framework described in Option 2 into the NPRM with one exception that is discussed more fully in the next set of questions. Instead of the nature of the problem or opportunity being evaluated as one of the primary factors of project justification, along with effectiveness and cost effectiveness, FTA proposes that it will be rated and evaluated under ''other factors''. The effect of this change is that the ''nature of the problem/opportunity'' rather than being included as a separate factor, will be considered as an ''other'' factor that can either raise or lower the overall rating for project justification.

4. In what ways could FTA improve the evaluation process to highlight the ''case'' for a proposed New Starts project rather than focus on numerical ratings?

5. Are there any other measures that might indicate and characterize the nature and extent of the problem or opportunity addressed by a proposed New Starts project?

6. How should FTA evaluate or rate projects that address significant transportation problems compared to projects that take advantage of opportunities to improve service?

Comment: Question 4 received 4 comments, question 5 received 7 comments, and question 6 received 6 comments. Questions 4, 5, and 6 addressed FTA's proposal to include in the evaluation of project merit an examination of the nature or extent of the problem or opportunity in a corridor. FTA suggested some measures that might be used to quantify the problem or opportunity in the corridor, including current bus travel speeds, current highway speeds, vacancy rates, value of land, and others.

The majority of commenters wrote that each project may have unique strengths or may be structured to meet specific local objectives. Rather than FTA dictating standard measures that might indicate and characterize the nature and extent of the problem or opportunity, these commenters felt that each sponsoring agency should be left to define the specific measures appropriate to their project. A few commenters provided specific suggestions for measures that might be included in defining the problem or opportunity such as congestion/crowding relief and maintenance of existing mode share.

The majority of commenters were opposed to giving more weight to projects that seek to address

demonstrated transportation problems than those projects that take advantage of opportunities.

Response: At the heart of any planning, environmental, or transportation study is an adequate description of the nature and magnitude of the needs that are driving consideration of projects that could require significant funding and/or have significant impacts on the communities in which they are built. Because of the diversity of regional conditions in which New Starts projects are implemented, local areas are in the best position to describe the nature of the needs that a project is intended to address. It is undeniable that projects that address problems that are already severe have more benefits over the long term than those that address problems that are less severe now, but which are forecast to be worse over time. However, the New Starts process, which measures project benefits for forecast periods that are 20 to 25 years into the future, based on annualized costs and benefits, does not account for the year in which the benefits occur. The conventional approach that properly accounts for costs and benefits over time would be to determine them for each year into the future and perform a net present worth computation to today. However, to account for each year of project costs and benefits would pose a significant burden on project sponsors due to the considerable effort required for interim year forecasts of travel and transit system capital and operating and maintenance costs. Therefore, projects designed to take advantage of an opportunity to improve transportation and economic development, while serving areas that have less severe transportation problems compared to what is predicted in the future, are currently advantaged in the New Starts evaluation process compared to areas with current severe problems. Consideration of higher ratings for projects with severe problems currently can reduce this unfair advantage.

Proposal: FTA proposes to use the current ''make the case'' document under ''other factors'' as the basis for evaluating the severity of the transportation or economic development problem that the New Starts project is to address. This document is currently part of the evaluative information that FTA requests of sponsors of New Starts projects. While FTA will not dictate specific measures to describe the nature and extent of the problem or opportunity addressed by the proposed New Start project, it will consider the nature of the problem and opportunity in the overall project justification rating. While actual rating measures will be described in policy guidance, one way to do this is to use a three-tiered rating with the highest rating given to projects with severe transportation or economic problems; the next highest rating to projects with less severe transportation or economic problems; and the lowest rating for projects which are opportunities to improve transportation or economic development. Projects in areas with demonstrable existing problems will be rated more highly than projects in areas where problems are only predicted to develop over the next 20 to 25 years, all else being equal. As congestion is one of the Nation's most daunting transportation challenges, one measure that FTA intends to consider under ''other factors'' is the degree to which a project is a part of an effective congestion reduction strategy. FTA will evaluate projects that are a principal element of an effective congestion reduction strategy, in general and a pricing strategy, in particular, more highly. FTA seeks comment on how it might better measure congestion in the future.

FTA will also consider as an ''other factor'' any benefit of the project not covered under the project justification criteria or other factors that the Secretary determines to be appropriate to carry out the evaluation. The rating for ''other factors'' will be compared to the combined rating for effectiveness and cost effectiveness and can be used to raise or lower the overall project justification rating.

7. Is there a preference for analyzing regional economic benefits or station area economic development benefits? Could FTA utilize both perspectives in evaluating expected economic development impacts?

8. How might FTA evaluate economic development and land use as distinct and separate measures?

9. Are there any additional methods available to predict economic development impacts? If so, how might these other measures be used to evaluate proposed New Starts projects?

Comment: Question 7 received 7 comments, question 8 received 11 comments, and question 9 received 16 comments. Four commenters expressed a preference for analyzing station area economic development benefits rather than regional economic development benefits. Reasons given for the preference included agreement with FTA's stated opinion that projections of regional benefits would be time-consuming and expensive and that a project's influence on a regional basis would be greatly diluted by other regional economic factors.

Three commenters supported an evaluation of both regional and station area economic impacts. One of these commenters stated that regional forecast models tend to be more reliable than those for smaller station areas.

Commenters generally supported the evaluation of both land use and economic development as distinct and separate measures, though few comments articulated a clear difference between these two measures. Many comments characterized economic development and land use factors interchangeably or stated that land use factors were a component or indicator of economic development potential. One industry association supported characterizing land use impacts as ''buildings and density'' while economic development would be characterized as ''jobs and sales.''

As a means of predicting economic development impacts, several commenters suggested that FTA focus on existing developer agreements and partnerships and the existence of local development incentives.

Response: FTA agrees that both station area economic development and regional economic impacts are useful and valid measures of project benefits. At the current time, however, the analytical tools used to develop regional economic analyses appear to be overly costly and burdensome to impose on every project sponsor. FTA intends to continue research efforts and case studies of both the station area impacts and regional economic impacts to develop tools that can be applied to measure the economic development impacts of New Starts projects. The regulation is structured to allow new measures to be added through policy guidance, following public review and comment.

Whether for land use or economic development, a common theme of the majority of respondent suggestions was to use indicators of the likelihood of increased development in areas near projects. Past research confirms that this increased development is not added to the region but that the effect of transit investments is to attract development around stations that would locate elsewhere if not for the project, in effect redistributing development within a region. Existing land use conditions, existing and planned transit-oriented plans and policies, and projections of increases in employment and revenues are all factors that help to determine whether or not a transit project is likely to have an impact on development. Indeed, it is not possible to ascertain the

likelihood of a project's effect on surrounding development unless a number of factors relating to both land use and economic development are considered in combination. Land use considerations provide information about the potential for development or redevelopment and whether that development can occur in a transit-oriented way. Although these are necessary conditions, they are not in themselves sufficient to ensure that the proposed project spurs development, as the local development climate must be robust enough to provide the engine needed for development; the project must be perceived as permanent to entice developer interest; and the project must increase accessibility to the area. Because all these factors must be viewed in combination, it is critical that land use and economic evaluation criteria be combined into a single criterion.

Proposal: Until additional research is completed, FTA proposes to implement an evaluation measure for land use and economic development impacts that focuses on the potential for station-area development impacts of the proposed projects. The best available measures of likely land use and economic development benefits can be derived from the circumstances in which the projects would be implemented rather than from actual forecasts of development. This approach is necessary because forecasts of additional development due to New Starts projects require considerable resources and contain considerable uncertainty.

FTA proposes to use a single criterion to ascertain the likelihood of increased transit-oriented development resulting from a New Starts project. Given the important role that land use plays in increasing development, in developing specific measures for this criterion, FTA will draw upon many of the same factors used in its current evaluation of land use. These will be augmented with indicators that provide further incentives to development. A survey of available research on the development impacts of transit suggests two primary transit-related drivers of development (1) increased accessibility and (2) permanence of the transit investment. While the actual FTA proposes to evaluate whether or not the conditions necessary to support economic development exist in the project corridor by using the following specific measures: (1) Current land-use conditions, (2) development and land-use plans and policies, (3) the economic development climate in the corridor and region, (4) the project-related change in transit accessibility for developable areas in the corridor; and (5) the economic lifespan of new transit facilities proximate to those developable areas. FTA seeks comment on how it might better measure land use/economic development in the future.

10. Are there any other measures of mobility benefits that could be used to evaluate New Starts projects?

Comment: Ten comments were received in answer to this question. Commenters suggested that FTA should examine ways to better capture the following in the mobility benefits measure: benefits to highway users; benefits resulting from special events trips; benefits resulting from non-home-based trips; and benefits generated by automobile trips not taken due to enhanced pedestrian activity in the corridor.

Response: FTA is committed to incorporating highway benefits into its mobility and cost effectiveness rating in every way feasible. In fact, the ''SUMMIT'' software used by FTA to calculate user benefits already has the ability to capture benefits to all transportation system users (including highway users). Further, the definition of user benefits included in the current regulation includes benefits to highway users. However, this function of the SUMMIT software cannot currently be used because FTA has found that most travel models around the country do not accurately predict changes in highway speeds resulting from transit improvements. This is a problem with travel models nationally. FTA does not have the resources on its own to correct the deficiencies but is working with the Federal Highway Administration to address this issue. The rule is structured in a way that once reliable forecasts of such benefits can be produced, they can easily be incorporated into the measures of mobility and cost effectiveness through the policy guidance. In addition, FTA proposes to adopt other measures on a temporary basis that would provide an indication of the congestion relief benefits to highway users. Such measures would be based on measures of current congestion in the project corridor. FTA seeks comment on how it might better measure congestion in the future.

Likewise, the SUMMIT software used by FTA already captures the benefits resulting from non-home based trips to the extent they are accurately estimated in the local travel model. Typically, few areas of the country have good data on the non-home-based trip market, which affects the ability of the local model to develop accurate forecasts. If a local area is willing to put resources into a data collection effort to improve the forecasts for this market, the Summit software used by FTA to calculate user benefits will automatically capture any additional benefits that may accrue.

FTA has always worked individually with various project sponsors to better capture the benefits resulting from special events markets. Local travel models are not generally structured to capture ridership/benefits for this market. Consequently, FTA has helped project sponsors in the past to include ''off-model'' calculations to capture these benefits and will continue to do so in the future.

FTA acknowledges the value of the trip not taken in terms of reducing congestion but has not yet been able to develop methodologies capable of making reliable estimates of this benefit.

Proposal: FTA is proposing to adopt a definition of user benefits that explicitly includes congestion relief benefits to highway users and pedestrians. FTA is supporting the Office of the Secretary of Transportation and the Federal Highway Administration to improve travel forecasts so that the transportation system user benefits to highway users can be calculated reliably and be included in the cost effectiveness calculation. The Department of Transportation expects to release a Request for Proposals/Work Statement for model improvements in Fall 2007. In the interim, as discussed below under item 4 of ''Additional Discussion Items for Comment,'' FTA will explore the use of surrogate measures which can assess the degree to which a proposed New Start results in congestion relief. These measures could include the current level of service, delay compared to free flow speed, or the average daily VMT on any highway facility in the project corridor.

Absent any specific suggestions for other measures of mobility benefits, FTA will use its policy guidance to set specific measures for mobility. Two measures that FTA considers to have merit are user benefits per passenger mile for those using the New Starts project, and the absolute number of passengers using the project. The first would measure the magnitude of the user benefits for each traveler and whether the savings are significant, while the second would measure the number of travelers affected.

11. Does the proposed (low-income mobility) measure entail implementation difficulties for measurement, reporting, or comparison between projects?

12. Are there any other measures that FTA should consider when evaluating

the benefits that accrue to transit dependent populations?

Comment: Question 11 received 3 comments and question 12 received 6 comments. In the Guidance on New Starts Policies and Procedures, FTA proposed using a new measure for determining mobility for transit dependents—the share of user benefits accruing to passengers in the lowest income stratum or to the lowest auto ownership stratum (depending on which is used in the local travel model) compared to the regional share of the lowest income stratum or lowest auto ownership stratum. All commenters to Question 11 noted that the proposed measure may result in some inconsistencies among projects because of this difference in how local models stratify trip takers. An additional comment noted that in densely developed urban areas, transit dependency does not correlate with either income or car ownership.

The comments included the following suggested alternative populations to include when calculating the benefits to transit dependent populations, but did not identify a specific way to measure the benefits to these populations: Elderly persons, persons with disabilities, and university students. One commenter suggested that FTA should include in the measure how well the overall transit system serves job centers, but there was no specific discussion of how this might be measured.

Response: FTA acknowledges that examining the benefits that accrue to the lowest income stratum or the lowest auto ownership stratum from the local travel forecasting models is only a surrogate for determining the benefits to transit dependents. But this information is already available from all local travel models and does not require development of additional data by project sponsors. Furthermore, since the measurement relies on the change in service for that stratum in a given city, it is not necessary for every city to use the same stratum in order for the measure to allow for comparisons between cities.

FTA believes that whatever measure is used, it should have a way of identifying how the project serves transit dependents rather than simply characterizing the project corridor demographics. Unfortunately, local travel models do not usually stratify trips by some of the suggested categories—elderly persons, persons with disabilities, and university students. Consequently, the benefits accruing to these populations cannot be calculated.

Proposal: The regulation simply states that FTA will measure Mobility Benefits. The actual measures will be listed in policy guidance. One approach that FTA is considering is to utilize the share of user benefits accruing to passengers in the lowest income stratum or to the lowest auto ownership stratum (depending on which is used in the local travel model) compared to the regional share of the lowest income stratum or lowest auto ownership stratum for the region for evaluating mobility for transit dependents.

13. How could FTA improve the current method of evaluating environmental benefits to produce a more useful measure?

Comment: Three comments were received in answer to this question. FTA currently measures environmental benefits from proposed New Starts projects by examining the projected change in regional vehicle miles traveled (VMT), various types of vehicle emissions, and energy consumption. All comments received indicated support for continuing the current measures given that other replacement measures are not readily available. One commenter expressed concern that the current measures are biased in favor of projects that help reduce highway congestion and against those projects that help relieve transit congestion. Since a project that is meant to reduce existing congestion on a transit system does not reduce VMT, no environmental benefits would be shown under the current method. The commenter stated that the rating process should make accommodations for this situation, but acknowledged that no other measures of environmental benefits are readily available to address this problem.

Response: The current measure is limited to capturing reduced emissions, projecting the change in VMT and energy consumption as a result of automobiles being taken off the road when travelers use transit instead of driving. However, even in that case, the change is usually very small compared to emissions region wide, limiting the usefulness of the measure.

Proposal: FTA proposes to continue to evaluate environmental impacts, with the actual measures identified in policy guidance. FTA is currently conducting research to try to develop other measures that better distinguish the environmental merits of projects.

14. Should FTA rely on the cost effectiveness evaluation to address the operating efficiency criterion?

15. If not, in what way could agency operating cost information be used to compare New Starts projects to each other?

Comment: Question 14 received 6 comments and question 15 received 11 comments. Four comments received were in favor of eliminating the operating efficiency criterion because of the inability of the measure to distinguish in a meaningful way between projects. However, two commenters disagreed with the proposal, stating that operating efficiency can be a significant factor in comparing a single new rail line with the transit system as a whole.

Response: In the past, FTA has used the projected system-wide change in operating cost per passenger mile to measure the impact of proposed New Starts projects on operating efficiency. However, this measure has not proven to be a meaningful way of distinguishing among proposed projects. On the other hand, FTA's evaluation of cost effectiveness has always included the annual system-wide operating and maintenance expense as a component of annualized cost. Therefore, the impact of the project on operating and maintenance costs is already captured in the calculation of cost effectiveness.

Proposal: FTA proposes to remove the operating efficiency factor as a separate evaluation criterion, relying instead on the evaluation of cost effectiveness to address this statutory criterion. Project sponsors may still calculate operating efficiency if they find it useful for their own comparisons.

16. Is it desirable for FTA to attempt to incorporate other measures of effectiveness besides mobility when evaluating cost effectiveness?

17. If so, what measures might be incorporated and how?

18. How could FTA combine transportation system user benefits measures with economic development measures into a valid measure of cost effectiveness?

Comment: Question 16 received 2 comments, question 17 received 1 comment, and question 18 received 8 comments. For all three of the questions, comments received were opposed to incorporating other measures of effectiveness in the evaluation of cost effectiveness. Reasons for the opposition included the potential for ''double-counting'' benefits and the increased complexity that would result from adding other measures.

Response: FTA sees value in acknowledging additional benefits of transit projects when comparing benefits to costs. There are two major components of these additional benefits that are distinct from those currently calculated: Travel time saved by users of the highway system who experience less

congestion as a result of fewer vehicles on the highway; and transportation benefits from more compact development patterns. For the first, FTA has discovered that current highway assignment models do not reliably predict the reductions in travel time for highway users. Research and development of improved travel models are needed to ensure that highway travel time benefits are reliable. For the second, additional development would have to be forecast with and without the New Starts project and travel models employed to ascertain the user benefits that result. The analytical analysis required to accomplish this is beyond the capabilities of the current demand forecasting models in virtually every urban area in the nation. As a result, at this time there is no analytical approach that can be implemented to determine the additional economic development benefits that should be added to those currently predicted for travel time savings. However, FTA has identified a surrogate for including economic benefits to the travel time savings calculation. The breakpoint for cost effectiveness already includes an assumption that the non-transportation benefits, including economic development, are approximately equal to the value of the travel time savings for a project. Therefore every city is given the same credit for other benefits.

Proposal: Because of the difficulty of incorporating additional measures into its evaluation of project cost effectiveness, FTA is proposing to maintain its current cost effectiveness measure of annualized cost per hour of user benefits at this time.

19. Are there any ways that FTA could improve the evaluation of financial capability?

Comment: Five comments were received in response to this question. Two comments were received with specific suggestions for improvements or changes to the financial evaluation process. The first comment stated FTA should consider the degree to which private sector resources are leveraged to assist with project financing (public-private initiatives) as well as the degree to which synergies between Federal funding sources are leveraged to build and operate the project. The second comment stated that FTA should consider a broader set of indicators to rate the current capital condition of an agency rather than just the average age of the fleet and the agency's bond ratings. The commenter stated that capital condition should be evaluated in the context of the project sponsor's full fleet management plan, including replacement cycles, miles between breakdowns, and budgeted purchases.

Three additional comments concerned with the current evaluation methodology were received, but the commenters did not suggest ways to improve the evaluation methodology. Other points noted in the five comments indicated the policy guidance was not clear with regards to who will assess financial capability. One commenter stated that the current process examines the reliability of capital, operating, and maintenance cost estimates under both the project justification evaluation and the financial capability evaluation and requested more detail from FTA on exactly how financial capability is currently evaluated. Lastly, one commenter stated that the requirements for operating and maintenance plans are more detailed than necessary for systems with a long history of consistent performance.

Response: Although not specifically accounted for in the financial capability evaluation process, FTA does consider the degree to which private sector resources are utilized to assist with project financing when making funding recommendations. In addition, FTA has recently initiated the Public Private Partnership Pilot Program outlined in SAFETEA–LU as a means to distinguish projects that are supported by private sector resources.

Section 3011(c) of SAFETEA–LU authorizes the Secretary of Transportation to establish and implement the Pilot Program to demonstrate the advantages and disadvantages of public-private partnerships (PPPs) for certain new fixed guideway capital projects. In particular, the Pilot Program is intended to study whether, in comparison to conventional procurements, innovative contracting arrangements, known as PPPs, better reduce and allocate risks associated with new construction of such projects, accelerate their delivery, enhance their operating performance once they are constructed and improve the reliability of projections of project costs and benefits. This Pilot Program will evaluate this view as applied to the procurement and operation of eligible projects, which may include projects funded under the Section 5309 Capital Investment program.

On March 22, 2006, FTA issued a notice in the **Federal Register** (71 FR 14568), soliciting comments and requesting preliminary expressions of interest in sponsoring a project under the Pilot Program. Five potential project sponsors submitted expressions of interest. On January 19, 2007, FTA issued a notice in the **Federal Register** (72 FR 2583) establishing the Pilot Program's operating criteria and soliciting formal applications.

FTA believes that the process of establishing Public-Private Partnerships, which include innovative arrangements for operating New Starts projects, can result in contractual arrangements that can reduce and/or improve the reliability of forecasts of operating costs on New Starts systems. Arrangements under which private sector interests take responsibility for the design, construction, operations, finance, and maintenance of projects can result in transferring much of the long term risk of project capital and operating costs to the private partner. Alternatively, the process of procuring such arrangements can identify changes that can produce significant improvements in the efficiency of publicly provided services through innovative contractual arrangements. As a result, projects which utilize such approaches are likely to be rated better, because operating costs will be lower (producing better ratings of cost effectiveness), and the reliability of the estimates of such costs will be higher (producing higher ratings of reliability). FTA asks for specific comments on this approach under question 5 under the section ''Additional Discussion Items for Comment.''

FTA has tried whenever possible to base the financial ratings on readily available information that all project sponsors consistently calculate and report. Of the additional items mentioned by one commenter for inclusion in the capital condition subfactor rating, FTA believes that two—replacement cycles and budgeted purchases—are already captured in the average fleet age calculation. Clearly the average fleet age will change from year to year as replacement vehicles are purchased and older vehicles retired. This is true for all grantees. The other item mentioned by the commenter—miles between breakdowns—is not always routinely prepared by all transit agencies or prepared with a consistent methodology. For example, different operators may classify breakdowns in a different way. Therefore, FTA feels this would not be a good measure to use. FTA believes the existing measures for capital condition are fair, easily reported, and consistently applied to all grantees.

In response to the comment that more detail is needed from FTA on exactly how financial capability is evaluated, FTA would like to point out that each year as part of the New Starts Reporting Instructions and again as an appendix to the Annual Report on New Starts, FTA

includes a detailed description of the entire rating process, including a discussion of the financial capability evaluation and rating process. Included in this appendix are two matrices that outline specifically what is required in the financial plan to receive each level of rating (from low to high) for each and every financial subfactor used in the evaluation. In addition, FTA has posted on its Web site the guidance that it provides to its financial contractors who help develop the financial capability ratings. This provides the industry with additional insight into exactly how the ratings are determined for those areas of the evaluation that are more subjective than quantitative. FTA feels the process is very well described, standardized, and completely transparent.

Proposal: FTA proposes to keep the current financial capability evaluation and rating process since the requirements were not changed by SAFETEA–LU, the current process has proven to be useful for distinguishing among projects, and the process is thoroughly documented and transparent. However, FTA will continue to issue the specific measures for each factor for review and comment in its policy guidance. In addition, the proposed regulation would provide for an assessment of the degree to which project proposals include innovative contractual arrangements which produce significant reductions in operating expenses, or which improve the reliability of forecasts of operating costs.

20. Should the existing weighting factors used to develop the financial ratings be changed?

Comment: Seven comments were received in answer to this question. Of the comments received, approximately half were in favor of maintaining the existing weights used to develop the financial ratings, and half were opposed, stating that the current weights are awkward, provide little insight, and should be changed. Of those opposed to the existing weighting scheme, one commenter proposed a simple pass/fail approach for evaluating the capital financial plan as well as a much less rigorous review of the operating financial plan. Other comments received concerned retaining the credit given on the New Starts share rating when higher local shares are proposed.

Response: Not only does SAFETEA–LU require FTA to rate projects on both project justification and local financial commitment on a five tier scale from low to high, but also FTA sees merit in showing gradations in financial plan ratings versus employing a simple pass/fail approach, particularly with regard to making tough funding recommendation decisions. A less rigorous evaluation of the operating and maintenance financial plan, as suggested by one commenter, is inconsistent with the requirement added by SAFETEA–LU that FTA must ensure local funding is available to operate, maintain, and re-capitalize the proposed project as well as the rest of the transit system without a reduction in existing services or levels of service. The change in SAFETEA–LU to this criterion was clearly intended to strengthen, not weaken, FTA's review of the operating and maintenance financial plan. FTA believes the current financial capability evaluation methodology meets the requirements of the law.

FTA agrees that project sponsors should be given credit when higher local shares are proposed. FTA proposes to maintain the non-New Starts funding share as one of the financial capability evaluation criterion. FTA proposes to continue the practice of giving project sponsors a higher rating based on a higher non-New Starts share and will set the measures for this in its policy guidance. In addition, FTA may consider the non-New Starts share during the decision to recommend a project for a Full Funding Grant Agreement (FFGA). However, consistent with SAFETEA–LU, FTA will also consider the project sponsor ability to provide only a 20 percent match and will not rate the project's local financial commitment at less than Medium, solely on the basis of a 20 percent match, so long as the project sponsor can demonstrate that the 20 percent match is based on the limited fiscal capacity of State and local governments. In this way, FTA can address the SAFETEA–LU requirement that FTA consider State and local fiscal capacity at the same time that it addresses the SAFETEA–LU requirement that it gives priority to financing projects with a higher-than-required non-New Starts/Small Starts share.

Proposal: The NPRM proposes that the local financial commitment rating consist of equally weighting the ratings of the capital and the operating financial plan.

21. How might the FTA incorporate measures of reliability into project evaluation?

Comment: Four comments were received in answer to this question. All comments received were opposed to incorporating measures of reliability into project evaluation, stating that the New Starts process already includes a number of mechanisms to evaluate the reliability of forecasts so that additional reviews are unnecessary. In addition, one commenter stated that peer projects are difficult, if not impossible, to identify.

Response: Although the New Starts process certainly includes mechanisms intended to improve the quality of forecasts, reliability can vary considerably for a variety of reasons that relate to (1) transit-orientation of existing and future land uses and land-use plans and policies, based on the degree to which project effectiveness depends upon projected changes in future land use patterns and the likelihood of those changes occurring;

(2) Project sponsor experience with implementing previous projects; (3) Industry experience with the proposed project type; (4) The reliability of forecasting methods used to prepare those estimates, as well as the reliability of the information provided to FTA for its evaluation of the project; (5) How the opening year project ridership compares to that estimated for the 20 to 25 year planning horizon; (6) Enhanced reliability of operating cost forecasts due to use of innovative contractual arrangements; and (7) Mitigation actions the project sponsor takes to help improve the reliability of the information submitted in support of a proposed project. For example, travel forecasts made for downtown circulator projects are by their very nature less reliable than those for projects intended to attract a predominately commuter-oriented travel market. This is because travel models have traditionally been better able to predict the travel behavior of commuters, and historically have been poor predictors of travel involving the type of discretionary trips that a downtown circulator is intended to attract. Other travel markets that can be problematic to predict include suburban-to-suburban travel and park-and-ride travel in areas with few existing park-and-ride lots. In addition, capital cost estimates historically have been problematic for tunnels and elevated structures. Moreover, recent construction experience has shown that commodity prices can be volatile and that the bidding environment plays a much larger role in cost estimates compared to the past.

Project sponsors of new transit projects commonly ask for peer reviews to help them assess the quality of their cost and ridership forecasts. While FTA acknowledges that no two projects are identical, drawing on past experience from a similar type of project has proven invaluable to improving the cost and ridership forecasts of the newer project because these projects often have enough features in common to gain

insights that result in improved forecasts.

Proposal: SAFETEA–LU specifically requires FTA to evaluate projects based on the reliability of their forecasts. Furthermore, FTA's experience over the past three decades indicates that there is a considerable range of reliability in forecasts based on the factors discussed above. FTA proposes to consider reliability of the costs and ridership forecasts in its evaluation and to adjust, either upward or downward, the ratings of the individual criteria that rely on these forecasts. The measures for reliability will be identified in policy guidance but are likely to be designed to address the issues addressed above, such as transit-orientation of existing and future land use plans and policies; project sponsor experience with implementing previous projects; industry experience with the proposed project type; the reliability of the forecasting methods; a comparison of the opening year ridership to that estimated for the planning horizon covering no less than 20 years; use of innovative contractual arrangements which improve the reliability of cost estimates; and mitigation actions taken by the project sponsor.

22. How should information on the reliability of forecasts be modified or updated as a proposed project advances through project development?

Comment: Six comments were received in answer to this question. One comment was received stating that FTA and the project sponsor should work to improve reliability of forecasts as projects advance through project development. The remaining respondents addressed the unrelated topic of how and when to solidify funding sources.

Response: FTA agrees that with more detailed information generated as the project progresses through project development the reliability of forecasts should improve over time. However, FTA's experience also shows that even with this updated information, forecasts are by their very nature predictive and that it is only through actual completion of the project that true costs and ridership are known.

Proposal: FTA acknowledges that it is impossible to totally remove uncertainty from any stage of the process. However, the measures prescribed by FTA are written broadly enough to allow FTA to tailor its assessment of reliability to reflect the stage that the project is in. Therefore, FTA will use these measures to assess the reliability of forecasts as a proposed project advances through project development and use the most recent information available in making its assessment of reliability.

23. How should FTA help to ensure that contingencies adequately reflect the uncertainties in project design, prices, and quantities at each stage of project development?

Comment: Three comments were received in response to this question. Four themes or suggestions emerged from the comments that relate to the treatment of uncertainties, project costs, and project contingencies. In the first theme, dealing with project uncertainties, many commenters stated that FTA's project management oversight (PMO) program and risk assessment processes constitute a worthwhile and sufficient approach. In addition, one commenter stressed the value of peer review for cost estimates. Many commenters suggested that uncertainties could be reduced through simplification of FTA's process, specifically through implementation of policies to screen out unworthy projects earlier (i.e., at entry to preliminary engineering (PE)) and to execute FFGAs within six months of final design entry.

A second theme, calling for greater collaboration between project sponsors and FTA, was seen throughout the comments. Collaborative relationships and ''shirt-sleeve'' working sessions were suggested as a way of establishing appropriate contingency amounts after risk assessment, improving project reviews ''through a series of intense partnering sessions,'' achieving greater accountability for project success, and assisting new project sponsors or sponsors with previous difficulties.

The third suggestion was that FTA should use an index other than the GDP deflator to adjust cost effectiveness breakpoints given that supporting studies show that construction costs over the past five years have risen at rates up to17 percent faster than costs reflected in the GDP deflator.

The fourth theme is a corollary to the third and pertains to cost management procedures. Rather than requiring project sponsors to carry extraordinarily large contingencies that may jeopardize a cost effectiveness rating, many commenters suggested an incentive approach to cost control, specifically allowing sponsors to retain remaining funds at construction completion. In addition, commenters stated that project sponsors should be allowed to incur costs, even if they exceed the FFGA amount by more than 5 percent, as long as the project sponsor is responsible for paying for the cost increases out of its own funds. The commenters did feel, however, that FTA should provide New Starts funding flexibility when a project experiences cost increases due to sudden market shifts beyond the project sponsor's control.

Response: Although SAFETEA–LU calls for projects to include adequate contingency funds ''to cover unanticipated cost increases,'' the amount of contingency required depends on the amount and nature of uncertainties. FTA agrees that reducing uncertainties earlier in the process benefits everyone. FTA intends to pursue this through earlier use of its risk assessment and project management oversight programs, as well as peer reviews of cost estimates. The amount of contingency at various points can be guided by industry standard percentages but should be established for a specific project through collaboration between FTA and the project sponsor after reviews have been conducted. FTA will further study the commenters' suggestions regarding early screening of projects, rapid execution of the FFGA, institution of more collaborative processes, the makeup of the cost effectiveness breakpoints, and cost management. Nothing in the proposed regulation would preclude FTA from making changes in these areas through its policy guidance.

Proposal: FTA proposes to add a requirement, taken directly from SAFETEA–LU, as part of the criterion on the stability of capital funding plan that takes into account the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases. FTA will collaborate with project sponsors to ensure that project contingencies are appropriate to the specific uncertainties related to the proposed project and to the level of design. For the purpose of rating a project to address the reliability of the cost estimate, FTA will rely in large part on evaluations by its project management oversight contractors.

24. What weights should FTA apply to each measure?

Comment: Six comments were received in answer to this question. FTA proposed to continue the equal weighting of the local financial commitment and project justification ratings when determining the overall project rating. Of the comments received on this question, there was no clear majority of opinion. One commenter agreed with FTA's equal weighting of local financial commitment and project justification. One commenter stated that local financial commitment and project justification should not be combined to arrive at an overall project rating. This commenter stated that the local financial commitment rating should merely be pass/fail, and that the project

justification rating would prevail for the overall project rating if local financial commitment were found to be worthy of a passing grade. Another commenter suggested an entirely new weighting scheme: 20 percent weight each to mobility improvements, cost effectiveness, and financial capability; 15 percent weight each to land use and economic development; and, 10 percent weight to the remaining measures. The remainder of the comments focused solely on how the project justification rating is derived, stating that cost effectiveness should not be weighted greater than one third of project justification and should not be used as a project veto if it does not meet FTA's specified threshold.

Response: SAFETEA–LU places equal emphasis on project justification (referred to as ''project merit'' in the January 19, 2006 Guidance on News Starts Policies and Procedures) and local financial commitment (referred to as ''financial capability'' in the January 19, 2006 proposed Guidance on New Starts Policies and Procedures). As stated previously, FTA feels there is merit in showing gradations in financial plan ratings (low to high) versus employing a simple pass/fail approach, particularly with regard to making tough funding recommendation decisions. Furthermore, FTA believes that moving to a pass/fail rating approach for financial commitment as suggested by one commenter would diminish its importance relative to project justification, going against the apparent intention of SAFETEA–LU.

Regarding the new weighting scheme proposed by another commenter, FTA has stated previously the general difficultly in measuring economic development benefits and the concern of ''double-counting'' when rating and evaluating economic development versus land use. Consequently, until such time as better measures are developed for these areas, the proposed weighting scheme would be very difficult to implement. With regards to not using a cost effectiveness to veto a project, in the past there has been considerable support by the Administration to establish a minimum standard for a project's cost effectiveness in order for the project to advance through project development.

Proposal: FTA proposes to give equal weight to both project justification and local financial commitment in calculating the project's overall rating. Within the Project Justification rating, cost effectiveness and effectiveness are proposed to be weighted equally at 50 percent. Further, the NPRM proposes that the effectiveness rating be comprised of the following criteria and weights: 40 percent to land use, 40 percent to mobility for the general population, 10 percent to environmental benefits, and 10 percent to transit dependent mobility. Finally, under the proposed regulatory text, a project would not be eligible for a funding recommendation unless it achieves a medium or better rating on cost effectiveness.

25. How can the reliability of forecast measures be used to adjust New Starts project ratings?

Comment: Four comments were received in answer to this question. Three of these comments stated opposition to FTA's proposal to add uncertainty and risk of the forecasts as evaluation criteria or stated that additional guidance and clarification is needed before implementation. The primary reason given for opposing the proposal was that determining the uncertainties in the forecasts would require lengthy reviews that would ultimately add cost to the project. The commenters also stated that the additional analyses would not eliminate risk and uncertainty in the forecasts.

The one commenter supportive of the proposal agreed with FTA's simple strategy for incorporating the uncertainty measures into the ratings process. That is, the uncertainty ratings should be used to decide the outcome for ratings at breakpoint between two ratings.

Response: FTA is not proposing to eliminate risk and uncertainty from forecasts, which is impossible, but for project sponsors to report the nature of the uncertainty as a result of their analysis. This will allow both the project sponsor and FTA to use that information as they make decisions on whether to advance the project.

More explicit representation of uncertainties is required by SAFETEA–LU because reliability of forecasts is now one of the listed criterions for project justification. An explicit representation of uncertainties is also essential if the project sponsor and FTA are to meet other requirements in SAFETEA–LU. For instance, an early discussion of uncertainties is essential if the project sponsor is to understand and explain the reasons that forecasts may change between entry into PE, entry into final design, and after opening the project to revenue operations as required for before/after studies, as well as for FTA to accurately assess contractor performance. An understanding of uncertainties also provides information to FTA as it implements SAFTETEA–LU's cost incentive provision, which allows FTA to provide more New Starts funding if project costs are no more than 110 percent, and ridership no less than 90 percent, of the estimates made when the project was admitted into PE.

Current FTA guidance on capital cost estimation and travel forecasting discusses the role of uncertainty in forecasts and describes how these uncertainties could be reported. However, to ensure that uncertainties are being reported consistently by all grantees, FTA intends to issue more explicit guidance of what factors should be included in this discussion.

Proposal: FTA believes a requirement to adjust ratings based on the reliability of the data should be included to satisfy several SAFETEA–LU requirements. Understanding uncertainty will allow FTA to better recommend funding among projects with similar costs and benefits, but with significant differences in uncertainties. A better understanding of uncertainties will facilitate a better understanding of why costs and ridership vary from predictions so that better approaches to forecasts can be developed for future projects. Additionally, because a major purpose of planning and project development studies is to disclose information for decision-making, a more explicit representation of uncertainties better informs decision-makers by providing richer information about the likelihood of achieving the project benefits and costs. FTA will consider the reliability of operating costs certainties by looking at whether there are any innovative contractual arrangements which produce significant reductions in operating expenses, or which improve the reliability of forecasts of operating costs.

Project Development Procedures

26. Does the proposed requirement to have local endorsement of the financial plan address FTA's desire to enhance the degree of confidence in the likelihood of proposed funding sources to materialize?

27. Do project sponsors foresee any potential problems securing these local endorsements?

Comment: Question 26 received 3 comments and question 27 received 7 comments. FTA proposed a requirement that all proposed sources of funding be specified in the financial plan and that each sponsoring agency provide a letter endorsing the proposed financial strategies and funding amounts. The proposal was meant to increase FTA's confidence level earlier in the project development process (prior to entry into PE) that the project has the support of the proposed funding partners. Almost

all commenters misunderstood the proposal to mean that letters of commitment of local funding would be required earlier in the project development process. As a result, of the 3 comments received in response to this question, only one (an MPO) thought the proposed requirement had merit and would enhance the degree of confidence in the likelihood of funding sources materializing. The MPO also stated that the inability of a project sponsor to get the required endorsement would be most telling. All other commenters stated that requiring letters of endorsement (which they interpreted as letters of commitment) from local agencies on the financial plan early in the project development process was premature. They indicated it would be difficult to get financial commitments from local governments without a corresponding commitment at the same time from FTA. Others stated that FHWA does not require a similar endorsement from State and local governments for highway projects.

Response: The requirement to obtain a letter of endorsement of a financial plan is not intended to be as stringent as having to obtain a firm letter of commitment of funding. FTA believes that this requirement, so clarified, should not be that difficult to address, so long as the project sponsor has worked closely with the proposed funding partners, and these partners have actually developed an understanding of their proposed roles. FTA acknowledges that, as with many of the New Starts requirements, there is not a similar requirement for highway projects. However, the great majority of Federal aid highway projects are funded through FHWA formula grants, and the selection of projects is the prerogative of the States, in cooperation with the metropolitan planning organization designated for the area per 23 U.S.C. 134 (j)(5) and (k)(4), and 49 U.S.C. 5303 (j)(5) and (k)(4); conversely, major transit capital investments are funded through the Section 5309 Capital Investment discretionary program, and projects are selected for funding on a competitive, nationwide basis.

Proposal: FTA is proposing to require letters of endorsement for any non-grantee controlled or non-committed source of funding specified in the financial plan prior to entry into PE and with each annual New Starts submission. In the letter of endorsement, each sponsoring agency would need to give their support to pursuing whatever steps are necessary for them to ultimately commit the proposed financial strategies and funding amounts.

28. Are there any other policies or requirements that could enhance FTA's confidence in the funding plans for proposed New Starts projects?

Comment: Four comments were received in answer to this question. Three comments were received that suggested other policies or requirements FTA might use. Two transit agencies discussed including a timeline for obtaining funding commitments in a project development agreement (PDA). The fourth comment suggested that FTA consider the degree to which the project sponsor has expended funds on the project at its own risk as an indication of the agency's commitment to the project.

Response: FTA agrees that a PDA could be used to lay out timelines for receipt of funding commitments, but this would not provide FTA with any added confidence that the funding would actually materialize. FTA also agrees that the degree to which a project sponsor has expended funds on a project is an indication of the project sponsor's commitment to the project. However, FTA does not agree that this in and of itself reflects local political support from other potential funding partners. Too often, project sponsors have been unable to obtain sufficient local funding from outside sources, even though they have expended a considerable amount of their own resources to undertake alternatives analysis and PE.

Proposal: Lacking any other suggestions, FTA will rely on the requirement that all proposed sources of funding be specified in the financial plan and that each sponsoring agency provide a letter endorsing the proposed financial strategies and funding amounts. Again, such a letter would not constitute a commitment on the part of a proposed funding partner, but only an indication that the funding partner understands and is willing to proceed with further development of its proposed role in funding the project. In addition, FTA would continue to require that funding commitments be provided as the project moves through the process, with 50 percent of the commitments in place as a condition of entry into final design, and 100 percent of the commitments in place prior to execution of a FFGA.

29. In what ways could FTA describe the baseline alternative more clearly?

Comment: Twelve comments were received in answer to this question. Two commenters said the no-build should be the baseline. One commenter stated that the use of a baseline that is different than the no-build puts it in conflict with the National Environmental Policy Act (NEPA). Others stated that it should be the Transportation System Management (TSM) alternative, defined succinctly as the best than can be done without construction of a new fixed guideway, and that it should be identified as such. Other concerns included changes to the baseline late in the project development process and the opinion that too much emphasis is placed on the baseline alternative given that in most circumstances it would not be built.

Response: FTA believes that a properly-defined TSM constitutes an appropriate baseline for the purpose of estimating New Starts project justification criteria and that, because there are only limited circumstances in which the use of a no-build alternative is justified, referring to the baseline by its ''intended'' name—the TSM alternative—makes sense. FTA does not support using the no-build as the baseline because a consistently defined TSM alternative is required to ensure a level playing field when comparing projects across the country. FTA has not required that the TSM alternative be carried forward in NEPA documents when the project sponsor has adequately described its reason in the NEPA document for not carrying the alternative forward for detailed analysis. Both FTA's oversight of the technical work supporting alternatives analyses and the project sponsor's performance of the tests identified in the policy guidance prior to FTA approval of the baseline alternative are intended to obviate the need for review and adjustment of the baseline during subsequent project development stages. The fact that SAFETEA–LU establishes a Small Starts program that provides a source of capital funding for low-cost major transit investments undermines the argument that TSM-level improvements cannot be built. This undercuts the argument that it is not fair to evaluate the merits of a New Start against an ''academic'' TSM, because the TSM is now a viable alternative, which could receive funding through the Small Starts program category.

Proposal: FTA is already in the process of enhancing its guidance on the development of the New Starts baseline alternative. Because FTA is only clarifying, rather than changing, its existing guidance, such clarification can be addressed as technical guidance, without affecting any of the higher-level principles articulated in the existing regulation and carried forward in the NPRM. The guidance will clarify FTA's expectations that the New Starts baseline will be identical to the TSM alternative in all but very rare cases, and will use that terminology to describe the

attributes of the baseline. Since in most cases the baseline will be the TSM alternative, the guidance will describe the process for developing the TSM alternative, the appropriate tests for optimizing the TSM alternative, and the rationale for these tests. The guidance will further provide examples for the development of appropriate TSM alternatives in specific environments.

30. Should there be a way to report project benefits of the proposed New Starts project compared to the no-build alternative outside the cost effectiveness evaluation?

Comment: Two comments were received in answer to this question. Both commenters answered in the affirmative, although neither provided suggestions on how to report benefits.

Response: In response to comments submitted by the transit industry and in recognition of the desire to simplify the New Starts process, the December 2000 New Starts Final Rule eliminated the requirement for an evaluation comparing the New Starts criteria for the build alternative against both the no-build and the TSM alternative. Instead, the regulation promulgated the current requirement that projects be evaluated against a single ''baseline'' alternative, typically the TSM alternative. Permitting an alternative presentation of project benefits (build vs. no-build) would result in additional work for project sponsors and could lead to confusion over the true representation of project benefits. Nevertheless, FTA has always allowed project sponsors to use criteria and measures in their studies that depart from those used by FTA, but which address local concerns.

Proposal: FTA will maintain the requirement as stated in the current regulation that cost effectiveness will be based solely on a comparison between the proposed project and the baseline alternative, while clarifying that the baseline in almost all cases is the TSM alternative and providing enhanced guidance on the development of the TSM alternative.

31. How recent should on-board surveys be to ensure that the information is still valid?

32. Are there cases where an on-board survey less than 5 years old could be out of date? If so, how might FTA be sure of the usefulness of on-board survey information?

Comment: Question 31 received 5 comments and question 32 received 3 comments. One commenter believed that on-board surveys were not needed, stating that other data sources would suffice. Four commenters suggested surveys be conducted within the past 5 to 10 years.

Response: Given the critical role that the information gleaned from on-board surveys plays in understanding the nature of the transit riding market and in ensuring that travel models can replicate current conditions, it is essential that the data on ridership patterns be as current as possible. To the extent that the data used to validate the model varies from current ridership patterns because of significant changes in population, service, or other factors, the usefulness of the data is diminished. In fact, it may be necessary to update all or a portion of the survey more frequently than every five years if an area has experienced dramatic changes in service, population, and employment or other factors during that time. For example, if the survey was taken when little park-and-ride service existed, and considerable park-and-ride service was implemented after the survey, a new survey would be necessary to understand park-and-ride behavior if the New Start project relied in large part on the park-and-ride market to generate ridership.

Proposal: FTA proposes that, for project sponsors using traditional four-step travel forecasting procedures to estimate transportation system user benefits, the procedures be rigorously validated using an on-board survey of transit riders completed no more than five years prior to entry into PE. FTA will determine if changes in service, demographics, or other factors are significant enough to require a more recent survey to validate the model.

33. Would a clearer definition of the preliminary engineering phase for New Starts projects help project sponsors target resources expended on preliminary engineering in ways that better support the decision-making process for New Starts?

Comment: Three comments were received in answer to this question. Two comments were received in support of this proposal, and one provided an alternative. Commenters stated that significant resources would need to be shifted from final design to preliminary engineering (PE). Commenters also stated concern about potential increases in costs. One commenter stated that an explanation of how PE relates to the NEPA process would be helpful. Another stated that all NEPA requirements should be met during PE and that a Record of Decision (ROD) and FFGA should be issued simultaneously prior to final design. Another respondent inquired about the purpose of final design if PE is expanded to include capping of funds. That agency suggested that FTA should have clear criteria for entrance into PE.

Response: The goal of PE is to finalize the project scope, cost estimate, and financial plan. Project scope must be defined such that all environmental impacts are identified and adequate provisions made for their mitigation in accordance with NEPA. FTA will not complete the NEPA process until a project has been approved for entry into PE. In addition, although the level of scope development may vary from project to project, it must, at a minimum, be advanced to the point where design issues are fully addressed and no significant unknown impacts to cost may result. FTA intends that the cost estimate produced at the end of PE be used as the baseline cost estimate for determining the share of Section 5309 Capital Investment funds to be awarded in the full funding grant agreement. Similarly, FTA expects that the project financial plan produced during PE (and submitted to FTA as part of its statutory evaluation to approve project entrance into final design) will demonstrate adequate financial capacity and provide support for the local financial commitment necessary before FTA can execute the FFGA.

In its May 2006 New Starts Policy Guidance, FTA adopted a policy requiring that NEPA scoping be performed prior to entry into PE. Scoping prior to PE fosters informed decision-making in the New Starts process and allows for resolution of issues regarding the alternatives to be considered in the NEPA review to be made during the planning process instead of discovering them during PE and having to do additional planning analyses to address them. NEPA completion during PE facilitates performing the requisite engineering and analysis to define the project scope, cost, and financial plan, which are documented in a ROD.

Final design is a statutorily prescribed phase of the New Starts project development process following PE and preceding construction. Technically, final design is the phase of project development in which the project sponsor prepares for project construction. During final design, the engineering and design products of PE are refined for the development and solicitation of construction contract packages, as well as the development and/or updating of various project management plans and risk mitigation strategies. It is, however, expected that under the definition of New Starts PE adopted in the May 2006 New Starts Policy Guidance, the duration of final design will be considerably shortened as PE would result in developing sufficient engineering and design to arrive at an

accurate and reliable cost estimate. Thus, it is expected that the time between entrance into final design and negotiations on an FFGA will be reduced.

Proposal: FTA has defined the conditions that must be met at the completion of New Starts PE. FTA believes that these conditions will help in clarifying when a New Starts project is ready to move from one step to the next.

34. How might the Project Management Oversight (PMOC) process be designed to support the higher expectation regarding the results of preliminary engineering?

Comment: Only one comment was received, and it favored enhanced PMOC assistance. The respondent stated that although nearly all the information needed to make a final decision on project funding should be complete at the end of PE, completion of engineering should not be a criterion for exiting PE. Design refinements and subsequent cost adjustments should be expected through the final design phase. The earlier in the process that the PMOC understands the unique challenges the project faces in terms of engineering and cost estimating, the more likely the PMOC will be able to assist in determining whether or not the contingencies are appropriate.

Response: FTA has a number of activities underway to strengthen its project management oversight activities during PE. These include cost validation, independent cost estimates, and risk analysis and management. The PMOC reviews grantee data and corresponding engineering analysis throughout PE to determine the completeness and mechanical correctness of the baseline cost estimate. Project cost reviews are an iterative review process, whereby costs are assessed for consistency with the project scope adopted in the ROD (as amended and/or updated to the selected alignment), as well as consistency with relevant, identifiable industry or engineering practices. In this manner, FTA can determine that the project scope and costs are sufficiently complete to support the level and quality of revenue service expected. Using these tools during project development allows the grantee, with Federal oversight, to identify opportunities to improve the operation and cost effectiveness of its project. Whereas design refinements are expected during final design, significant cost adjustments should not occur. The scope and cost reviews that FTA incorporates in its risk analysis conducted during PE are intended to identify those project elements that are likely to require cost adjustments so that these potential cost adjustment may be accounted for in the resulting baseline cost estimate, as part of the contingency calculation, at the completion of PE.

Proposal: FTA is currently reviewing its PMOC regulations and guidance with the goal of providing greater program effectiveness in New Starts project development and delivery. These changes will be discussed under a separate rulemaking to amend the Project Management Oversight regulation and are not reflected in this NPRM.

35. Does this approach significantly increase the cost of preliminary engineering? If so, is that problematic if costs are just shifted from final design?

Comment: Two comments were received in response to this question, both generally agreeing that the cost of PE would increase. One commenter stated that the proposed requirement would result in an extended PE phase and blur the line between PE and final design. Specifically, the commenter noted that a shift in consultants between phases could result in increased costs due to the need to redesign project elements and that increased costs should not eliminate projects from the New Starts pipeline. The other stated that asking project sponsors to front load their design costs may prove to be an onerous burden.

Response: It is not clear that costs for PE will increase in order to meet FTA's requirement for a more reliable cost estimate. This is because the nature of work performed in PE and in final design has never been well defined, and as a result the level of engineering performed varies widely among projects. Expenditures for PE in the past have not always been focused on a reliable cost estimate, but have addressed a variety of concerns, many of which did not necessarily enhance the soundness of the cost estimate. In addition, many candidate New Starts project sponsors have already undertaken ''continuing/extended PE'' prior to entry into final design in order to identify and resolve engineering and/or design issues. In those instances, the project's sponsors have generally been able to complete final design in a shorter timeframe. From an accounting standpoint, requiring this effort by all project sponsors may increase costs incurred during the designated PE phase but decrease costs during final design.

Proposal: The proposed regulation clearly identifies the products of both PE and final design. With FTA clearly defining each phase of New Starts project planning and development, along with prescribed exit criteria, project sponsors can assess their resource needs and plan for them accordingly.

36. Does the proposed policy of MPO reaffirmation of the proposed project address FTA's goal of ensuring local support for implementing and financing proposed New Starts projects?

37. If FTA implements the previously mentioned local endorsement of the Financial Plan, does this separate action become redundant?

Comment: FTA received 8 comments on question 36 and 1 comment on question 37. Five commenters noted opposition to the proposal mentioned in question 36. Those opposed who wrote this proposal would add an unnecessary step to the process that would delay final design approval and thereby add to the cost of project development. In addition, they wrote this would not help to address FTA's concern of ensuring local support for financing of the project. Lastly, commenters suggested this would create a disconnect with requirements placed on highway projects. Three comments were received stating no objection to the proposal, but also not stating strong support of it. These commenters wrote it was reasonable and in line with current local planning process requirements, but would not help address FTA's concern. Only one comment was received on whether the proposal was redundant should FTA implement its other proposal for local endorsement of financial plans. That commenter wrote it was not redundant and that it is important for the MPO as a regional entity to formally state that it supports the project in its final configuration.

Response: FTA does not believe this proposal would add significant time or cost to the project development process. The FTA/FHWA metropolitan and statewide planning regulations require that before Federal funds may be spent on a project, it must be adopted into the MPO's financially constrained metropolitan transportation plan and transportation improvement program. FTA's proposal would ensure that the latest information on the project's cost estimate and impacts is incorporated into the region's transportation plan.

Proposal: To verify that New Starts projects, with their final scope and costs, are supported by regional planning partners, FTA proposes to require that MPOs reaffirm their commitment to implementing and financing projects, prior to those projects advancing into final design, if significant changes have occurred in the project definition or cost.

38. Section 5309(h)(3) as amended by SAFETEA–LU accords FTA the discretion to provide a higher percentage of New Starts funding than that requested by the project sponsor as an incentive to producing reliable ridership forecasts and cost estimates. How could FTA implement this provision of SAFETEA–LU?

Comment: Eight comments were received in total, but very few included specific ideas on how the incentive could be implemented. Two commenters were opposed to the incentive idea. Four transit agencies and one MPO were supportive of the idea. One transit agency expressed neither support nor opposition, but rather concerns with what projections would be evaluated to determine eligibility, suggesting that the proposal may result in less accurate cost and ridership forecasts. The two commenters opposed to the idea, and one of the transit agencies in support of the idea, suggested that rather than allowing grantees to reduce the local share if New Starts funding is increased under the incentive, project sponsors should instead be required to use the additional funding for betterments to the project. One transit agency suggested that incentives are acceptable only if they are kept small (2–3 percent increase) while another transit agency suggested that FTA should work with the project sponsor to determine an incentive amount that would be meaningful. Another comment stated that an FFGA should be amended before it is fully paid out to increase the New Starts share if ridership and cost estimates prove reliable over the course of the first year of operation.

Response: Regarding the accuracy of forecasts, the concern of the commenting agency that this proposal could result in less accurate cost and ridership forecasts may be unfounded. Presumably the commenter is suggesting that grantees would overstate costs and understate ridership during project development so as to come in under budget after completion of the project and with higher ridership to be eligible for an incentive. The very nature of the New Starts rating and evaluation process would prevent this from happening, because overstating costs and understating ridership would significantly impact a project's cost effectiveness. Furthermore, FTA examines both cost and ridership projections closely throughout project development and would not accept obvious misrepresentation of costs and ridership.

Proposal: FTA proposes to implement a new feature of FFGAs, consistent with changes made by SAFETEA–LU, that would include an incentive clause that would allow for an amendment to either increase the Federal funding contribution or allow for the addition of scope, when actual opening year ridership is no less than 90 percent of that forecast and actual capital costs, adjusted for inflation, are not more than 110 percent of that estimated, at the time the project entered PE. This standard is slightly more stringent than the wording in SAFETEA–LU, as FTA is proposing to amend the FFGA only after the project is complete and operating, rather than assessing whether forecasts have stayed within these limits prior to execution of the FFGA. FTA believes that the incentive should only be provided for actual performance not for projected performance. However, as suggested by the commenters, FTA is allowing the incentive to be used either to increase the Federal share or to add scope to the system.

ANPRM on Small Starts

Small Starts Eligibility

SAFETEA–LU constrains eligibility of projects for Small Starts funding by imposing limits of less than $75 million in Section 5309 Capital Investment funds and less than $250 million for total project cost. However, it broadens eligibility in terms of project definition by relaxing the existing requirement that the project include a fixed guideway. With this change, a project that would not meet the fixed-guideway criterion is now eligible if it (1) includes a substantial portion that is in a separate right-of-way, or (2) represents a substantial investment in specific kinds of transit improvements in a defined corridor.

The eligibility provisions of the statute raise several issues: (1) How to define ''substantial portion in a separate right-of-way;''; (2) how to define ''substantial investment''; (3) the possibility that project sponsors could divide traditional New Starts projects into two or more Small Starts projects; and (4) the possibility that a Small Starts project might be proposed as the initial transit service in a corridor. The ANPRM provided a discussion of the challenges and merits of various approaches to addressing these issues, and readers of this NPRM are encouraged to refer to it for more information. The ANPRM further posed several questions related to the eligibility of Small Starts projects with the goal of facilitating a discussion of this important topic. These questions, a summary of industry reaction to the questions, and FTA's response and proposal for the NPRM follows:

1. What portion of the project should be in a separate right-of-way to qualify for funding under the Small Starts eligibility criteria? Should this determination be based on length or on performance?

2. How might FTA interpret the requirements that a project represent a ''substantial investment?''

3. How might we ensure that a Small Starts project is in a ''defined corridor?''

Comments: Questions 1 and 2 received 20 comments each, and question 3 received 11 comments.

Comments were generally split on the first question of eligibility. Of the 12 comments that noted the need for a separate right-of-way for Small Starts projects, there was a consensus that 25–50 percent of the length of the project should be in exclusive right-of-way to be eligible for Small Starts funding. Reasons cited for a minimum guideway threshold included the ability to show a permanence of investment, which would better support the land use and economic development objectives of proposed transit investments, and to ensure travel time savings. But 4 of the 8 commenters not in favor of requiring a dedicated right-of-way noted similar gains in performance may be made through the use of ITS technology such as signal prioritization, queue jumping, and other operational treatments. Indeed, slightly more than half of the commenters on this question favored a performance-based determination of eligibility, with travel time savings the most commonly suggested performance criteria.

All 20 of the commenters favored the inclusion in the NPRM of a definition of ''substantial investment.'' However, 2 comments stressed the need for flexibility and opposed either a dollar value or a specific list of criteria elements that needed to be met, as proposed in the ANPRM. Twelve comments requested that a portion of the right-of-way be dedicated, although 7 of these stated that FTA should not mandate that a separate right-of-way be an element of every Small Start. More specific comments noted that a substantial investment should be defined in terms of infrastructure investment. Fifteen commenters recommended that FTA define substantial investment as a ''package'' of investments listed in 49 U.S.C. 5309(e)(10), as amended by SAFETEA–LU, including hardware such as signal pre-emption, off-board fare collection, level boarding, station investment, and special vehicles. Due to the large number of potential variables associated

with a ''substantial investment,'' 7 comments noted the need for clear, non-regulatory based guidance that should cover the majority of projects.

Suggestions to the question on ''defined corridor'' were wide ranging. Three commenters noted that a traditional view of an arterial street or a transportation corridor may be too rigid of a definition and suggested that FTA take a flexible approach to the definition of a ''corridor'' for Small Starts purposes. One commenter recommended, for example, that a corridor could be defined as a combination of parallel streets, as a downtown shopping area, or as a central business district. To further define the corridor, local policies on economic development and land use should be examined and matched to the corresponding area of interest. Seven commenters suggested that a more narrow definition be used, for the reason that the modest costs of Small Starts tend to lend themselves to improvements to existing travel corridors rather than creation of more expensive new services. Two commenters expressed concern that any definition must be able to distinguish Small Starts from improvements that could be funded under the Section 5309 bus or FTA formula programs.

Two commenters cited additional concerns on consideration of a Small Starts project that would cross multiple jurisdictions. To proceed on a project spanning jurisdictions, it was recommended that a number of construction and planning phases be allowed if that type of implementation approach facilitated project delivery.

Response: FTA believes that there is significant merit to using a performance-based approach to determine whether or not the separate right-of-way is ''significant.'' Because all fixed guideway projects (rail projects and those with catenary, i.e., electric trolley-bus service using overhead wires for power supply) are automatically eligible for New Starts and Small Starts, the following is relevant to bus projects only. Generally, the purpose of a separate right-of-way for bus projects is to remove transit vehicles from general-purpose traffic, thereby speeding up service. Therefore, a performance-based determination would ensure that the portion of the project in a separate right-of-way actually had the intended effect of better operating performance. However, FTA has never applied a performance standard to fixed-guideway projects. Thus, in the interest of consistency among potential Section 5309 Capital Investment projects, FTA believes that using a criterion based on physical characteristics is more appropriate.

Likewise, FTA believes that it is necessary to define a minimum level of transportation investment sufficient to justify the project for discretionary Small Starts funding. Otherwise, Small Starts projects would be competing for funding with many capital investments (*e.g.* buses) that should be funded with FTA formula, bus discretionary, or Title 23 flexible funds. Thus, FTA is proposing a number of specific project components that would comprise a ''substantial investment'' to improve the level of transit service, yet not require a specific threshold or dollar value of improvements.

It is very difficult to prescribe the dimensions of a ''defined corridor'' given the diversity of project contexts. Nevertheless, the principles guiding the definition should be that the project addresses a single travel shed that consists of a concentration of trip origins and destinations. While there is no rigid definition of travel corridor, routes with significant geographic separation would be considered to serve different corridor travel markets.

Proposal: FTA proposes in this NPRM that to qualify for funding, Small Starts bus projects must either (a) provide a dedicated right-of-way for at least 50 percent of the total project length in the peak period or when congestion inhibits transit system performance, or (b) be a corridor-based bus project with the following minimum elements:

- Substantial transit stations
- Traffic signal priority/pre-emption, provided that there are traffic signals on the corridor,
- Low-floor buses or level boarding,
- Branding of the proposed service, and
- 10-minute peak/15-minute off peak headways or better while operating at least 14 hours per weekday

The first three bullets are taken directly from the statute; the fourth is a low-cost strategy for achieving a sense of the uniqueness and permanence of transit service and is thus consistent with SAFETEA–LU's requirement that a corridor-based bus capital project include ''features that support long-term corridor investment.'' The fifth bullet embodies the underlying concept that, to be successful transportation investments, Small Starts projects must provide for a significant level of transit service. Experience in major transit corridors across the United States suggests that 10-minute peak frequencies, in addition to representing a high level of service, is the minimum headway at which passengers' decision to take transit is not based upon route schedule information.

While other project features such as park-and-ride lots and off-board fare collection are also eligible expenses under the program, they are not required elements. The regulation simply states that the project must be a corridor bus project; however, FTA intends to review proposed projects on a case-by-case basis to determine whether they are located in a ''defined corridor.'' A key consideration for this review will be whether the project is located in a single travel shed.

4. Should we try to prevent traditional New Starts projects from being divided into two or more Small Starts projects? If so, in what ways might we prevent this from happening?

Comments: Twenty comments were received in answer to this question. Only three of the commenters indicated they were in favor of allowing traditional New Starts projects to be divided into two or more Small Starts projects. The main reason cited to permit this division was that any phased implementation would result in faster implementation of at least some portions of a larger proposed investment, and that any ''stand-alone'' segment/project should be considered by FTA so long as it is deemed worthy when evaluated against the Small Starts criteria. The remaining 17 commenters noted that the division of large New Starts projects into two or more Small Starts projects is contrary to the intent of the Small Starts program. However, 14 commenters noted that the funding of projects in the same region but on adjacent or unrelated corridors should be allowed and even encouraged. In addition, other more specific comments included limiting the amount of funding over a given time period or justifying funding on the basis of how corridor improvements are included in a region's metropolitan transportation plan.

Response: The purpose of the simplified evaluation and project development process for Small Starts is to scale the analysis and procedures according to the complexity of the projects. Projects that are very large investments in fixed guideway transit facilities demand the full due diligence regarding the benefits, costs, and the project sponsor's capability and readiness in order to ensure that public resources are allocated to their best use. These larger projects should not be able to evade due diligence simply because they are divided into phases which individually meet the cost limits for Small Starts.

Proposal: FTA proposes that all potential Small Starts projects (i.e.,

portions of a larger investment) planned in a corridor will be evaluated as a single project. If the combined cost or total requested funding amount, both expressed in year-of-expenditure dollars, is over the Small Starts limits, the project will be evaluated as traditional New Starts project.

5. Should we establish a minimum ridership requirement to ensure that Small Starts projects are used to improve the quality of service for existing transit markets rather than represent the first transit service offered to potentially new transit markets? If not, how can a project demonstrate need for an investment?

Comments: Twenty-seven comments were received in answer to this question. Approximately two-thirds of commenters opposed the idea of instituting a minimum ridership requirement for Small Starts, citing that this would penalize communities that are in the initial stages of land development and thus currently do not have a demand for transit or communities that are trying to open up new markets to transit. The 9 commenters in favor of the minimum ridership requirements indicated that such a threshold would allow Small Starts funds to be provided only to those areas that have a demonstrated need for improved transit. It was further suggested by 8 of these 9 commenters that in these existing cases, there would be substantially less risk to a project's achievement of success because of this demonstrated need.

Response: FTA recognizes that the implementation of high quality transit service in areas where such service does not exist today can, when combined with aggressive corridor land use development initiatives, contribute to future use of service.

Proposal: In the interim guidance for Small Starts, FTA required, as one criterion for qualifying as a Very Small Start, that sponsors of such projects provide evidence of current corridor ridership that would benefit from the project of no less than 3,000 average weekday passengers. FTA proposes to maintain this eligibility requirement for Very Small Starts since it is an intrinsic element of FTA's ability to warrant the project as being cost effective. For all other projects, FTA proposes not to require a minimum ridership threshold. However, FTA notes that it would seem unlikely that Small Starts projects proposed in corridors with a small or non-existent transit market would be able to generate immediate transportation benefits, as required by SAFETEA–LU in its requirement that cost effectiveness be calculated for an opening, rather than design, year. In considering the reliability of ridership estimates, FTA will closely examine the justification for the ridership and travel time benefits of such projects. Consequently, sponsors of such projects must make an extremely compelling case that there is sufficient planned development to result in conditions that support a strong transit travel market.

Small Starts Evaluation and Ratings

As amended by SAFETEA–LU, 49 U.S.C. 5309(e)(2) allows the Secretary of Transportation to provide funding assistance to a proposed project under this new Small Starts category only if the Secretary finds that the project is:

(A) Based on the results of planning and alternatives analysis;

(B) Justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

(C) Supported by an acceptable degree of local financial commitment.

The statute expands on the justification required in paragraph (B), requiring that the Secretary make the following determinations:

- The degree to which the project is consistent with local land use policies and is likely to achieve local development goals;
- The cost effectiveness of the project at the time of the initiation of revenue service;
- The degree to which a project will have a positive effect on land use and local economic development;
- The reliability of the forecasting methods used to estimate costs and ridership associated with the project; and
- Any other factors that the Secretary determines appropriate to make funding decisions.

The statutory provisions for the evaluation of proposed Small Starts projects raise several issues. These include the framework for the evaluation; the specific measures used in the evaluation; and scaling of the evaluation approach for Small Starts projects of different size, cost, and complexity. The ANPRM provided a discussion of the challenges and merits of various approaches to addressing these issues. Most notably, FTA proposed two potential options for organizing the Small Starts project criteria into a coherent evaluation framework. This is the same framework that is discussed in Question 3 under the Guidance on New Starts Policy and Procedures. The ANPRM further posed several specific questions related to the evaluation and rating of Small Starts projects. These questions, a summary of industry comments, and FTA's response and proposal for this NPRM follow:

6. How should the evaluation framework for New Starts be changed or adapted for Small Starts projects?

Comments: Twenty-four comments were received in response to this question. Several commenters addressed not only the overall evaluation framework but also measures for local financial commitment and FTA's proposal that the nature of the problem or opportunity in the Small Starts project corridor be included in FTA's evaluation of Small Starts. Comments on these specific measures were addressed in our response to questions that specifically addresses these two issues. Of the two evaluation framework options presented in the ANPRM, Option 2 generated the most support, although 3 commenters strongly indicated that land use should be elevated to a benefit rather than used as a risk factor. Four commenters objected to both Options 1 and 2, and proposed an alternative approach—a ''point-system'' developed in a Transit Cooperative Research Program (TCRP) quick study report.

In terms of local financial commitment, 1 commenter noted that FTA should not penalize smaller Small Starts project sponsors who may not be able to generate more than a 20 percent local funding match, although another commenter hoped that FTA would continue to encourage local overmatch through its evaluation of local financial commitment. Two commenters suggested that State and local governments or private investors are unwilling to commit project revenues until they receive assurances of Federal funding, and that FTA needs to consider prior history in obtaining non-Federal commitments as a surrogate for actual commitments.

There was little comment on the proposal that projects be evaluated in terms of the problems they solve or the opportunity they take advantage of. One respondent was concerned that the ANPRM couches ''problems'' as only being mobility related.

Response: Based upon the comments received, FTA intends to advance the framework described in Option 2 into the NPRM with one exception that is discussed more fully in the question 3 under the Guidance on New Starts Policy and Procedures. FTA has reviewed the TCRP proposal for evaluating Small Starts projects and notes that the approach entails double counting and difficulties determining the proper weights. FTA understands the positive and negative aspects of

encouraging local overmatch to Federal discretionary funding, but notes that SAFETEA–LU permits FTA to consider the degree to which the project financial plan depends upon non-New Starts funding, and FTA therefore intends to reward overmatch for Small Starts just as it does New Starts. Further it would be poor program management for FTA to make Federal funding commitments in advance of local commitments. Equally importantly, FTA expects that the demand for Small Starts funding will be great enough among projects that can demonstrate such commitments that it would be counterproductive for FTA to commit its funds in advance of local funding commitments. FTA strongly encourages project sponsors to provide an overmatch under the Small Starts program as it is likely to be as highly competitive, if not more so, as the New Starts program.

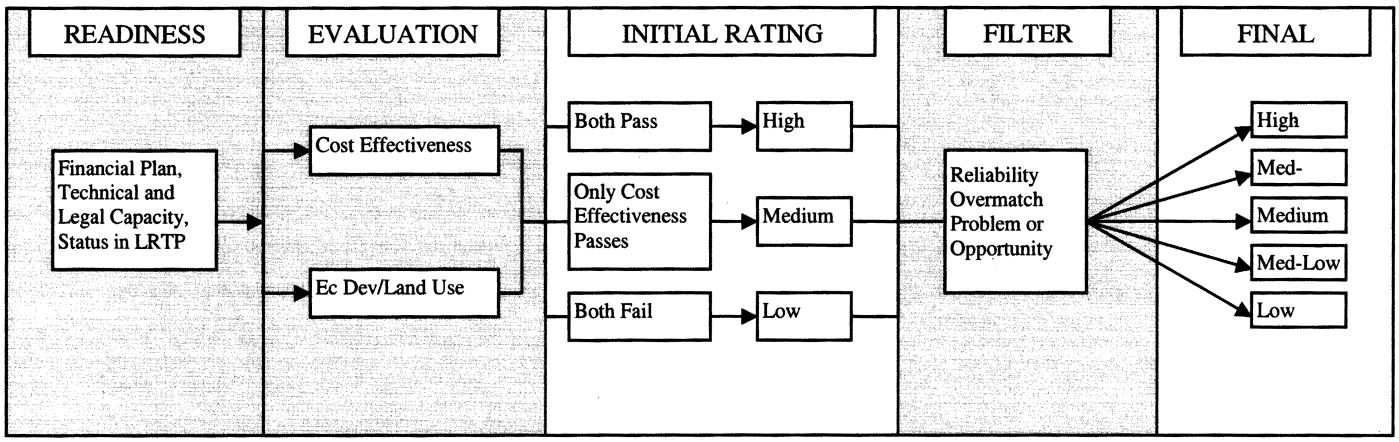
Proposal: The NPRM advances for further review and comment the Option 2 evaluation framework first proposed in the ANPRM. However, Option 2 has been modified in three important ways. First, the ''nature/extent of problem or opportunity'' in the project corridor has been removed as an explicit evaluation criterion. FTA acknowledges that this factor is not specifically identified in 49 U.S.C. 5309(e)(4). However, FTA notes that 49 U.S.C. 5309(e)(4)(E) directs FTA to ''consider other factors that the Secretary determines appropriate.'' Therefore, whenever a project is evaluated, FTA intends to consider the degree to which the proposed Small Starts project addresses the existing and forecast problem and opportunity as an ''other'' factor. As congestion is one of this Nation's most daunting transportation challenges, another measure that FTA currently intends to consider under ''other factors'' is the degree to which a project is a part of a significant congestion reduction strategy. FTA will evaluate projects that are a principal element of a congestion reduction strategy, in general and a pricing strategy, in particular, more highly. FTA seeks comment on how it might better measure congestion in the future.

FTA will also consider as an ''other factor'' any benefit of the project not covered under the project justification criteria or other factors that the Secretary determines to be appropriate to carry out the evaluation. This consideration could result in a project's rating being increased or decreased.

Further, FTA is proposing that land use be included under both the economic development/land use criterion (under effectiveness) and the reliability criterion. FTA intends that current land use conditions, as well as land use plans and policies, be critical components of these criteria. The economic development/land use criterion will account for 60 percent of the effectiveness rating, with the remaining 40 percent of the rating comprised of mobility benefits. This should ensure that the factor is given sufficient overall attention in the rating process. FTA seeks comment on how it might better measure economic development/land use in the future.

In addition to revising Option 2, FTA is asking for specific comment, under a section entitled ''Additional Discussion Items for Comment'' on an alternate evaluation framework for rating proposed Small Starts projects. This framework is based upon three principles that FTA espouses, which it has heard expressed by many in the transit industry. The first principle is that there are two primary reasons for implementing major transit capital investments—mobility improvements and economic development—and that these can be evaluated on a pass/fail basis. In the Small Starts program, FTA considers cost effectiveness in terms of the cost of improving mobility. The second principle is that FTA's evaluation process for Small Starts should be as simple as possible, and only needs to be sufficient to identify the best projects, ferret out the worst projects, and array those in the middle. Finally, the third principle is that whatever the merit of proposed Small Starts, lack of sufficient financial capability will prevent its implementation; therefore, financial commitment should be treated as a ''minimum'' or ''readiness'' requirement, rather than a component of an overall New Starts project rating.

Figure 1 presents FTA's proposed Option 3 evaluation framework:



Under this framework, the financial commitment, as measured by the adequacy of a project's capital and operating plan (but not its proposed Small Starts share) would join technical and legal capacity, and the achievement of Federal metropolitan planning requirements, as basic ''readiness'' requirements for being considered for advancement in the Small Starts project development process. Once readiness is determined, projects would be subject to a ''pass/fail'' assessment of their cost effectiveness and economic development/land use impacts. If projects pass both assessments, they will receive an initial rating of High. If a project passes the cost effectiveness assessment but not the economic development/land use assessment, it would receive an initial rating of Medium. A project that fails both assessments, or passes the economic development assessment but not the

cost effectiveness assessment, would receive an initial rating of Low and will not be considered by FTA for either advancement into project development or a funding recommendation until the rating is improved.

These initial ratings are then adjusted by three factors: (1) The reliability of the project's travel forecasts and cost estimates; (2) the degree of Small Starts funding overmatch; and (3) the magnitude of the problem or opportunity the project is intended to address. All of these factors are important. Based upon these adjustments, the initial project ratings may go up or down. For example, a project that received an initial rating of Medium, but that is providing a significant overmatch of Small Starts funding and/or demonstrates reliable estimates of project costs and ridership could receive a Medium-High or High overall project rating. On the other hand, a project with a similar initial rating of Medium but that does not address a severe transportation problem and/or for which ridership and cost forecasts are considered not as reliable would receive an overall rating of Medium-Low or Low. However, consistent with SAFETEA–LU, FTA will also consider the project sponsor's ability to provide only a 20 percent match and will not rate the project's local financial commitment at less than Medium, solely on the basis of a 20 percent match, so long as the project sponsor can demonstrate that the 20 percent match is based on the limited fiscal capacity of State and local governments. In this way, FTA can address the SAFETEA–LU requirement that FTA consider State and local fiscal capacity at the same time that it addresses the SAFETEA–LU requirement that it gives priority to financing projects with a higher-than-required non-New Starts/Small Starts share.

7. How should the baseline alternative be defined?

Comments: Twenty-three comments were received in response to this question. Twenty-one commenters strongly favored the use of a ''no-build'' scenario as a baseline alternative for Small Starts. Expanding on this, 1 commenter suggested that the Small Starts baseline be consistent with the NEPA baseline, be locally driven, and reflect a project that is included in local transportation plans and improvement programs. It was further suggested by a commenter that the baseline no longer be carried into final design. Another commenter suggested that the Small Starts baseline should be adjusted based on the complexity of the project. For example, one commenter favored using a ''no-build'' scenario for smaller projects, but using the TSM for larger projects.

Response: FTA agrees that the definition of the Small Starts baseline should be a locally driven process but disagrees that it should be identical to the NEPA ''no build'' in all cases. Consequently, FTA continues to require—as it does for traditional New Starts—that the alternatives analysis study be the venue for developing and evaluating a number of low- to higher-cost alternatives that meet the purpose and need for transportation improvements in a given corridor. No reasonable alternative should be excluded for consideration until an appropriate analysis determines that it does not sufficiently address locally-identified problems, commensurate with its cost and other impacts. It is through this process that a Small or New Starts baseline alternative should be defined. However, while the alternatives analysis process is the venue for identifying the baseline alternative it should be noted that FTA uses the baseline alternative not to determine whether it is reasonable to advance that alternative for further study, but as the required comparison for measuring the benefits of the project.

FTA acknowledges that many Small Starts, particularly Very Small Starts, will be Transportation System Management (TSM) improvements: that is, lower-cost, operations-oriented upgrades to existing transit services that do not require construction of a new fixed guideway. For such projects, a no-build alternative would be the appropriate Small Starts baseline. For more complex projects, including those that contemplate the implementation of a fixed guideway, a non-guideway alternative—for example, a TSM alternative that provides for similar service levels as the proposed Small Starts—would be the appropriate baseline. Whatever the baseline alternative, FTA agrees that, once a Small Starts project is approved into project development, the baseline should not change unless the scope of the Small Start project changes and will be used only as a comparison for preparing the required information for the annual New Starts Report (as necessary) and for making a recommendation on funding for a PCGA.

Proposal: Cognizant of SAFETEA–LU's expectation that the advancement of Small Starts projects be streamlined to the extent possible, FTA has simply proposed in the NPRM that FTA must approve the baseline alternative. However, FTA intends to rely on the following simple guidelines for definition of the Small Starts baseline alternative:

- A project with a dedicated right-of-way for 50 percent or more of its length in the peak period would usually have a TSM as its baseline. In general, a TSM can be satisfied by (1) the inclusion within its scope of the physical features found in a Very Small Starts project, as defined elsewhere in this NPRM; and (2) service levels which are comparable to the proposed Small Start.
- A project that does not meet the definition above, including a Very Small Start, would use a no-build alternative as its baseline alternative.

By following these guidelines, FTA believes that the process for approving the Small Starts baseline alternative will be extremely simplified in comparison with the process for FTA approval of the baseline alternative for traditional New Starts. FTA also desires to provide some flexibility in the definition of the baseline alternative for project sponsors who believe, for whatever reason, these guidelines are inappropriate for their proposed Small Starts project. Therefore, FTA will consider deviations from these guidelines. In such cases, FTA strives to make its review and determination as quickly as possible, but notes that it is the responsibility of the project sponsor to make a compelling justification for deviation from the guidelines.

8. How might FTA evaluate economic development and land use as distinct and separate measures?

Comments: Eighteen comments were received in response to this question. In terms of land use, 2 commenters suggested comparing the current densities with the proposed densities of planned developments. In addition to density, however, it was also noted by 7 commenters that the existence or planning of transit-oriented policies would be a good measure. Economic development had a similar depth of interest and comments. For example, 4 commenters suggested measurement of the increase in employment and tax revenue, or the property values of current properties versus the selling price of future acreage/developments. In addition to these specific suggestions, other commenters noted precautions that should be taken when considering these two measures. One commenter cited concern that these should be downplayed in the initial stages of the project's development, and focus should instead be placed on mobility and cost effectiveness.

Response: Whether referring to land use or economic development, a

common theme of the majority of respondent suggestions was to use indicators of the likelihood of increased development in areas near projects. Existing land use conditions, existing and planned transit-oriented plans and policies, and projections of increases in employment and revenues are all necessary, but not sufficient conditions for inducing transit-supportive development patterns as a result of a transit project. Indeed, it is not possible to ascertain the likelihood of a project's effect on surrounding development unless a number of factors relating to both land use and economic development are considered in combination. Land use considerations provide information about the potential for development or redevelopment and whether that development can occur in a transit-oriented way. However, while these are necessary conditions, they are not sufficient in and of themselves, as the local development climate must be sufficiently robust to provide the engine needed for development; the project must be perceived as permanent to entice developer interest; and the project must increase accessibility to the area. All these factors must be viewed in combination in order to evaluate the potential economic development benefits of the project.

Proposal: FTA proposes to use a single economic development/land use criterion based on the likelihood of increased transit-oriented development resulting from a Small Starts project. The following describes FTA's current thinking with respect to what these measures will be. Given the important role that land use plays in supporting, guiding, and often increasing development, FTA will draw upon many of the same factors used in its current evaluation of land use. These will be augmented with indicators that provide further incentives to development. Because measurement of economic development in terms of jobs or value of future development is not currently feasible, FTA proposes instead to evaluate whether or not the conditions necessary to support economic development exist in the project corridor. To accomplish this, FTA proposes to use the following specific measures: (1) Current land-use conditions, (2) development and land-use plans and policies, (3) the economic development climate in the corridor and region, (4) the project-related change in transit accessibility for developable areas in the corridor, and (5) the economic lifespan of new transit facilities proximate to those developable areas. FTA is conducting research in this area and as more quantifiable measures are developed they will be proposed as part of any new policy guidance. FTA seeks additional comment on how it can better measure economic development/land use.

9. Are there other measures of effectiveness that should be considered?

Comments: Thirteen comments were received in response to this question. An assessment of a project's effect on economic development was the subject of many commenters. The response to those comments was addressed as part of Question 3 above. Two commenters stated that FTA faces a challenging task when creating appropriate measures of effectiveness for Small Starts projects. For example, it was noted that one measure, changes in passenger travel time, may be difficult to capture in cities where limited ridership or bus service exists. Despite the potential challenges, several measures of effectiveness were suggested. Increased access to job centers as well as the reduction in the number of single occupancy vehicles on the roadway were two measures noted. In addition, several ideas mentioned in the ANPRM were emphasized in the comments, including: Reductions in passenger travel time, the ability to maintain a cost effective transit project, the appearance of permanence of the Small Starts project, and trends in land values and development in and near the project area. Other suggested measures included the availability of land, the success in development near transit in neighboring communities, plans, ordinances and policies that support transit-oriented development, and economic development.

Response: Measures of effectiveness vary within each project due to its size, sponsor experience and capabilities, and location specific criteria. For the concerns relating to changes in passenger travel time and increased access to jobs, transportation user benefits provides an excellent metric that captures all the benefits of interest. Measures related to land use and economic development will be considered by FTA in its evaluation of the criterion for economic development/land use.

Proposal: Because the primary objectives of transit projects are to improve mobility and foster economic development, FTA has chosen to use two criteria for measuring the project's effectiveness. These are mobility, which is the travel time savings calculated as part of the cost effectiveness measure, and economic development/land use, the components of which are discussed in Question 8 under Guidance on New Starts Policies and Procedures. Although FTA sees merit in identifying other measures of effectiveness, the lack of analytical methods to address many of the desirable characteristics of transit projects results in an inability to determine these benefits fairly at this time. If FTA is later able to identify additional measures, these can be added to the evaluation as part of any changes to our policy guidance, which would be subject to public review and comment.

10. Is it desirable for FTA to attempt to incorporate other measures of effectiveness besides mobility when evaluating cost effectiveness? If so, what measures might be incorporated and in what manner?

Comments: Thirteen comments were received in response to this question. The number and variety of responses seem to indicate not only a great interest in this evaluation tool, but also provide a view of priorities in the respondent communities. Suggestions regarding cost effectiveness concerned numerous areas, including service, neighborhood revitalization, and congestion reduction. Commenters specifically suggested increased service to transit dependent users and improved connectivity to job, residential, or retail centers, and contributions to local land-use changes and economic development as measures. Specifically, 2 commenters noted that the cost effectiveness should include mobility benefits that would accrue to highway users with the increase of transit use. In addition, 2 other commenters noted that walkability should also be incorporated into cost effectiveness. In addition to the mobility-oriented measures listed previously, other suggested measures include the extent to which a community is considered livable. Other comments noted that the evaluation of effectiveness should be simplified, thus eliminating the need for additional measures of evaluation.

Response: FTA supports a simplified cost effectiveness evaluation process. The need to maintain this simplification has been taken into account when choosing the appropriate measures and tools. Thus, specific, quantifiable, and easily attainable measures such as transportation user benefits and capital costs are necessary components of the evaluation process. More qualitative measures such as regional connectivity, neighborhood revitalization, walkability, and contributions to land-use and economic development are difficult to incorporate in a measure of cost effectiveness because they are difficult to measure reliably. As described in the response to Question 10 under New Starts, FTA is currently

unable to accurately assess the mobility benefits that accrue to highway users from high-capacity transit due to the inability of local travel models to reliably determine the effect. Once travel models have been improved to reliably forecast these benefits, FTA will use them. In addition, as described under Question 4 in ''Additional Discussion Item for Comment,'' FTA is interested in exploring certain surrogate measures that could account for highway user benefits.

Proposal: Because of the difficulty of incorporating additional measures into its evaluation of project cost effectiveness, FTA is proposing to maintain its current cost effectiveness measure of annualized cost per hour of user benefits. As described in Question 10 under New Starts above and Question 4 under ''Additional Discussion Items for Comment,'' FTA will continue to seek ways to include the benefits to highway users in the calculation of user benefits.

11. Should mode-specific constants be allowed in the travel demand forecasts? If so, how should they be applied?

Comments: Fourteen comments were received in response to this question. All but two of the commenters favored use of an asserted modal constant in the estimation of Small Starts project ridership and mobility estimates. The two opposed cited the short timeframe for a Small Start project and that there is too little national data gathered at this time and too much variation between communities to make this worthwhile. Those in favor of utilizing a modal constant noted that in areas with a total absence of a particular transit mode, it may provide a useful assessment tool. These comments varied from using a locally-derived constant when the mode is in place to use of nationally determined constants.

Response: FTA allows use of a mode-specific constant in forecasts that have been carefully calibrated using ridership information from the mode. Mode-specific constants play two roles in travel forecasting. The first is to represent all the attributes of the mode that are not otherwise explicitly included in the travel models. These service attributes include visibility, reliability, span of service, and comfort, as well as others. Constants also act as correction factors for all the errors that occur in the models so that model results can replicate current transit ridership. Deciding the magnitude of each of these roles is extremely difficult and the subject of current FTA-sponsored research. When this research has been completed, FTA aspires to having an approach to the application of mode-specific constants nationally that will both produce accurate representations of these omitted attributes and be fair to all projects seeking funding. In the interim, in the policy guidance issued in June 2007, FTA has allowed credits for a constant for a new transit mode to an area. The credits are based on the attributes of the project.

Proposal: FTA's current policy allows the use of mode constants for travel models that have been carefully calibrated against travel demand for an existing transit mode, and which fall within a reasonable range established by prior experience. For areas proposing a new mode, FTA has specified credits for a constant based on the project's attributes. It should be noted that this position is not specifically addressed in the NPRM as FTA intends to treat the issue of a modal constant through policy guidance, not regulation.

12. How might FTA incorporate risk and uncertainty into project evaluation for Small Starts?

Comments: Fifteen comments were received in response to this question. Due to the simplified nature of the Small Starts program, 7 comments related to ways in which risk and uncertainty (which FTA now describes as reliability) could be incorporated into the evaluation process without compromising this simplicity. For instance, 4 commenters indicated that peer reviews and risk analysis based on similar and previously approved projects would be a sufficient means of evaluation. Six other commenters indicated that risk analysis measures should be broad in scope such that simple travel demand models would be able to analyze these measures effectively and without costly software packages. To further simplify risk analysis, 4 commenters were in favor of creating separate Small Start and Very Small Start project analysis criteria. Specific measures of risk and uncertainty proposed by commenters include the presence or development of transit-oriented development policies and public/private funding.

Three commenters stated that risk and uncertainly were adequately addressed within the financial analysis and evaluation and that additional measures of risk may overly complicate the process.

Two commenters questioned the inclusion of travel forecast and cost estimate reliability as an evaluation factor, noting that (1) the simplified nature of Small Starts projects minimizes risk and uncertainties associated with their implementation and (2) the process for evaluating projects should be streamlined and no new measures should be introduced.

Response: Although the Small Starts evaluation process is meant to be simpler than that used for New Starts projects, accurately weighting reliability factors remains an important task. Further, SAFETEA–LU calls for FTA to include an assessment of the reliability of forecasts for Small Starts, just as it does for New Starts. Reliability measures take into account a project sponsor's ability to manage transit projects, as well as factoring in local expertise and development conditions. Financial reliability depends on both the amount and the terms of local financial funding, as well as the size of the funding request (e.g., is it reasonable in relation to other projects of a similar size in a similar community?). In addition, measures such as forecasted ridership and peer reviews are valid means to assess reliability.

Proposal: FTA proposes to consider reliability of the costs and ridership forecasts in its evaluation and to adjust, either upward or downward, the ratings of the individual criteria that rely on these forecasts. The measures for reliability will be identified in policy guidance and these could include a number of factors. For instance, for travel forecasts (1) the current land use and land-use policies, (2) the soundness of forecasting tools and data used to predict ridership and mobility benefits, including steps to reduce uncertainty through peer reviews and other quality control procedures, (3) comparisons of ridership forecasts against peer projects—similar projects in similar settings, with particular scrutiny for projects without any peers, and (4) the track record of the project sponsor with benefits forecasts for previous transit projects.

The reliability of the cost effectiveness measure would necessarily depend on any uncertainties associated with both the effectiveness measures and the cost estimates. The effectiveness reliability could be quantified with the measures outlined above. The cost reliability measures could be based on (1) the soundness of cost-estimating procedures, including steps to reduce risk through peer reviews and other quality-control efforts, (2) comparisons of the cost estimates against peer projects, and (3) the track record of the project sponsor with cost estimates for previous transit projects. In addition, since operating efficiencies are measured as part of cost effectiveness, FTA would consider any innovative contractual arrangements, especially Public Private Partnership arrangement, which produce significant reductions in

operating expenses, or which improve the reliability of forecasts of operating costs in its assessment of reliability.

13. What weights should FTA apply to each measure?

Comments: Nine comments were received in response to this question. Although the specific weights varied considerably among commenters, most agreed that the overall measures of cost effectiveness, land use, and economic development would provide an accurate assessment of the project. Those who stated that cost effectiveness is a moderate to important factor weighted it between 33 percent and 50 percent. One commenter suggested a scenario in which a project would be required to rate well in cost effectiveness, land use, and economic development, or be able to score highly in any of the three, to receive project funding. Three commenters suggested that although cost effectiveness was an important measure, the evaluation process should allow for leniency where other project benefits outweigh cost effectiveness. One additional commenter indicated that project merit and a local commitment to funding should outweigh the cost effectiveness measure.

Response: The variety of responses indicates the difficulty in assigning weights to each measure. This difficulty is compounded by the fact that there is no research that can be used to guide a decision on the importance of each of the criteria. Therefore, the application of weights is policy driven.

Proposal: FTA proposes in the NPRM to give equal weight to both project justification and local financial commitment for the overall project rating. Further, the project justification rating will be comprised of cost effectiveness, weighted at 50 percent and effectiveness, weighted at 50 percent. Economic development/land use will account for 60 percent of the effectiveness rating, with the remaining 40 percent of the rating comprised of mobility benefits. An alternative approach, which uses a pass/fail decision rule in lieu of weights was described in Question 6 under the ANPRM on Small Starts and is specifically called out in the ''Additional Discussion Items for Comment'' at the end of this section.

14. Should the FTA make a distinction in the way we evaluate Small Starts projects of different total project costs and scope?

Comments: Thirty-three comments were received in response to this question. Twenty-seven commenters favored a scaled approach to Small Starts projects. Although some of these preferred the distinction between Small Starts and Very Small Starts as proposed in the ANPRM, others simply noted that a threshold should be created below which little modeling or intensive quantitative analysis would occur. Of the 6 commenters opposed to creating a distinction among Small Starts projects, most still saw the need for a scaled approach to evaluating Small Starts projects. This was especially true for those commenters who operated existing transit projects, and for which the proposed project was simply an extension of an existing project.

Response: As noted in the ANPRM, several options are available for evaluation of Small Starts proposals: (1) Application of the same evaluation methods for all projects regardless of scale; (2) development of simplified analytical procedures for smaller projects; or (3) defining for small projects a set of conditions, effectively ''warrants'' based on project scope and implementation setting, under which proposals are automatically deemed to have an acceptable level of project justification.

Small Starts projects may range in size from non-guideway improvements costing $20 million, or perhaps less, to new guideways costing just under $250 million. Given this relatively wide range of project costs and the potential for complexity and risk, different approaches seem appropriate for projects of different scale. Furthermore, FTA recognizes that the effort expended by project sponsors to develop the necessary information and by FTA to ensure the reliability of that information should be matched to the size and complexity of the proposed project. Lower levels of effort, however, should result from lower levels of complexity, detail, and rigor, not from a reduced ability to address the full range of evaluation criteria. Given the relatively straightforward nature of the financial measures, most of the differences in evaluation methods should occur in the evaluation of project justification, particularly in the methods used to compute mobility benefits and, therefore, cost effectiveness.

Proposal: FTA advances in this NPRM the very simplified evaluation process for Very Small Starts projects that was first proposed in the ANPRM and established, on an interim basis, in the Final Interim Guidance on Small Starts issued August 8, 2006. This process relies on pre-existing ''warrants,'' which if met set the project's justification and local financial commitment ratings at Medium. In addition, while Small Starts projects would be subject to a similar evaluation process as is used for New Starts, the forecast year and level of detail are significantly simplified.

Small Starts Procedures for Planning and Project Development

SAFETEA–LU specifies the use of some different planning and project development procedures for Small Starts projects from those used for traditional New Starts projects. Like the requirement for traditional New Starts, 49 U.S.C. 5309 requires that Small Starts projects be based on the results of planning and alternatives analyses but because of the short timeframe for the analysis (opening year versus the planning horizon covering no less than 20 years), it is likely that this process can be simplified. Unlike traditional New Starts, Small Starts need only be approved to advance from planning and alternatives analysis to project development and construction; no separate approval to enter final design is required. A Project Construction Grant Agreement (PCGA), which is a simplified Full Funding Grant Agreement, is used to provide a multi-year funding stream for Small Starts projects. The ANPRM included a discussion of, and asked for comment on, a number of these issues. The following summarizes the comments received, FTA's response and proposal for addressing the issue in the NPRM:

15. Should there be a distinction in the alternatives analysis requirements for Small Starts compared to traditional New Starts?

16. Should there be a distinction in the alternatives analysis requirements for Very Small Starts compared to larger projects that qualify as Small Starts?

17. Within an alternatives analysis, what other alternatives should be considered in addition to the Small Start and the existing service alternatives?

18. What should be the key elements or features of a highly simplified or simplified alternatives analysis?

Comments: Question 15 received 18 comments, and question 16 received 12 comments. Question 17 received 7 comments, and question 18 received 8 comments. There was universal support expressed for differentiating alternatives analysis between Small Starts and New Starts. Numerous commenters suggested that letting the NEPA process fulfill the requirement for alternatives analysis would streamline the project development process. The desire for simplification was rooted in the idea that Small Starts projects, due to their small size, are inherently less risky than the larger New Starts projects, and the planning process should be correspondingly less complicated.

Another suggestion was to permit the analysis of different alignments or phasing strategies of just one mode or technology, rather than to require an analysis of alternative modes.

Approximately two-thirds of the commenters favored a distinction in the requirements of alternatives analysis between Very Small Starts and Small Starts. These commenters opined that the size of the Very Small Starts projects were not substantial enough to warrant an alternatives analysis. Some mentioned that this would be a redundant step that could be easily covered in the NEPA documentation process. The remaining third of commenters did not believe there should be a difference in the alternatives analysis process, because by differentiating between the two programs, some may use this as an incentive to keep projects just under the Small Starts cost thresholds in order to perform less analysis and be able to step through a streamlined process.

There was a consensus from the commenters that no additional alternatives should be considered. Six commenters suggested that the alternatives analysis should be limited to a ''build'' and a ''no build.'' One commenter specified that such an analysis was appropriate in established transit markets, but that a simplified analysis might include a ''build'' and ''improved system'' for less-well-served transit markets. One commenter wrote that the consideration of other alternatives should be a matter of local discretion, so long as the process meets NEPA requirements.

In terms of what constitutes a highly simplified or simplified alternatives analysis, 3 commenters again focused on the narrowing of alternatives and adherence to NEPA as the key factors that would simplify the process. One commenter noted that many Small Starts, and in particular Very Small Starts, would qualify as categorical exclusions and thus not require an analysis of alternatives. In such cases, they suggested that the NEPA determination ought to serve as meeting the requirement for alternatives analysis.

Response: Although larger projects require a number of alternatives to be considered in an alternatives analysis to assess the numerous tradeoffs in costs, benefits, and impacts, the consideration of Small Starts often implies that fewer useful alternatives exist, and in some cases, there may only be two alternatives, one representing the Small Start and the other representing today's service levels. Nevertheless, the number of alternatives considered must continue to meet the requirements of NEPA, good planning practices, and proper identification of project costs and benefits for funding recommendations. Where an alternatives analysis is performed prior to initiation of NEPA (but consistent with NEPA principles), the subsequent NEPA process and document ought to recognize and incorporate planning analysis and decisions; this applies to both New Starts and Small Starts. A very simple alternatives analysis and subsequent evaluation process can be used when Very Small Starts are being considered.

Proposal: In this NPRM, FTA incorporated the proposal advanced in the ANPRM and established, on an interim basis, in its Final Interim Guidance on Small Starts issued August 8, 2006. This proposal acknowledges that a very limited number of alternatives are permissible and that use of the no-build alternative as the baseline is appropriate if the project does not include a new fixed guideway. For Small Starts, the level of analysis for an alternatives analysis may be considerably simpler than that for New Starts if issues associated with the projects being considered are less complex. For Very Small Starts only minimal information needs to be developed relating to a clear description and assessment of the problem or opportunity in the corridor, a clear description of the project and how it addresses the problem or opportunity, determination of the project sponsor's ability to support the costs of building and operating the project, and a plan for implementing the project.

19. Should Small Starts projects also be required to perform a ''before and after'' study?

Comments: Nineteen comments were received in answer to this question. Approximately two-thirds of the commenters indicated a ''before and after'' study should not be required of Small Starts projects. Of those opposed to requiring the study, reasons cited included the cost relative to the project funding allotment, as well as the need for greater consistency in reporting requirements. Others opposed to requiring the study noted that while data collection and analysis is a useful process, and one that should be included in the project funding, it should not be a requirement. For the one-third of the commenters who supported a requirement for a ''before and after'' study, the need for a solid base of data and analysis of Small Starts projects nationwide was consistently cited as a reason. However, another commenter noted the need for simplicity with regard to data requirements and analysis methods. It was further suggested that the ''before and after'' study be cost effective and in line with the project size and scope, with little or no analysis required for Very Small Starts projects. Specific measures that were noted as potentially useful included projected versus actual ridership; annual report of ridership; projected versus actual costs (operations and maintenance, capital); project scope; and projected service levels versus actual service levels.

Response: The objectives of the ''before and after'' study are two-fold: (1) To expand insights into the costs and impacts of major transit investments; and (2) to improve the technical methods and procedures used in the planning and development of those investments. These objectives are equally important to both large-scale and smaller-scale transit projects. Small Starts projects have a unique opportunity to affect a greater number of transit agencies with the results provided from a ''before and after'' study.

Proposal: FTA proposes to require a ''before and after'' study for all Small Starts projects. Support for this approach can be found in 49 U.S.C. 5309(g)(2)(C), which applies to all Section 5309 Capital Investments, not just to those funded under 49 U.S.C. 5309(d). However, FTA is cognizant of the need to simplify this process and therefore the FTA guidance on ''before and after'' studies for New Starts will be modified to allow for a simplified study approach for Small Starts. In addition, for Very Small Starts, the requirements for the Before and After Study in the NPRM have been extremely simplified since the project sponsor is required to submit project information that is generally available.

20. Should FTA mandate an early scoping approach for those alternative analyses that are not being conducted concurrently with the formal NEPA process?

Comments: Fifteen comments were received in answer to this question. In order to better address environmental requirements for alternatives analyses, the ANPRM proposed an ''early scoping'' procedure. That procedure is described in Council on Environmental Quality's (CEQ) guidance. It allows for a scoping process in advance of the Notice of Intent to prepare an Environmental Impact Statement. Response to this proposal was mixed with 6 commenters supporting the approach and 9 commenters opposing it. However, it should be noted that more experienced entities and those

representing the largest transit operators were opposed to the proposal due primarily to the fact that scoping is likely to not be required for the majority of Small Starts projects under the National Environmental Policy Act (NEPA) regulations. Those entities stated that because the requirement will often be more stringent than what NEPA requires, it should not be imposed.

Response: Early scoping, undertaken by sponsors, could assist FTA in making a well-reasoned class of action determination for each Small Starts project. If, in advance of any informal early scoping process, it appears that, based on established facts and circumstances, a particular project proposal qualifies for a categorical exclusion, then early scoping by the project sponsor need not be undertaken; otherwise, early scoping is the best means of determining the appropriate class of action for purposes of the NEPA process. However, because of the likelihood that a vast majority of proposed projects will not be required to engage in formal scoping, this additional effort outweighs its limited value.

Proposal: FTA is not proposing that early scoping, as defined by CEQ guidance, be required for Small Starts projects. Instead, for projects requiring an Environmental Impact Statement, FTA is proposing to require that the project has progressed beyond the NEPA scoping phase before FTA will approve entry into project development. This requirement is identical to that currently applied to New Starts.

Additional Discussion Items for Comment

A few additional issues have been raised since publication and comment on the Guidance on New Starts Policies and Procedures and the ANPRM on Small Starts. FTA specifically requests feedback on these issues, which are identified below and are also discussed in either the Response to Comments or in the Section-by-Section Analysis. FTA will consider comments received on these issues during future stages of the rulemaking process.

1. FTA has revised the definition of a fixed guideway system in section 611.5 to reflect the changes included in SAFETEA–LU. In addition, however, FTA has included in that definition facilities, such as HOT lanes, that replicate the kind of free-flow conditions expected of a traditional fixed guideway system through pricing or other enhancements. This proposal is more fully described under the proposal for Question 1 in the Eligibility section of the Guidance on New Starts Policies and Procedures.

2. In sections 611.13(b), 611.23(b), and 611.33(b) of the regulatory text, of the NPRM FTA is proposing that the costs of all ''essential project elements'' must be included in the capital cost estimates that lead to a project's cost effectiveness rating. Cost estimates that do not include all of these elements will be considered incomplete and will not be accepted for rating. FTA requests industry input as to which ''essential project elements'' should be required for inclusion. There has been much discussion in the past as to what constitutes an essential element of the project versus a project betterment, which can and should be funded entirely with local funds. In addition, in the interest of ''right-sizing'' some project sponsors have excluded improvements needed in the latter years of the planning horizon from the scope of the FFGA, even though such costs are always required for cost effectiveness calculations. This has led to some confusion as to whether the project sponsor is required to provide these improvements, since they are necessary to generate the benefits used in the cost effectiveness calculation. One way this problem has been addressed is that the project sponsor has included these improvements in the 20 year financial plan but has shown that they will be funded with non-Section 5309 Fixed Guideway funds. FTA seeks the industry views on how these various concepts, ''essential project elements'', ''betterments'' and ''right-sizing'' should be addressed in the New Starts/Small Starts process.

3. FTA is considering whether an extremely simplified alternative evaluation framework should be allowed for Small Starts projects. The framework would allow for a ''pass/fail'' rating for economic development/land use and cost effectiveness, which, when combined with a reliability factor, would translate into the five levels (high, medium-high, medium, medium-low, and low) for the overall rating. This framework could simplify the rating process, while identifying the projects with the most potential. It would not, however, provide as much information on the variations between projects. This proposal is more fully described in the Response to Comments section under the proposal for Question 6 in the Small Starts Evaluation and Ratings section.

4. Relief of congestion is a top priority of the Department of Transportation, as reflected in its recently announced Congestion Initiative. The proposals made in this Notice include several features which are designed to assure that Major Investment projects contribute to reducing congestion. For example, as noted below, FTA intends to take account of, as a part of its review of ''other factors,'' the degree to which a project is supported by an effective congestion relief strategy including variable pricing. Second, FTA proposes to continue to include highway user transportation benefits, such as travel time savings from reduced demand on the highway system, as part of its measure of transportation system user benefits used to calculate mobility improvements and cost effectiveness. However, while this factor has been included in the definition of user benefits for some time, as described above in response to Question 10 under New Starts, reliable estimation of these benefits has been problematic. FTA intends to continue to work closely with the Federal Highway Administration to address the improvements needed in travel models to assure that reliable estimates can be developed and included in the measurement of transportation system user benefits. However, until such estimates are uniformly available on a reliable basis, FTA believes it is appropriate to use alternative measures that could provide some indication of the congestion relief benefits of New Starts projects. One such measure could be the reduction in highway vehicle miles of travel between the New Start and baseline alternative, weighted by a factor of highway congestion (e.g., daily vehicle miles of travel per lane mile in the New Starts project corridor). Such a measure, while imperfect, would allow for consideration of the amount of reduced highway demand to be assessed in the context of the severity of congestion in the corridor. Accordingly, as the third way in which congestion would be addressed in evaluating projects, FTA is proposing to include ''congestion relief'' as one of the features of ''mobility improvements'' evaluated as part of establishing project justification. FTA is interested in comment on the implications for the New Starts program of taking into account the congestion reduction benefits of transit projects, the measure of congestion relief proposed above, other possible measures of congestion relief, and the methods by which the current travel models could be used to produce better and nationally consistent estimates of highway system user benefits.

5. FTA is seeking feedback on how to provide additional incentives to increase the role of public/private partnerships in Section 5309 Capital Investment projects. FTA is proposing

to explicitly address the role of public/private partnerships as part of an assessment of the role that innovative contractual arrangements can play in reducing and/or improving the operating costs both as a measure of the reliability of estimates of operating costs and in its assessment of the operating plan under local financial commitment. However, there may be additional steps that FTA could take. In addition, FTA is looking at ways that public/private partnerships can enhance the capital plan under local financial commitment as well as measure cost effectiveness. For purposes of this question, a public/private partnership assumes that the private sector invests its own financial capital (as opposed to an in-kind contribution) in the project. One possible approach would be to allow ''betterments'' funded by private entities to be excluded from the cost effectiveness calculation. This would allow private entities to invest in particular elements of a project that they viewed to be of particular benefit to them without jeopardizing an acceptable cost effectiveness rating. This approach would be available to a project with an acceptable cost effectiveness rating calculated without taking into account such betterments. To the extent that the addition of the betterments to the project's design would result in the project's cost effectiveness becoming unacceptable, FTA would exclude such costs from the calculation of cost effectiveness if they were borne by private entities. Examples of such improvements, or betterments, could include additional station entrances to subway stations, substantial improvements to a station's design beyond the design standards used for other stations in the system, and changes in the vertical or horizontal alignment of the project. Alternatively, FTA could exclude from the calculation of the cost effectiveness rating those project costs paid for by private capital—whether such costs are for betterments or otherwise—and calculate a project's cost effectiveness based only on costs borne by the public.

6. FTA has chosen to publish the weights used to calculate the Project Justification and local financial commitment ratings for New and Small Starts projects in the final rule. Previously, these weights as well as measures used to determine New or Small Starts Project Justification and Local Financial Commitment ratings have been published in the Annual Report on Funding Recommendations and separately in other FTA publications. FTA seeks comment on whether to publish both the weights and the measures in the final rule, or to preserve a degree of flexibility and maintain the measures in a separate document.

7. FTA is seeking comment on how it might develop a methodology to better quantify the user benefits attributable to a project. First, FTA seeks comment on a methodology for quantifying the user benefits that would accrue from the interaction of the proposed New Start or Small Start project and road pricing included in an effective congestion management strategy.

Second, FTA seeks a methodology for quantifying the benefits attributable to the economic development/land use changes that occur as a result of a proposed New Start or Small Start project. Those changes in economic development/land use may provide benefits that are not otherwise included in FTA's current estimation of user benefits. FTA seeks comment on how to quantify this difference in economic development/land use attributable to the project, as well as how to measure the benefits that result.

III. Section-by-Section Analysis

Reorganization

In order to make the regulation more understandable, FTA is proposing to divide it into four subparts that will cover General Provisions, ''New Starts,'' ''Small Starts,'' and ''Very Small Starts.'' Subpart A would include General Provisions that apply to all projects seeking Section 5309 Capital Investment funds. Subpart B would include those provisions that apply to New Starts (projects of over $250 million in total cost *or* requesting more than $75 million in New Starts funds). Subpart C would cover Small Starts projects (projects of under $250 million in total cost *and* requesting less than $75 million in Small Starts funds but not qualifying as a Very Small Start). Subpart D would cover Very Small Starts (a subset of Small Starts projects which are less than $50 million in total cost and $3 million per mile (excluding vehicles) and which meet other specified characteristics). FTA has chosen this approach, even though there is a lot of similarity in the requirements of each subpart, in order to assist a project sponsor in finding all of the applicable procedures and evaluation criteria in a single subpart, depending on the size and nature of the proposed project.

Subpart A includes a general statement of purpose and contents, statements on applicability of the regulation, and a section on definitions. These sections are similar to section in the current regulation, but include certain amendments, which are described below. This is followed by a new section on measures of reliability, which applies to all projects seeking Section 5309 Capital Investment funds, no matter the size.

Subparts B, C, and D each include separate provisions on eligibility, the project justification criteria, the local financial commitment criteria, overall project development ratings, and the project development process, as they apply to New Starts, Small Starts, and Very Small Starts, respectively. These subparts build on the sections in the existing regulations that cover these subjects, amended as described below, and tailored to the size and complexity of the projects being considered.

Distribution Table

For ease of reference, the following distribution table indicates proposed changes in section numbering and titles from the current version of the regulations in 49 CFR part 611.

Current part 611	Proposed part 611
611.1 Purposes and Contents	Subpart A—611.1 Purpose and Contents.
611.2 Applicability	Subpart A—611.3 Applicability.
	Subpart B—611.9 New Starts—Eligibility.
	Subpart C—611.19 Small Starts—Eligibility.
	Subpart D—611.29 Very Small Starts—Eligibility.
611.5 Definitions	Subpart A—611.5 Definitions.
611.7 Relation to planning and project development processes	Subpart B—611.17 New Starts—Project development process.
	Subpart C—611.27 Small Starts—Project development process.
	Subpart D—611.37 Very Small Starts—Project development process.
611.9 Project justification criteria for grants and loans for fixed guideway systems.	Subpart B—611.11 New Starts—Project justification criteria.
	Subpart C—611.21 Small Starts—Project justification criteria.

Current part 611	Proposed part 611
611.11 Local financial commitment criteria	Subpart D—611.31 Very Small Starts—Project justification criteria. Subpart B—611.13 New Starts—Local financial commitment criteria. Subpart C—611.23 Small Starts—Local financial commitment criteria. Subpart D—611.33 Very Small Starts—Local financial commitment criteria.
611.13 Overall project ratings	Subpart A—611.7 Measures of reliability in the Section 5309 capital investment evaluation and rating process. Subpart B—611.15 New Starts—Overall project ratings. Subpart C—611.25 Small Starts—Overall project ratings. Subpart D—611.35 Very Small Starts—Overall project ratings.

Subpart A—General Provisions

Section 611.1: Purpose and Contents

This section describes the purpose of the proposed rule, which is to implement the requirements of Title 49, United States Code (U.S.C.), sections 5309(d) and (e) and 5328(a).

As is the case with the current regulation, the proposed rule establishes the methodology by which FTA will evaluate candidate projects for Section 5309 Capital Investment funding. Applicants must follow these rules to be considered eligible for discretionary capital investment grants for new fixed guideway systems, including substantial corridor-based bus systems or extensions to existing systems. As in the current regulation, data collected as part of the planning and project development process and related regulations, conducted under 23 CFR part 450 and 23 CFR part 771, provide the basis for evaluating projects seeking to proceed under the New Starts, Small Starts, or Very Small Starts programs.

As in the current regulation, the results of these evaluations will be used by FTA to make the findings required to advance a project into preliminary engineering (PE) and final design for New Starts, and into project development for Small Starts and Very Small Starts. They also will be used to make recommendations, as required under 49 U.S.C. 5309(k)(1), for inclusion in the President's annual budget request, and to determine which projects are eligible for funding commitments under Full Funding Grant Agreements, in the case of New Starts, or Project Construction Grant Agreements, in the case of Small Starts and Very Small Starts. The annual report was previously called the New Starts Report, but will now be retitled because it will include funding recommendations for both New Starts and Small Starts. In contrast to the current regulation, information will not be needed for an annual Supplemental Report on New Starts, formerly required by 49 U.S.C. 5309(o)(2), as it was dropped by the amendments made to 49 U.S.C. Chapter 53 by SAFETEA–LU.

Section 611.3: Applicability

This section states that this rule, as in the current regulation, applies only to the evaluation of projects seeking Federal capital investment funds (New Starts and Small Starts) for new fixed guideway systems and extensions to existing systems under 49 U.S.C. 5309. However, in contrast to the current regulation, ''substantial capital investments in new corridor-based bus projects'' are added to the eligible activities for Small Starts, implementing additional eligibility provided by SAFETEA–LU. New Starts projects must continue to include a fixed guideway component, as will be described below in more detail.

As in the current regulation, this section also states that the rule does not apply to projects already in final design or under a Full Funding Grant Agreement.

The proposed rule, consistent with SAFETEA–LU, does not continue the current exemption from the requirements of this rule for projects seeking less than $25 million in Section 5309 Capital Investment funds. However, the proposed rule would permit projects which had been exempt and which had already been approved into project development (PE or final design) to use funds that have already been made available through the appropriations process and to receive those funds without being rated and evaluated under the proposed rule. However, to receive additional Section 5309 Capital Investment (New Starts and Small Starts) funds from FTA, previously exempt projects would have to be rated and evaluated in accordance with the provisions of the rule.

Section 611.5: Definitions

As in the current regulation, this section defines key terms used in 49 CFR part 611. Many of the definitions would remain unchanged from the current regulation. However, several definitions have been changed to provide more detail or specificity or to be consistent with changes proposed to be made elsewhere in the rule. Key changes include the following.

The definition of ''alternatives analysis'' is proposed to be expanded to include a requirement that an alternatives analysis must ''include sufficient key information to enable the Secretary to make the findings * * * required under section 5309.'' This was added to be consistent with the definition of alternatives analysis added to 49 U.S.C. 5309 by SAFETEA–LU.

The definition of ''baseline alternative'' is proposed to be changed slightly to modify the reference to alternatives that have a better ratio of measures of mobility to cost than the no build alternative by explicitly stating the condition that the cost effectiveness of the baseline alternative must meet. This is consistent with long standing FTA guidance. Specific reference to Transportation System Management or Very Small Start-like alternatives as typical baseline alternatives is proposed to be added.

A definition of ''metropolitan transportation plan'' is proposed to be added, which is based on the requirements in 49 U.S.C. 5303.

The term ''Project Construction Grant Agreement (PCGA)'' is proposed to be defined as a document similar in concept to a Full Funding Grant Agreement (FFGA), but for Small Starts (including Very Small Starts) projects.

The term ''project development'' is proposed to be defined as steps taken during PE and final design, prior to award of a FFGA or a PCGA.

A definition is provided for the term ''Section 5309 Capital Investments Program'' which includes funding for New Starts and Small Starts projects under Section 5309(b)(1), (b)(4), and (m)(2)(A). While the title for all of Section 5309 is ''Capital Investment Grants,'' this rule applies only to projects seeking discretionary grants for New Starts and Small Starts funding under subsections (b)(1), (b)(4) and (m)(2)(A) and not to funding for Fixed Guideway Modernization under

subsections (b)(2) and (m)(2)(B) or discretionary bus grants under subsections (b)(3) and (m)(2)(C).

FTA is proposing a definition of ''Project Development Agreement'' (PDA), which is an agreement between FTA and the project sponsor that must be executed before the project is approved for entry into PE. The terms and conditions of a model PDA are set forth in Appendix A to the proposed rule.

The term ''Section 5309 Capital Investment'' is proposed to be defined as those projects eligible for assistance with funds from the discretionary Section 5309 Capital Investment Program. This includes new fixed guideway systems and extensions, as in the current regulation, but also an expanded definition of this term. First, FTA has proposed that the definition include a transportation facility that, by means of pricing or other enhancements, replicates the benefits of ''free-flow'' conditions for transit. Second, in response to SAFETEA–LU for Small Starts funding, the definition includes corridor-based bus projects with at least 50 percent of the project operating in a guideway dedicated to transit or high occupancy vehicle use during peak periods, or a substantial investment in a defined corridor which includes certain key elements. The key elements proposed are substantial transit stations, traffic signal priority/pre-emption, low floor buses or level boarding, branding of the proposed service, and 10 minute peak and 15 minute off-peak headways or better for at least 14 hours per day. The definition also would provide for a categorization of projects into three categories (New Starts, Small Starts, and Very Small Starts), depending on the size of the project and certain project features. New Starts projects would be defined as those requesting $75 million or more in Section 5309 Capital Investment funds, or a total project cost of $250 million or more. Small Starts projects would be projects requesting less than $75 million in Section 5309 Capital Investment funds and a total project cost of less than $250 million. Very Small Starts projects would be defined as meeting Small Starts requirements, but in addition having a total cost of less than $3 million per mile (not including vehicles), a total project cost of less than $50 million, and including demonstrably effective and cost-effective project elements. For the purpose of categorizing projects, costs would be expressed in year-of-expenditure dollars.

A definition of ''Transportation System Management (TSM)'' would be added that is drawn from long-standing use of the term in the planning process. In essence, it is defined as the best than can be done without construction of a new fixed guideway. At a minimum it must be more cost effective as compared to the no build alternative than the New or Small Starts project compared to the no build alternative. This could include upgrades to transit service through operational and small physical changes, selected highway improvements, minor widenings, and other focused traffic engineering improvements.

A definition of ''user benefit'' has been added. The term is defined as transportation system user benefits accruing to all travelers affected by the proposed Section 5309 Capital Investment improvement, compared to a baseline alternative. User benefits include travel time savings, reduced out-of-pocket travel costs, improvements in comfort, convenience, and reliability, and other benefits that accrue to users of specific travel modes, where such benefits are supported by verifiable data. The definition explicitly includes highway users, transit users, and pedestrians as users of the transportation system.

Section 611.7: Measures of Reliability in the Section 5309 Capital Investment Evaluation and Rating Process

This section, which is completely new compared to the existing regulation, would provide that FTA would evaluate and rate the reliability of the forecasts of ridership and costs estimated and proposed for a Section 5309 Capital Investment project. SAFETEA–LU amended 49 U.S.C. 5309 to add new provisions (49 U.S.C. 5309(d)(3)(B) and 49 U.S.C. 5309 (e)(4)(D)) that require FTA to evaluate the reliability of these forecasts and proposals. However, as stated in the NPRM, the specific measures that will be used to evaluate and rate reliability will be established in policy guidance. It is likely that these measures would address the transit orientation of existing and future land uses in the environment of the proposed project, the experience of the project sponsor in implementing previous major projects similar to that being proposed, industry experience with implementation of projects of a similar nature, the reliability of forecasting methods used by the project sponsor and of the information provided by the project sponsor in support of the evaluation process, a comparison of opening year project ridership to that estimated for the planning horizon covering no less than 20 years, the degree to which innovative contractual arrangements are in place or planned which reduce the uncertainty of operating cost estimates, and mitigation efforts by the project sponsor to improve the reliability of forecasts. Once a project's reliability of forecasts has been established, the proposed rule would allow FTA to adjust, upward or downward, specific ratings that would otherwise be applied to the specific project justification or local financial commitment criteria that would be affected by the uncertainties associated with the area of estimation reliability determined in the evaluation of the factors outlined above.

FTA is considering an alternative structure for developing overall project ratings for Small Starts projects. This proposal is more fully described in the Response to Comments section under the Proposal for Question 6 under the Small Starts Evaluation and Ratings section. Should the alternative approach be adopted, FTA would also consider the amount of funding proposed to come from outside the Section 5309 Capital Investment program as an indication of the reliability of the financial commitment to the proposed Small Starts project.

Subpart B—New Starts

Section 611.9: Eligibility for Section 5309 Capital Investments Funds (New Starts)

This section would establish the eligibility for New Starts funding. New Starts are defined, in section 611.5, as those projects requesting $75 million or more in New Starts funds or having a total project cost of $250 million or more. As in the current regulation, New Starts projects must be the result of planning and alternatives analysis. Codifying current FTA practice, projects must have at least 50 percent of the project length (not necessarily contiguous) operating on a fixed guideway that is dedicated to transit or high occupancy vehicle use during the peak period or when congestion inhibits transit system performance. Projects which qualify as a New Start project due to their cost or requested New Starts share must be evaluated under the criteria and procedures provided for in Subpart B; they may not be subdivided for the purpose of analysis, rating, and evaluation into a series of Small Starts or Very Small Starts projects covered by Subparts C or D.

Section 611.11: Project Justification Criteria (New Starts)

The approach taken in the proposed rule for evaluation of the justification for New Starts projects builds on the approach in section 611.9 of the current

regulation. As required by 49 U.S.C. 5309(d)(2)(B), FTA must find that a project is ''justified'' based on a comprehensive review of a series of criteria. Many of these criteria were unchanged by SAFETEA–LU, but several were added or were given added emphasis. As under the current regulation, FTA will evaluate and rate a proposed project based on information coming from locally-conducted alternatives analyses and project development processes. Also as in the current regulation, FTA will use a ''multiple measure'' approach to determine the overall justification of a proposed project, combining the ratings made against a series of criteria.

As in the current regulation, ratings for each of the specified criteria will be expressed in terms of five levels of descriptive indicators ranging from ''high'' to ''low.'' Subsection (a)(2) provides that the specific measures for each of the project justification criteria will be published in policy guidance and may be changed from time to time. However, as required by SAFETEA–LU, such changes will be subject to notice and comment before they are finalized and will be published at least every two years or when substantial changes occur.

As proposed in the January 2006 Guidance on New Starts Policy and Procedures, FTA is proposing to adopt a new approach to classify the criteria used for project justification. Mobility improvements (including mobility for transit dependents and congestion relief), economic development/land use, and environmental benefits will be classified as measures of project effectiveness.

Cost effectiveness is proposed to be evaluated separately, measured as annualized capital and operating costs divided by transportation system user benefits. The capital cost used for cost effectiveness must include all essential project elements necessary for completion of the project. Transportation system user benefits are explicitly defined elsewhere to incorporate benefits to all transportation system users, including transit riders, highway users, and pedestrians. In the long run, it is expected that the measure will count highway user benefits explicitly, once transportation models are capable of providing reliable and nationally consistent estimates of their value.

''Operating efficiencies'' is no longer included as a separate evaluation criteria, even though it is called out in 49 U.S.C. 5309(d)(2)(B) as one of the factors to be assessed by FTA in finding that a project is ''justified.'' Instead, FTA proposes to address this factor through the cost effectiveness measure, which already includes operating costs in the annualized costs, because experience has shown that a separate measure of operating efficiencies does not meaningfully distinguish between projects. FTA expects that operating efficiencies resulting from innovative contractual arrangements will result in lower operating expenses and hence higher cost effectiveness ratings. FTA will consider any innovative contractual arrangements, including public private partnerships, as a measure of operating efficiencies in its evaluation of both reliability and the operating plan as part of local financial commitment.

Consistent with the changes made by SAFETEA–LU, which explicitly added ''economic development'' to the list of justification factors, and which elevated ''public transportation supportive land use policies and future patterns'' from a consideration to a justification factor, ''economic development/land use'' is included as a measure of effectiveness. As described above in the Questions 7 and 8 of the response to comments received on the Guidance on New Starts Policies and Procedures and Question 8 of the ANPRM on Small Starts, it is difficult to separately evaluate these two factors. Nonetheless, recognizing the importance that SAFETEA–LU provided by including both these factors, FTA will use this combined measure as an important part of the evaluation of project justification. Thus, the rating of cost effectiveness and of effective will be weighted equally in computing the project justification rating. Economic development/land use will comprise 40 percent of the effectiveness measure, with an additional 40 percent given to mobility for the general population (including congestion relief), 10 percent to environmental benefits, and the final 10 percent to transit dependent mobility.

As in the current regulation, effectiveness and cost effectiveness are evaluated by comparing the project to the baseline alternative and ''other factors'' will be considered in setting the overall rating for project justification. Although FTA is not proposing, as was proposed in the January 19, 2006 draft Guidance on New Starts Policies and Procedures, to explicitly assess the case for the project as a separate measure, FTA intends to evaluate this issue for all projects as part of its assessment of ''other factors.'' As part of its policy guidance FTA will identify which additional factors will be considered as ''other factors.'' One measure that FTA currently intends to consider under ''other factor'' is the degree to which a project is a part of a significant congestion reduction strategy that incorporates pricing. Others could include multimodal emphasis of the locally preferred investment strategy, including the proposed New Starts project as one element; environmental justice considerations and equity issues; consideration of innovative financing, procurement and construction techniques, including design-build turnkey applications; and additional factors relevant to local and national priorities and to the success of the project.

In the current regulation, a series of ''considerations'' specified in 49 U.S.C. 5309(d) are laid out. The proposed rule does not explicitly include these considerations as specific criteria. However, the measures which will be used to support the criteria that are explicitly identified do implicitly cover the considerations included in 49 U.S.C. 5309(d). Specifically, congestion relief (49 U.S.C. 5309(d)(3)(D)(i)) and improved mobility (49 U.S.C. 5309(d)(3)(D)(ii)) are incorporated in the measures of mobility and transportation system user benefits; air pollution (49 U.S.C. 5309(d)(3)(D)(iii)), noise pollution (49 U.S.C. 5309(d)(3)(D)(iv), and energy consumption (49 U.S.C. 5309(d)(3)(D)(v) are addressed in the measure for environmental benefits; and, finally, ancillary and mitigation costs (49 U.S.C. 5309(d)(3)(D)(vi)) and local land, construction, and operating costs (49 U.S.C. 5309(d)(3)(J)) are included in the costs used to calculate cost effectiveness. As noted earlier, measures of congestion relief could also include measures of reduced highway travel weighted by severity of congestion, as well as being included in the measure of transportation system user benefits used to calculate cost effectiveness. Further, infrastructure costs and other [land use] benefits (49 U.S.C. 5309(d)(3)(E)) and the cost of suburban sprawl (49 U.S.C. 5309(d)(3)(F)) are addressed in the measure of economic development/land use. The mobility of the public transportation dependent population (49 U.S.C. 5309(d)(3)(G)) is, in fact, a key part of the mobility measure of effectiveness, and economic development (also in 49 U.S.C. 5309(d)(3)(G)) is part of the economic development/land use measure of effectiveness. Population density (49 U.S.C. 5309(d)(3)(H)) is addressed as part of the economic development/land use measure of effectiveness and current transit ridership (also in 49 U.S.C. 5309(d)(3)(H)) forms an important part of the new measure of reliability.

Finally, the technical capacity of the grant recipient (49 U.S.C. 5309(d)(3)(I) is addressed in the measures of reliability, as well as forming an important part of the assessment of readiness to proceed to through project development.

Subsection (c) is essentially unchanged from the existing regulation and requires the New Starts project to be compared to the baseline alternative and that a greater degree of certainty with respect to the scope, level of commitment and the plans and policies that support land use and economic development are required as the project moves through the process.

A new subsection (d) is added that indicates that while project sponsors are expected to use the traditional four-step model to estimate mobility benefits, alternative, simpler methods may be applied with FTA approval.

Finally, as in the current regulation, subsection (e) states that the ratings for each of the criteria will be combined into an overall rating of project justification. As in the current regulation, the overall rating for project justification will range on a five level scale from ''high'' to ''low.'' ''Other factors'' will be considered in setting the overall rating. The proposed rule explicitly indicates that applying these ''other factors'' can result in an adjustment, upward or downward, in the overall rating of project justification.

Section 611.13: Local Financial Commitment Criteria (New Starts)

The approach taken to evaluate local financial commitment is proposed to be largely unchanged from the current regulation. This includes an assessment of the amount of non-Section 5309 Capital Investment funds being requested, and the stability and reliability of the funding proposed to be used to cover both the capital costs of the project and the operating costs of the entire transit system, including the project. As in the current regulation, the capital and operating financing plans will be rated over the planning horizon covering no less than 20 years for the project. The measures for rating the stability of the funding to cover operating costs will include an assessment of the degree to which innovative contractual arrangements are in place to assure the reliability of operating cost estimates.

The provision which calls for FTA to assess the degree to which planning and PE have been carried out with other than Section 5309 Capital Investment funds has been dropped, as this requirement was deleted by SAFETEA–LU. In addition, as required by SAFETEA–LU, a provision is proposed that would provide that FTA would give priority to financing projects that require less New Starts funds, while at the same time considering the fiscal capacity of State and local governments to provide more New Starts funds in determining whether to rate the project's overall local financial commitment below ''medium.''

As in the current regulation, ratings of the percentage of Federal funds sought from the New Starts program and the capital and operating financial commitments will be made on a five level scale ranging from ''low'' to ''high.'' These ratings will be combined, as in the current regulation, into an overall rating of financial commitment on a five level scale ranging from ''low'' to ''high.''

Section 611.15: Overall Project Ratings (New Starts)

As in the current regulation, the ratings on project justification and local financial commitment will be combined into an overall project rating. In contrast to the current regulation, which, as provided for in Transportation Equity Act for the 21st Century (TEA–21), called for overall project ratings to be expressed as ''highly recommended,'' ''recommended,'' or ''not recommended,'' the proposed rule calls for, consistent with SAFETEA-LU, projects to be assigned overall ratings on a five level scale of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' and ''low.'' In addition, in response to the requirement in SAFETEA-LU, the proposed rule calls for the summary rating to take into account the degree of the reliability of the estimates of ridership and costs.

As in the current regulation, ratings will be made at the time a project seeks to move from one step in the project development process to another, and annually for the purposes of the annual report on funding recommendations required by 49 U.S.C. 5309(k)(1).

The proposed rule does not specify how the ratings of project justification and local financial commitment will be translated into the overall project ratings, except to indicate, similar to the current regulation, that a project must be rated at least ''medium'' on project justification, and local financial commitment to be rated ''medium'' overall. Since, as required by SAFETEA-LU, a five level scale will now be used, FTA proposed to apply a similar decision rule to determining the rating of ''medium-high'' and ''high'' as is used in the current regulation which required ratings of at least ''medium'' on both local financial commitment and project justification to achieve a rating of ''recommended,'' which is now a rating of ''medium.'' In other words, both project justification and local financial commitment would have to be rated ''high, medium-high or medium'' in order to achieve an overall rating of ''high, medium-high or medium.'' Consistent with SAFETEA-LU, the proposed rule continues to require an overall project rating of at least ''medium'' for a project to advance to a subsequent step in the project development process or to be recommended for funding.

Section 611.17: Project Development Process (New Starts)

This section provides for the procedures by which New Starts projects are to advance through the project development process. For New Starts, this process is largely consistent with the project planning and development procedures in section 611.7 of the current regulation. All projects must emerge from the metropolitan and Statewide planning processes. Projects must proceed through both the PE and final design stages of the project development process before being eligible to be recommended for New Starts funding.

As in the current regulation, project sponsors must perform an alternatives analysis. The proposed rule indicates that this analysis must be consistent with FTA guidance and NEPA requirements. The alternatives analysis must cover a range of alternatives and result in selection of a locally preferred alternative that is formally adopted and included in the region's metropolitan transportation plan.

The proposed rule defines project development to include PE and final design. The proposed rule includes more detail on the definition of the activities that are included in PE which are then translated into entry criteria for final design. It indicates that PE includes completion of the NEPA process, design of all major project elements to the extent that no significant cost-related issues remain, and cost estimation that permits development of a financial plan that establishes the maximum amount of New Starts funding which FTA will provide if the project were to receive a full funding grant agreement. As in the current regulation, minimum readiness criteria for entry into PE are provided. Along with the previous requirement that FTA approve the baseline alternative, new features of these criteria include a requirement that the NEPA scoping process has been completed before FTA approves entry into PE, that independent endorsement has been

received from potential funding partners of the proposed financing strategy, and that the travel demand forecasting methods have been validated against a survey of transit riders no more that five years old. In addition, approval to enter PE will also require development of a preliminary plan to conduct the ''before and after study'' that is required by the amendment to 49 U.S.C. 5309(g)(2)(C) added by SAFETEA-LU. Such studies are already required by the current regulation. This added requirement to enter PE is designed to assure that the process of conducting such studies is facilitated. An overall rating of ''medium'' is required to receive approval to enter PE; this is consistent with the current regulation's requirement that the project have an overall rating of ''recommended.'' As in the current regulation, project sponsors approved to enter PE are granted pre-award authority to conduct all PE activities prior to grant approval.

In a new subsection (2(H)) FTA is proposing to require the execution of a Project Development Agreement (PDA) before approval of entry into PE. The PDA would set forth the mutual understandings of FTA and the project sponsor regarding the steps and schedule to ensure the satisfactory completion of the NEPA process, the steps and schedule to complete preliminary engineering and final design, including development of reliable cost estimates and ridership forecasts, a discussion of all significant uncertainties in the development of costs, benefits and financial information, and the steps and schedule to secure funding commitments. The terms and conditions of a model PDA between FTA and a project sponsor are set forth in Appendix A to the proposed rule.

Final design entry criteria are also proposed in subsection (d), similar to those in the current regulation. New readiness criteria include a requirement that the project be reaffirmed in the region's metropolitan transportation plan if there are any significant cost or scope changes during PE, and a requirement for an agreement between FTA and the project sponsor as to the maximum amount of New Starts funding that will be sought for the project. However, as stated in subsection (d)(2)(D), FTA will entertain requests for increases above this amount in an FFGA for the project if it is determined that costs have increased outside of the project sponsor's control. As in the current regulation, approval to enter final design will require further development of the plan to conduct the ''before and after'' study. However, the proposed rule requires that data on the project through the end of PE must be collected and submitted to FTA as part of the final design submittal. Again, analogous to the current regulation's requirement for a rating of ''recommended,'' a project must receive an overall rating of at least ''medium'' to advance into final design. Further, as in the current regulation, project sponsors approved to enter final design are granted pre-award authority to conduct final design activities, right-of-way acquisition and utility relocation prior to grant approval. Other project activities would require a Letter of No Prejudice. As stated in subsection (d)(7), projects that are approved into final design will be exempt from any changes in New Starts policy or guidance.

As in the current regulation, criteria are provided for execution of Full Funding Grant Agreements (FFGAs) in subsection (e). Projects must be rated ''medium'' or better, project sponsors must be determined to have the technical capacity to carry out the project, and no outstanding issues may remain. The proposed rule notes in subsection (e)(2) that FTA's funding decision is distinct from project evaluation and rating process. Projects that meet or exceed the criteria described in this section are eligible, but are not guaranteed, to be recommended for funding. FTA will recommend projects for funding in the annual Report on Funding Recommendations and President's Budget only if the project is rated at least ''medium'' overall and has a cost-effectiveness rating of at least ''medium.''

As noted earlier, it is intended that the maximum New Starts share of the project be established at entry into final design. However, FTA will entertain requests for additional New Starts funds, on a case-by-case basis where costs have increased outside the control of project sponsors. FFGAs are proposed to continue to specify the cost and scope of the project, the schedule that the project sponsor must meet, and the schedule of Federal funding amounts (subject to appropriations). Consistent with changes made by SAFETEA–LU, in subsection (e)(7), FTA proposes to add a new feature of FFGAs, which would be an incentive clause that would allow for an amendment to increase the Federal funding contribution when actual opening year ridership is no less than 90 percent of that forecast and actual capital costs are not more than 110 percent of that estimated at the time the project entered PE, compared in constant dollars. The standard being set for ridership and cost is slightly more stringent than provided for in SAFETEA–LU, as FTA is proposing to process an amendment for these additional incentive funds only after the project is complete and operating, rather than providing an immediate incentive based on whether forecasts stayed within these limits after entry into PE but prior to execution of the FFGA. FTA believes that the incentive should only be provided for actual performance, not for projected performance. As in the current regulation, FTA is limited in the amount of FFGA commitments it can make during a given reauthorization cycle by the amount authorized, plus a statutory limit on contingent commitments, which are subject to future authorizations. Finally, consistent with the current regulation, a ''before and after'' study must be completed within 30 months of project opening that assesses the costs of the project and actual ridership two years after opening compared with the estimated costs and forecast ridership at entry into PE, final design, and the FFGA.

Subpart C—Small Starts

Subpart C provides for the eligibility, criteria, and process requirements that will be applied to Small Starts projects that do not meet the requirements for Very Small Starts. As required by 49 U.S.C. 5309(e), as amended by SAFETEA–LU, it is based on a simplified process but similar to that used for the larger, New Starts projects covered by Subpart B.

Section 611.19: Eligibility for Section 5309 Capital Investment Funds (Small Starts)

Section 611.19 provides the eligibility criteria for Small Starts. First, as defined in section 611.3, a Small Starts project must have a total project cost of less than $250 million and seek no more than $75 million in Section 5309 Capital Investment funds. To be eligible as a fixed guideway, as with New Starts, the project must involve operation for at least 50 percent of its total length (not necessarily contiguous) on a facility dedicated to transit and other high occupancy vehicles during peak periods (or other congested periods). However, in contrast to New Starts, a Small Starts project may also involve a corridor bus project with certain design features. The proposed rule requires substantial transit stations, traffic signal priority or preemption, low floor buses or level boarding, branding of the service, and 10 minute peak/15 minute off peak headways at least 14 hours per day. New Starts projects may not be subdivided to meet Small Starts

eligibility. Larger projects must follow the requirements of Subpart B.

Section 611.21: Project Justification Criteria (Small Starts)

This section provides the justification criteria for Small Starts. Although similar to the criteria for New Starts in section 611.11, there are some significant simplifications. Small starts projects must still be rated based on the results of an alternatives analysis, but, given the reduced amount of justification information required, it is likely that such analysis may be simpler. A multiple measure approach is again specified, but the number of criteria is reduced. Specific measures for each criterion are not specified in the regulation but will be published and changed, upon notice and comment as part of the process of developing policy guidance.

The project justification criteria for Small Starts are classified into those related to effectiveness, contributing to 50 percent of the project justification rating and cost effectiveness contributing 50 percent of the project justification rating. For Small Starts, the effectiveness criteria are mobility improvements for the general population and economic development/land use. The mobility measure would include a calculation of the travel time savings for highway users as discussed under New Starts above and provides 40 percent of the effectiveness rating. As with New Starts, economic development and land use will be evaluated together as a measure of effectiveness. But under Small Starts, economic development/land use will contribute to 60 percent of the effectiveness rating. As described above in the Response to Comments under Question 7 and 8 on the Guidance on New Starts Policies and Procedures and under Question 8 on the ANPRM on Small Starts, it is difficult to evaluate these two factors separately. Nonetheless, recognizing the importance that SAFETEA–LU provided by including both these factors, FTA has incorporated a combined criterion as an important part of the evaluation of project justification.

As with New Starts, cost effectiveness is proposed to be defined as annualized costs divided by user benefits. As with New Starts, ''other factors'' will be used to assess those features not included in the explicit criteria for effectiveness and cost effectiveness, and will be used to adjust the overall project rating. Other factors will always include a rating for the problem or opportunity in the project corridor. Another measure that FTA intends to consider as an ''other factor'' is the degree to which a project is a part of a significant congestion reduction strategy. FTA will evaluate projects that are a principal element of a significant congestion reduction strategy, in general and a pricing strategy, in particular, more highly. FTA will also consider as an ''other factor'' any benefit of the project not covered under the project justification criteria or other factors that the Secretary determines to be appropriate to carry out the evaluation. Measures of effectiveness and cost effectiveness will be based on comparing the proposed project with a baseline alternative and will be assessed using opening year forecasts (rather than the forecasts for the planning horizon covering no less than 20 years, as is the case for New Starts).

There is likely to be a significant difference between the analytical procedures used for Small Starts and New Starts projects. As opening year forecasts will be the basis for evaluation, simplified methods for projecting user benefits may be used, but are subject to FTA approval.

As with New Starts, an overall rating on a five level scale ranging from ''high'' to ''low'' will be applied to the measures for each criterion that make up the Small Starts project justification rating.

Section 611.23: Local Financial Commitment Criteria (Small Starts)

Section 611.23, covering local financial commitment criteria for Small Starts, is almost identical to section 611.13, which covers these criteria for New Starts. Project financial plans for capital and operating costs must be rated to determine their stability and reliability. The rating of the stability of operating costs will take into account the degree to which innovative contractual arrangements, especially public private partnerships, are in place which can improve the reliability of estimates of operating costs. Based on the amount of non-Section 5309 Capital Investment funding proposed, the capital plan and the operating plan will each be rated on a five level scale from ''high'' to ''low.'' An overall rating of ''high'' to ''low,'' also on a five level scale, will be assigned based on the ratings of the capital and operating plans and proposed New Starts share. The only significant difference in the regulation is that projects will be rated based on plans which go through the year of opening, rather than for the planning horizon covering no less than 20 years. Detailed measures will be provided in the policy guidance that will identify simplified information that can be used to satisfy the financial plan requirement. Furthermore, while FTA will give priority to projects that include more than required Small Starts funds it will not rate projects that propose a funding strategy based on an 80 percent Section 5309 funding share below ''medium'' so long as the amount of Section 5039 funding requested is consistent with the fiscal capacity of State and local governments. FTA strongly encourages all project sponsors to request the lowest amount of Section 5309 funding reasonable. Like New Starts, the Small Starts program is likely to be extremely competitive. While FTA will not use the Section 5309 funding request to reduce the overall local financial commitment rating below ''medium,'' it is likely in its policy guidance to propose a process that rewards projects for requesting a lower than 80 percent Section 5309 share. In addition, as noted in section 611.27(c)(2) just because a project is rated Medium, there is no guarantee that the project will be recommended for funding.

Section 611.25: Overall Project Ratings (Small Starts)

The approach taken in section 611.25 for developing the overall project ratings for Small Starts projects is essentially identical to the approach used in section 611.15 for New Starts. Projects will be assigned an overall project rating on a five level scale ranging from ''high'' to ''low'' that will combine the ratings made for project justification and local financial commitment. Projects must be rated at least ''medium, medium-high or high'' on both project justification and local financial commitment to receive an overall rating of ''medium, medium-high or high,'' respectively. Projects must have an overall rating of ''medium'' to advance from one step in the project development process to the next. The only significant differences are that there is no requirement for a separate approval for PE and final design in project development and the commitment document is a simpler Project Construction Grant Agreement (PCGA), rather than an FFGA.

Section 611.27: Project Development Process (Small Starts)

The initial steps in the project planning and development process for Small Starts are identical to the process required under section 611.17 for New Starts. On the other hand, due to the smaller scale of these projects, the type and detail of the analysis that must be conducted is likely to be somewhat simpler. Projects must be the result of alternatives analyses and must be included in the local metropolitan transportation plan. The alternatives

analysis must address a range of alternatives (albeit, a shorter list), including a TSM alternative as the baseline alternative. However, where no fixed guideway alternative is being considered, the no-build alternative may serve as the baseline.

For Small Starts, the second step in the process is ''project development,'' which combines PE and final design. The steps which must be undertaken for entry into project development are essentially the same as those required under section 611.17 for New Starts PE and final design, but combined and tailored to the smaller scale of the proposed Small Starts project. The NEPA process must be completed before final design can begin and before a funding recommendation can be made. During the project development, costs must be established and uncertainties mitigated, but the Federal contribution of Small Starts will not be set until negotiation of the PCGA.

The criteria for entry into Small Starts project development are essentially the same as those for entry into New Starts PE, again scaled to the project's size: (1) Alternatives analysis must be completed; (2) the NEPA scoping process must be completed unless a categorical exclusion has been granted; (3) the project must be in the metropolitan transportation plan; (4) financing strategies must be endorsed by prospective funding partners; (5) the travel demand forecasting process must be validated; and (6) the project sponsor must have adequate technical capacity to carry out the project. A project must be rated at least ''medium'' to advance into project development. A ''before and after'' study is required for Small Starts, and the plan for developing the study must be completed during project development. Pre-award authority is provided for all preliminary engineering activities upon approval to enter project development. In addition, once the environmental process is completed, as represented by a signed ROD or FONSI or a finding that the project is a categorically excluded under 23 CFR 777.117, the project sponsor also has automatic pre-award authority for final design, right of way acquisition and utility relocation.

For Small Starts, the commitment document is a PCGA. As with the FFGA for New Starts, the PCGA specifies the amount and schedule of Federal funding, which can include a commitment of future funds, and the project cost, scope, and schedule, and commits the grantee to complete the project based on these parameters. To be eligible for a PCGA, FTA must find that the environmental process is complete, the project is based on the evaluations and ratings required, the project has an overall rating of ''medium'' or better, the sponsor has the technical capacity to carry out the project, and there are no major outstanding issues interfering with successful completion of the project. The PCGA will include a requirement for completion of the ''before and after'' study. In the case of Small Starts, ''after'' is defined as one year after service commences, rather than two years as is the case with New Starts. Data on the progress of the project to date must be submitted before the PCGA will be awarded. FTA's funding decision is distinct from project evaluation and rating process. Projects that meet or exceed the criteria described in this section are eligible, but are not guaranteed, to be recommended for funding. FTA will recommend projects for funding in the annual Report on Funding Recommendations and President's Budget only if the project is rated at least ''medium'' overall and has a cost-effectiveness rating of at least ''medium.'' The total amount of funding committed in PCGAs cannot exceed the amount of funding for Small Starts authorized in law, plus a statutorily limited amount of contingent commitments, subject to future authorizations.

Subpart D—Very Small Starts

Subpart D provides for the eligibility, evaluation criteria, and procedural requirements that will be applied to Very Small Starts projects. It is essentially identical to Subpart C, but provides for an even more simplified approach to project development and uses ''warrants'' for determining project justification for Very Small Starts projects, which are a subset of Small Starts projects that have a set of defined characteristics. These very simple, smaller projects can be found to be justified solely on the basis of these project characteristics. This process is also based on, but now highly simplified from, the requirements for the larger, New Starts projects covered by Subpart B.

Section 611.29: Eligibility for Section 5309 Capital Investment Funds (Very Small Starts)

Section 611.29 provides the eligibility criteria for Very Small Starts. First, as defined in section 611.3, a Very Small Starts project must have a total project cost of less than $50 million and a project cost of less than $3 million per mile (not including vehicles) and serve a corridor where at least 3,000 existing riders per day will benefit from the project. Projects that do not meet these criteria, but which still are small enough to qualify as a Small Start, must follow the procedures and criteria set out in Subpart C. To be eligible as a fixed guideway, as with New Starts, a Very Small Starts project must involve operation for at least 50 percent of its total length (not necessarily contiguous) on a facility dedicated to transit and other high occupancy vehicles during peak periods (or other congested periods). However, in contrast to New Starts, and similar to a Small Starts project, a Very Small Start project may also involve a corridor bus project with certain design features. The proposed rule requires substantial transit stations, traffic signal priority or preemption, low floor buses or level boarding, branding of the service, and 10 minute peak/15 minute off peak headways at least 14 hours per day. As with New Starts, projects may not be subdivided to meet Very Small Starts eligibility. Larger projects must follow the requirements of Subpart B or C.

Section 611.31: Project Justification Criteria (Very Small Starts)

This section provides the justification criteria for Very Small Starts. Although similar to the criteria for Small Starts in section 611.21, there is a major simplification. While Very Small Starts projects must still be based on the results of an alternatives analysis, the justification information required is related to the predefined characteristics of the Very Small Starts project. Because Very Small Starts projects are made eligible based on a set of project characteristics that assures that they are effective and cost-effective, rather than rate these projects on the basis of an evaluation of information, FTA will simply assign an overall project justification rating of ''medium'' to these projects if they meet the predefined characteristics, although ''other factors'' can be used to increase this rating. ''Other factors'' include whether a project is a principal element of a significant congestion reduction strategy, in general and a pricing strategy, in particular. FTA will also consider as an ''other factor'' any benefit of the project not covered under the project justification criteria or other factors that the Secretary determines to be appropriate to carry out the evaluation. Another significant difference between Very Small Starts and Small/New Starts will be in the analytical procedures used. No forecasts are required; the sponsor need only provide counts of existing ridership in the corridor and the cost per mile.

Section 611.33: Local Financial Commitment Criteria (Very Small Starts)

Section 611.33, covering local financial commitment criteria for Very Small Starts, is identical to section 611.23, which covers these criteria for Small Starts. Financial plans for capital and operating costs must be rated to determine their stability and reliability. FTA intends to issue very simplified information to support the capital and operating plan requirements as part of its Policy Guidance. The rating of the stability of operating costs will take into account the degree to which innovative contractual arrangements, especially public private partnerships, are in place which can improve the reliability of estimates of operating costs.

Furthermore, while FTA will give priority to projects that include more than required Small Starts funds, it will not rate projects that propose a funding strategy based on an 80 percent Section 5309 funding share below ''medium'' so long as the amount of Section 5039 funding requested is consistent with the fiscal capacity of State and local governments. FTA strongly encourages all project sponsors to request the lowest amount of 5309 funding that is financially feasible. Like New Starts, the Very Small Starts program is likely to be extremely competitive. While FTA will not use the 5309 funding request to reduce the overall local financial commitment rating below ''medium,'' it is likely in its policy guidance to propose a process that rewards projects for requesting a lower than 80 percent 5309 share. In addition, as noted in section 611.27(c)(2), just because a project is rated Medium, there is no guarantee that the project will be recommended for funding.

The capital plan and operating plan and the proposed Section 5309 Capital Investment share will each be rated on a five level scale from ''high'' to ''low.'' An overall rating of ''high'' to ''low,'' also on a five level scale, will be assigned based on the ratings of the capital and operating plans and proposed Section 5309 Capital Investments share. Projects will be rated based on plans that go through the year of opening.

Section 611.35: Overall Project Ratings (Very Small Starts)

The approach taken in section 611.35 for developing the overall project ratings for Very Small Starts projects is similar to the approach used in section 611.25 for Small Starts. Projects will be assigned an overall project rating on a five level scale ranging from ''high'' to ''low,'' which will combine the ratings made for project justification and local financial commitment. Since projects which qualify as a Very Small Start by their nature automatically are granted a rating of ''medium'' for project justification, a project must have a rating of at least ''medium'' on local financial commitment to receive an overall rating of ''medium.'' It should be noted that a project can receive a rating higher than ''medium'' for project justification only through the use of ''other factors'' or the application of the reliability measures. Projects must be rated at least ''medium'' overall to enter the project development process or to be recommended for funding and receive a PCGA.

Section 611.37: Project Development Process (Very Small Starts)

The initial steps in the project planning and development process for Very Small Starts are identical to the process required under section 611.17 for New Starts and under Section 611.27 for Small Starts. However, due to the even smaller scale of these projects, the type and detail of the analysis that must be conducted is simpler. For instance, no baseline alternative is required as the project sponsor does not prepare specific information on effectiveness and cost effectiveness but simply provides existing data that supports the rating for the project. However, projects must be the result of alternatives analyses and must be included in the local metropolitan transportation plans.

For Very Small Starts, as with Small Starts, the second step in the process is ''project development,'' which combines PE and final design. The steps that must be undertaken are essentially the same as those required under section 611.17 for New Starts PE and final design, but again combined and tailored to the much smaller scale of the proposed Very Small Starts project. The NEPA process must be completed during project development, which for a Very Small Start, might involve only documentation of a categorical exclusion. During project development, costs must be established and uncertainties mitigated but the Federal contribution of Small Starts will not be set until negotiation of the PCGA.

As with Small Starts, the criteria for entry into Very Small Starts project development are essentially the same as those for entry into New Starts PE, again scaled to the project's much smaller size: (1) Alternatives analysis must be completed; (2) the NEPA scoping process must be completed unless a categorical exclusion has already been granted; (3) the project must be in the metropolitan transportation plan; (4) financing strategies must be endorsed by prospective funding partners; and (5) the project sponsor must have adequate technical capacity to carry out the project. A project must be rated at least ''medium'' to advance into project development. A very simplified ''before and after'' study is required for Very Small Starts and the plan for developing the study must be complete before a PCGA is executed. Pre-award authority is provided for preliminary engineering upon approval to enter project development. In addition, once the environmental process is completed, as represented by a signed ROD or FONSI or a finding that the project is categorically excluded under 23 CFR 117.17, the project sponsor also has automatic pre-award authority for final design, right of way acquisition and utility relocation.

For Very Small Starts, the commitment document is a PCGA. As with the FFGA for New Starts, the PCGA specifies the amount and schedule of Federal funding, which can include a commitment of future funds, and the project cost, scope, and schedule, and commits the grantee to complete the project based on these parameters. To be eligible for a PCGA, FTA must find that the environmental process is complete, the project is based on the evaluations and ratings required, the project has an overall rating of ''medium'' or better, the sponsor has the technical capacity to carry out the project, and there are no major outstanding issues interfering with successful completion of the project. The PCGA will include a requirement for completion of the ''before and after'' study. In the case of Very Small Starts, ''after'' is defined as one year after service commences, rather than two years as is the case with New Starts. The NPRM notes again in subsection 611.37(d)(2) that a sufficient rating under the proposals contained in this NPRM is not a guarantee that a PCGA will be recommended. The total amount of funding committed in PCGA's cannot exceed the amount of funding for Small Starts authorized in law plus a statutorily limited amount of contingent commitments, subject to future authorizations.

IV. Regulatory Analysis and Notices

A. Executive Order 12866

FTA has determined that this is a significant rule under E.O. 12866 because it will affect transfers (i.e., grant payments) of more than $100 million or more annually. This NPRM implements a grant program, and as such, it only

imposes regulatory requirements upon applicants requesting funding under the program. The rating criteria that are the subject of this NPRM are Congressionally-mandated.

The proposed rule is not intended to address a market failure, rather it is intended to both make the regulation consistent with the recent changes to 49 U.S.C. 5309 and change the way projects are currently evaluated. Under the existing regulation, all non-exempt New Starts projects are evaulated using the same process without regard to the size of the investment. This results in a more rigorous evaluation of smaller projects than is needed given the size of the Federal investment. Thus, this proposed rule would vary the level of evaluation based on the size of the project and the size of the Federal investment based on the changes recently made to 49 U.S.C. 5309.

B. Regulatory Evaluation

FTA performed a regulatory evaluation of this NPRM, but did so in a qualitative manner due to the difficulty of evaluating the industry-wide costs and benefits of the program this NPRM would implement. This NPRM proposes a process that FTA will use to evaluate and rate major capital investments under the statutory criteria in 49 U.S.C. 5309. This includes smaller capital projects requesting less than $75 million in Section 5309 Capital Investment program funds and that have a total cost of less than $250 million. Given the discretionary nature of the program and the fact that FTA cannot anticipate in advance which projects will be submitted for evaluation and funding, it is impossible to determine with accuracy the industry-wide costs and benefits of this rule.

Based on its past experience though, FTA has qualitatively evaluated the financial impact the NPRM would place on applicants if the adopted as proposed. The grant application requirements specified in law are substantial, but the major capital grant program makes available funds to defray project development costs. For example, 49 U.S.C. 5309(m)(5) allows up to 8 percent of funds allocated for New Starts and Small Starts to be available for project development costs. Additionally, 49 U.S.C. 5339, as amended by SAFETEA–LU, makes funding available for the alternatives analysis phase of project development. Finally, the transit formula program under 49 U.S.C. 5303 and 5307 and flexible funds under Title 23 may also be used for planning and project development activities. Thus, the financial impact of this rule on the applicants is minimal given that a portion of their project development costs can be reimbursed with Federal funds.

C. Departmental Significance

This rule is a ''significant regulation'' as defined by the Department's Regulatory Policies and Procedures, because it involves an important departmental policy and will probably generate a great deal of public interest. The purpose of this NPRM is to propose how FTA will process, rate and recommend for funding various major public transportation capital investment projects.

D. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis,'' which will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

As noted earlier, it is difficult for FTA to estimate the number and types of applications it may receive for major capital investment funds. Based on FTA's experience, however, major capital investments are not undertaken by small municipal entities. Even so, if small municipal entities were to apply for funding under this regulatory proposal, they would likely do so under the Small Starts program or the Very Small Starts program, for which the requirements have been streamlined. Based on this evaluation, FTA hereby certifies that the proposals for the New Starts program contained in this NPRM, if adopted, would not have a significant economic impact on a substantial number of small entities. FTA invites comment from members of the public who believe there will be a significant impact on small municipal entities.

E. Paperwork Reduction Act

This NPRM proposes information collection requirements subject to the Paperwork Reduction Act. The calculation of the paperwork burden of this NPRM is provided in the docket. The agency has submitted a request for a Paperwork Reduction Act approval. FTA currently collects information under an approved Paperwork Reduction Act request (control #2132–0529).

F. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The proposed regulations would implement a discretionary grant program that would make funds available, on a competitive basis, to States, local governments, and transit agencies. The requirements only apply to those entities seeking funds under this chapter, and thus this action would have not substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. FTA has also determined that this proposed action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Based on this analysis, it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Comment is solicited specifically on the Federalism implications of this proposal.

G. National Environmental Policy Act

FTA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and has determined that this proposed action would not have any effect on the quality of the environment. This action qualifies for a categorical exclusion under FTA's NEPA regulations at 771.117(c)(20), which covers the ''[p]romulgation of rules, regulations, and directives.''

H. Energy Act Implications

The proposals contained in this NPRM would likely have a positive effect on energy consumption because, through the Federal investment in public transportation projects, these projects would increase the use of public transportation.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to ensure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We invite Indian tribal governments to provide comments on the effect that adoption of specific proposals in this NPRM may have on Indian communities.

J. Unfunded Mandates Reform Act

This rule will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100,000,000 or more in any one year. However, this expenditure is voluntary, and not the result of a Federal, unfunded mandate.

K. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of section 3011 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which requires the Secretary of Transportation to prescribe regulations for Small Starts capital investment projects funded under 49 U.S.C. 5309 with a Federal share of less than $75,000,000 and a total cost of less than $250,000,000. In addition, this NPRM implements changes made by section 3011 to the New Starts program for funding capital investment projects with a higher Federal share or total cost than that specified for the Small Starts program.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

M. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 611

Government contracts; Grant programs—Transportation; Public Transportation.

For the reasons stated in the preamble, the Federal Transit Administration proposes to revise 49 CFR part 611 to read as follows:

PART 611—MAJOR CAPITAL INVESTMENT PROJECTS

Subpart A—General Provisions

Sec.
611.1 Purpose and contents.
611.3 Applicability.
611.5 Definitions.
611.7 Measures of reliability in the Section 5309 Capital Investment evaluation and rating process.

Subpart B—New Starts

611.9 Eligibility.
611.11 Project justification criteria.
611.13 Local financial commitment criteria.
611.15 Overall project ratings.
611.17 Project development process.

Subpart C—Small Starts

611.19 Eligibility.
611.21 Project justification criteria.
611.23 Local financial commitment criteria.
611.25 Overall project ratings.
611.27 Project development process.

Subpart D—Very Small Starts

611.29 Eligibility.
611.31 Project justification criteria.
611.33 Local financial commitment criteria.
611.35 Overall project ratings.
611.37 Project development process.
Appendix A to Part 611—Model Project Development Agreement
Appendix B to Part 611—Project Evaluation Framework
Appendix C to Part 611—Section 5309 Capital Investment Program Categories

Authority: 49 U.S.C. 5309; 49 CFR 1.51.

Subpart A—General Provisions

§ 611.1 Purpose and contents.

(a) This part prescribes the process that applicants must follow to be considered eligible for capital investment funds for new fixed guideway systems, substantial investments in corridor-based bus systems, or extensions to existing systems under 49 U.S.C. 5309(d) and (e). Also, this part prescribes the rules that will be used by FTA to evaluate proposed Section 5309 Capital Investment projects as required by 49 U.S.C. 5309(d) and (e), and the scheduling of project reviews required by 49 U.S.C. 5328(a).

(b) This part defines how the results of the evaluation described in paragraph (a) of this section will be used to:

(1) Approve entry into preliminary engineering and final design, as required by 49 U.S.C. 5309(d)(5), for New Starts, or into project development as required by 49 U.S.C. 5309(e)(6), for Small Starts;

(2) Rate projects as ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low,'' as required by 49 U.S.C. 5309(d)(5) and 49 U.S.C. 5309(e)(6);

(3) Assign individual ratings for each of the project justification and local financial commitment criteria specified in 49 U.S.C. 5309(d)(2)(B) and (C) and 49 U.S.C. 5309(e)(2)(B) and (C);

(4) Determine project eligibility for Federal funding commitments, in the form of Full Funding Grant Agreements as specified in 49 U.S.C. 5309(g)(2) or Project Construction Grant Agreements as specified in 49 U.S.C. 5309(e)(7);

(5) Support funding recommendations for this program for the Administration's annual budget request; and

(6) Fulfill the reporting requirements under 49 U.S.C. 5309(k)(1), Annual Report on Funding Recommendations.

§ 611.3 Applicability.

(a) This part applies to all proposals for Federal Section 5309 Capital Investment funds for new fixed guideway systems and extensions to existing fixed guideway systems, including substantial capital investments in corridor-based bus projects.

(b) This part does not apply to projects approved into final design prior to [the effective date of final rule] unless the sponsor proposes project changes that warrant the project's return to preliminary engineering. Such projects will continue to be rated under the regulatory provisions in effect at the time the project was approved into final design until the Full Funding Grant Agreement is executed.

(c) Projects that were exempt from the project evaluation and rating process (requesting under $25 million in Section 5309 Capital Investment funding), and were approved into project development prior to [the effective date of final rule], will receive the Section 5309 Capital Investment funds that have been appropriated before [the effective date of final rule] without being evaluated and rated under the provisions of this part, as long as all grant requirements are met. To receive additional Section 5309 Capital Investment funds after [the effective date of the final rule], projects must be evaluated and rated according to the process defined in this part.

§ 611.5 Definitions.

The definitions established by Titles 12 and 49 of the United States Code, the Council on Environmental Quality's regulation at 40 CFR parts 1500–1508, and FHWA/FTA regulations at 23 CFR parts 450 and 771 are applicable, unless a different definition is described below, in which case, the definition in this section will apply for purposes of this part. In addition, the following definitions apply:

Alternatives analysis means a study conducted as part of the transportation

planning process required under 49 U.S.C. sections 5303 and 5304, that evaluates all reasonable mode and alignment alternatives for addressing a transportation problem in a corridor or subarea, and results in the selection of a locally preferred alternative by the chief executive officers or official boards of the sponsoring governmental agency(ies) and the metropolitan planning organization(s) with jurisdiction through a public process. An alternatives analysis also provides sufficient information to enable FTA to evaluate and rate the project justification and local financial commitment criteria as required by this regulation.

Baseline Alternative means the alternative against which the proposed Section 5309 Capital Investment project is compared to develop project justification measures. Relative to the no-build alternative, it should include transit improvements lower in cost than the proposed Section 5309 Capital Investment project that represent the best that can be done to address mobility problems in the corridor without constructing a new fixed guideway. The baseline alternative is typically the Transportation System Management alternative or a Very Small Starts arterial bus project.

Bus Rapid Transit (BRT) means a series of coordinated improvements in a transit system's infrastructure, equipment, operations, and technology that give preferential treatment to buses on urban roadways. The intention of BRT is to reduce bus travel time, improve service reliability, increase the convenience of users, and increase transit ridership.

Fixed guideway system means a public transportation facility that utilizes and occupies a separate right-of-way or rail for the exclusive use of public transportation and other high occupancy vehicles for at least 50 percent of the length of the project, or uses a fixed catenary system and a right-of-way usable by other forms of transportation, or in the case of Small Starts, a corridor-based bus project where at least 50 percent of the project operates in a separate right-of-way during the peak period or the project represents a substantial investment in a defined corridor that includes at least the following elements: substantial transit stations; traffic signal priority/pre-emption; low-floor buses or level boarding; branding of the proposed service; and 10 minute peak/15 minute off-peak headways or better for at least 14 hours per day. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, ferry boat service, and dedicated facilities for buses (such as BRT) and other high occupancy vehicles. Additionally, a transportation facility shall be deemed a fixed guideway system solely for the purposes of funding eligibility under New Starts (49 U.S.C. 5309(d)) and Small Starts (49 U.S.C. 5309(e)) if the project is designed so that in any given month: transit vehicles utilize the transportation facility on a barrier-separated right-of-way; and by means of tolling or other enhancements, 95 percent of the transit vehicles using the facility will be able to maintain an average speed of not less than 5 miles per hour below the posted speed limit for the time they are on the facility. This definition does not alter the definition of ''fixed guideway mile'' for purposes of calculating eligibility for formula programs administered by FTA, including Urbanized Area Formula Grants (49 U.S.C. 5307(b)) and Fixed Guideway Modernization.

FTA means the Federal Transit Administration.

Full Funding Grant Agreement (FFGA) means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding New Starts projects as required by 49 U.S.C. 5309(d)(1) and (g)(2).

Metropolitan transportation plan means the official multimodal transportation plan covering a period of no less than 20 years that is developed, adopted and updated by the metropolitan planning organization through the metropolitan transportation planning process under 23 CFR part 450.

NEPA process means those procedures necessary to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), found at 23 CFR part 771. The NEPA process is completed when a Record of Decision (ROD) or Finding of No Significant Impact (FONSI) is issued by FTA, or when FTA agrees that the project is categorically excluded under 23 CFR part 771. Requirements under other Federal environmental laws should be integrated into the environmental review process per FTA's NEPA regulations at 23 CFR 771.113(a) and 23 CFR 771.133.

Planning horizon means the period used for forecasting costs and benefits. For New Starts the planning horizon must be at least 20 years. For Small Starts the planning horizon is opening year.

Project Construction Grant Agreement (PCGA) means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding Small Starts projects as required by 49 U.S.C. 5309(e)(7).

Project development refers to the activities and procedures that are to be conducted during preliminary engineering and final design before FTA can execute a Full Funding Grant Agreement or Project Construction Grant Agreement.

Project Development Agreement means a signed agreement between FTA and a project sponsor for a New Starts project that sets forth the principal issues to be resolved, products to be completed, all significant cost and ridership uncertainties and the strategies to address them, and the schedule for reaching significant milestones during the course of project development The terms and conditions of a model PDA are set forth in Appendix A to this part.

Secretary means the Secretary of Transportation.

Section 5309 Capital Investment program means a program of assistance for new fixed guideway and certain corridor-based bus systems and extensions to such systems eligible for assistance under 49 U.S.C. 5309(b)(1), (b)(4), (d), (e), and (m)(2)(A) and this part.

Section 5309 Capital Investment means a new fixed guideway system or an extension to an existing fixed guideway system, but does not include rail modernization or non-corridor bus capital projects funded under 49 U.S.C. 5309. Projects eligible for Section 5309 Capital Investment program funding will be categorized as follows:

(1) *New Starts* project refers to a project requesting Section 5309 Capital Investment program funds of $75 million or more in Section 5309 Capital Investment program funds or that has a total cost of $250 million or more, both in year of expenditure dollars.

(2) *Small Starts* project refers to a project requesting less than $75 million in Section 5309 Capital Investment program funds and that has a total cost of less than $250 million, both in year of expenditure dollars.

(3) *Very Small Starts* project refers to a subset of Small Starts projects that cost less than $3 million per mile (excluding vehicles) and have a total cost of less than $50 million in year of expenditure dollars, and are composed entirely of demonstrably effective and cost-effective project elements.

Transportation System Management (TSM) alternative is a low-cost alternative compared to the fixed guideway alternatives considered. It

represents the best low-cost strategies that can be applied in a corridor to address identified problems without the construction of a fixed guideway system. At a minimum it must be more cost effective as compared to the no build alternative than the New or Small Start project compared to the no build alternative. It is usually the baseline against which all of the guideway alternatives are evaluated. Generally, the TSM alternative emphasizes upgrades in transit service through operational and small physical improvements, plus selected highway upgrades through intersection improvements, minor widenings, and other focused traffic engineering actions.

User benefits refers to the transportation system benefits, expressed in hours of perceived travel time (travelers perceive wait and walk time as more onerous than in-vehicle time, so that perceived travel time converts wait and walk time into equivalent minutes of in-vehicle time), that accrue to all travelers affected by the proposed Section 5309 Capital Investment project compared to a baseline alternative. User benefits include travel-time savings, out-of-pocket travel and parking costs, convenience, comfort, reliability, and other benefits that accrue to users of specific travel modes over the planning horizon forecast. Travelers include transit riders, highway users and pedestrians.

§ 611.7 Measures of reliability in the Section 5309 Capital Investment evaluation and rating process.

In the evaluation of project justification and local financial commitment for Section 5309 Capital Investment projects, FTA shall consider the reliability of the estimates of ridership and costs as required by 49 U.S.C. 5309(d)(3)(B) and (4)(B)(i), as well as 49 U.S.C. 5309(e)(4)(D).

(a) The measures of reliability in the forecasts used to support the measures of project justification and local financial commitment will be published, subject to notice and comment, in policy guidance at least every two years or when substantial changes are made

(b) Reliability measures will be applied by adjusting, either upward or downward, ratings for the specific project justification and local financial commitment criteria affected by the associated uncertainties.

Subpart B—New Starts

§ 611.9 Eligibility.

(a) To be eligible for New Starts funding, a proposed project must meet the following prerequisites:

(1) Be based on the results of planning and alternatives analysis as described in § 611.17.

(2) Have at least 50 percent or more of the total project length as a fixed guideway during the peak period or when congestion inhibits transit system performance.

(3) Have a total project cost of $250 million or more or a requested Section 5309 Capital Investment share of $75 million or more, both in year of expenditure funds.

(b) Projects that would otherwise qualify for funding as a New Starts project may not be subdivided into several Small Starts projects. Projects may be built in phases or a series of minimum operable segments, but all projects envisioned for a single corridor, for the purposes of establishing Small Starts program eligibility, will be evaluated together as a single project. If the combined cost or total requested funding amount, both expressed in year-of-expenditure dollars, is over the Small Starts limits, the projects will be evaluated as New Starts projects.

§ 611.11 Project justification criteria.

In order to approve a grant for a proposed New Starts project and to approve entry into the preliminary engineering and final design phases as required by 49 U.S.C. 5309(d)(5), FTA must find that the proposed project is meritorious as described in 49 U.S.C. 5309(d)(3).

(a) To make the statutory evaluations and assign ratings for project justification, FTA will evaluate information developed locally through alternatives analyses and refined through the project development phases.

(1) The method used to make this determination will be a multiple measure approach in which the merits of candidate projects will be evaluated in terms of each of the criteria specified by this section.

(2) The ratings for each of the criteria will be expressed in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The application of these descriptors to each of these criteria will be published, subject to notice and comment, in policy guidance at least every two years or when substantial changes are made.

(b) The evaluation criteria and weights assigned to each for New Starts project justification are as follows:

(1) Effectiveness criteria (50 percent of the summary rating for project justification):

(i) Mobility improvements for the general population (40 percent of the ratings for effectiveness), including congestion relief. Congestion relief shall be measured based on the degree to which the project reduces highway travel demand and the relative level of congestion in the corridor based on estimated delay.

(ii) Economic development/land use (40 percent of the ratings for effectiveness). Economic development/land use shall be measured using factors that address the additional development expected around project stations as a result of the New Start project. These factors include the extent to which current land use is ripe for development, transit-oriented plans and policies, the economic development climate in the project corridor, the increase in transit accessibility offered by the project, and the economic lifespan of the project.

(iii) Environmental benefits (10 percent of the ratings for effectiveness).

(iv) Mobility improvements for transit dependents (10 percent).

(2) Cost effectiveness (50 percent of the summary rating for project justification) shall be calculated by dividing annualized capital and operating costs by transportation system user benefits. Cost effectiveness for New Starts will be evaluated based on the forecast made over the planning horizon. Annualized cost shall include all elements necessary for completion of the project with contingency amounts that are reasonable to cover unanticipated cost increases plus annual operating and maintenance costs. The breakpoints corresponding to the cost effectiveness ratings will be adjusted for inflation annually as part of the Reporting Instructions.

(3) Other factors will be considered under the authority provided by 49 U.S.C. 5309(d)(3)(K).

(i) All projects will be evaluated and rated on the severity of the transportation and economic development problem or opportunity in the corridor and consideration of the appropriateness of the proposed project as a response.

(ii) Depending upon the applicability, also considered will be the following factors:

(A) Identification of the project as a principal element of a congestion reduction strategy, in general and a pricing strategy, in particular;

(B) Any factor which the New Start project sponsor believes articulates the benefits of the proposed major capital investment but which is not captured within the other project justification criteria; and

(C) Other factors that the Secretary determines to be appropriate to carry out the evaluation.

(c) In evaluating proposed New Starts projects under these criteria:

(1) For the effectiveness and cost effectiveness criteria, the proposed New Starts project will be compared to the baseline alternative.

(2) As a candidate project proceeds through project development, a greater degree of certainty is expected with respect to the scope of the project and a greater level of commitment is expected with respect to the funding strategy and the plans and policies intended to support economic development and transit supportive land use.

(d) New Starts project sponsors will generally use traditional methods to estimate mobility benefits (user benefits and ridership). These methods are based on the traditional four-step regional travel demand modeling procedures, and project sponsors shall follow FTA guidelines in defining alternatives, operating plans, and other assumptions used to develop travel forecasts. Project sponsors that wish to use alternative technical methods to develop forecasts of ridership and project benefits must receive prior written approval from FTA.

(e) The individual ratings for each of the criteria described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' for project justification using the weights provided for above. ''Other factors'' will be considered and applied by adjusting, either upward or downward, the summary project justification rating.

§ 611.13 Local financial commitment criteria.

In order to approve a grant for a New Starts project under 49 U.S.C. 5309, and to approve entry into the preliminary engineering and final design phases as required by 49 U.S.C. 5309(d)(5), FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by 49 U.S.C. 5309(d)(4).

(a) The financial capability of the project sponsor to build, operate, and maintain the proposed project as well as the existing and planned system will be evaluated according to the following measures:

(1) The proposed share of project capital costs to be met using funds from sources other than the Section 5309 Capital Investment program, including both the non-Federal match required by Federal law and any additional local, State or non-Section 5309 Capital Investment Federal funding (''overmatch''). Unless otherwise specified in Federal law, FTA will not take into account the non-Federal funds expended on a project other than the New Starts project being evaluated when computing the non-Federal share of that New Starts project. However, FTA will give priority to financing projects that include more non-5309 funds than are required as local match under 5309(h). At the same time, FTA will take into consideration the fiscal capacity of State and local governments by not reducing the overall local financial commitment rating below ''medium,'' for projects that, due to state or local fiscal capacity constraints, propose a funding strategy with an 80 percent Section 5309 Capital Investment funding.

(2) The stability and reliability of the proposed capital funding plan for constructing all essential elements of the New Starts project and transit system, including the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases.

(3) The stability and reliability of the proposed operating funding plan to operate and maintain the entire transit system as planned, including local resources to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels without requiring a reduction in existing public transportation services or level of service to operate the proposed project, and including the existence of contractual arrangements that are designed to reduce and/or make more predictable the annualized cost of operations.

(b) The capital and operating plans specified in paragraphs (a)(2) and (3) of this section will be evaluated over the planning horizon, consistent with the planning horizon used for travel forecasting purposes.

(c) For each proposed project, ratings for paragraphs (a)(1), (2), and (3) of this section will be reported in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The application of these descriptors to each of these criteria will be published, subject to notice and comment, in policy guidance at least every two years or when substantial changes are made.

(d) The individual ratings for each measure described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' for local financial commitment. To develop the summary ratings, the rating for capital and operating financial plans will be given equal weights. The rating for the proposed share from other than the Section 5309 Capital Investments program will be used to assign a higher or lower rating should the weighting of the capital and operating financial plan ratings produce a rating which would otherwise fall between the summary rating levels specified in this section.

§ 611.15 Overall project ratings.

(a) The summary ratings developed for project justification and local financial commitment, adjusted by the degree of reliability of estimates of ridership, costs, and funding sources (§§ 611.7, 611.11, and 611.13), will form the basis for the overall rating for each project.

(b) FTA will assign overall ratings of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' as required by 49 U.S.C. 5309(d)(5)(B) to each proposed project. To obtain an overall rating of ''medium,'' a project must have at least a ''medium'' rating for project justification and local financial commitment. To obtain an overall rating of ''medium-high,'' a project must have at least a rating of ''medium-high'' for both project justification and for local financial commitment. To obtain a rating of ''high,'' a project must have a rating of ''high'' for both project justification and for local financial commitment.

(1) These ratings will indicate the overall merit of a proposed project at the time of evaluation.

(2) Ratings for individual projects will be updated annually for purposes of the annual report on funding levels and allocations of funds required by 49 U.S.C. 5309(k)(1), and as required for FTA approvals during the following project development steps:

(i) Advancement of proposed New Starts projects into both preliminary engineering and final design;

(ii) Decision to recommend New Starts projects for Full Funding Grant Agreements; and

(iii) Projects that achieve an overall rating of ''medium'' or better will be allowed to advance into and through project development, and may be recommended for funding.

§ 611.17 Project development process.

All New Starts projects must emerge from the metropolitan and statewide planning process, consistent with 23 CFR part 450, and be included in the metropolitan transportation plan. Proposed projects must be based on the results of alternatives analysis and proceed through the phases of project development before being recommended for New Starts program funding.

(a) Alternatives Analysis. To be eligible for project funding under the New Starts program, local project sponsors must perform an alternatives analysis consistent with FTA guidance.

(1) The alternatives analysis must develop information on the benefits, costs, and impacts of alternative strategies to address a transportation problem or opportunity in a given corridor, leading to the adoption of a locally preferred alternative.

(2) The alternative strategies evaluated in an alternatives analysis should include a no-build alternative, at least one TSM alternative that is able to serve as the New Starts project baseline alternative, and a number of build alternatives that represent the full range of reasonable responses to the transportation problem or opportunity. The project baseline alternative represents the best that can be done without building a fixed guideway system. This generally means a bus alternative that addresses as effectively and cost-effectively as possible the same transportation problem or opportunity as the build alternative. FTA will determine whether to require a separate baseline alternative on a case-by-case basis, if a project sponsor provides information intended to demonstrate that the no-build alternative (i.e., a continuation of existing transit service policies in the study area) fulfills the requirements for a baseline alternative (indicated by very high levels of existing transit service),

(3) The locally preferred alternative must be selected from among the evaluated alternative strategies and formally adopted and included in the metropolitan transportation plan.

(b) Project Development. Consistent with 49 U.S.C. 5309(d)(5) and 49 U.S.C. 5328(a)(2), FTA will approve entry of proposed projects into project development. Project development will include FTA approval points for preliminary engineering and final design. Preliminary engineering and final design will proceed as described in paragraphs (c) and (d) of this section.

(1) Consistent with 49 U.S.C. 5328(a)(2), FTA will complete the evaluation of a proposed project for approval into preliminary engineering within 30 days of receipt of a complete formal request from the project sponsor(s).

(2) Consistent with 49 U.S.C. 5328(a)(3), FTA will complete the evaluation of a proposed project for approval into final design within 120 days of receipt of a complete formal request from the project sponsor(s).

(c) Preliminary Engineering.

(1) The preliminary engineering phase of New Starts project development is the process of finalizing the project scope, cost, and the financial plan such that:

(i) All environmental and community impacts are identified and adequate provisions made for their mitigation in accordance with 49 U.S.C. 5324(b) and NEPA, with issuance of a Record of Decision (ROD) or Finding of No Significant Impact (FONSI);

(ii) All major or critical project elements are designed to the level that no significant unknown impacts relative to their costs are likely; and

(iii) All cost estimating is complete to the level of confidence necessary for the project sponsor to implement the financing strategy, including establishing the maximum dollar amount of the New Starts program financial contribution needed to implement the project.

(iv) The project sponsor has used credible, relevant, identifiable and cost-effective industry or engineering practices that are uniformly and consistently applied in preparing for and making these determinations. The cost estimating process during preliminary engineering would specifically identify the main components of the project as identified in FTA's Standardized cost categories, including all essential project elements, and add sufficient contingencies to cover the remaining design and cost uncertainties that will be addressed in final design.

(2) A proposed project can be considered for advancement into preliminary engineering only if:

(i) Alternatives analysis has been completed;

(ii) FTA has approved the alternative that will serve as the baseline alternative against which the proposed project will be compared in the evaluation and rating process;

(iii) The NEPA scoping process has been completed or the project has been granted a categorical exclusion;

(iv) The proposed project has been adopted as the locally preferred alternative in the metropolitan transportation plan;

(v) The proposed financial strategies, planned funding sources, and amounts have been independently endorsed by those agencies identified as responsible for providing or approving the funding. Where future State and/or local government action or public referendum is required to establish (and commit) the proposed funding source, a letter of endorsement and a timeframe for implementation and commitment is required from the appropriate policy-making or decision-making body responsible for providing or approving the proposed funding;

(vi) For project sponsors using traditional travel forecasting procedures (commonly referred to as four-step models) to estimate transportation system user benefits and ridership, the procedures have been rigorously validated using a survey of transit riders that has been completed not more than five years prior to a request to enter preliminary engineering;

(vii) Project sponsors have demonstrated adequate technical capability to carry out preliminary engineering for the proposed project;

(viii) FTA and the project sponsor have signed a Project Development Agreement (PDA) that identifies principal issues to be resolved, products to be completed during project development, all significant uncertainties and the strategies to address them, and schedules for reaching significant milestones during the course of project development. At a minimum, a PDA will include the steps and schedule to ensure the satisfactory completion of the NEPA process, the steps and schedule to complete preliminary engineering and final design including development of reliable cost estimates and ridership forecasts, a discussion of all significant uncertainties in the development of cost, benefit, and financial information, and the steps and schedule to secure funding commitments; and

(ix) All other applicable Federal and FTA program requirements have been met.

(3) Consistent with 49 U.S.C. 5309(g)(2)(C), project sponsors shall submit a preliminary plan for collection and analysis of information to identify the ''before and after'' impacts of the New Starts project and the accuracy of the forecasts prepared during development of the project. The project sponsor will also submit the initial information on project scope, service levels, capital costs, operating costs, and ridership of the project produced during alternatives analysis, identify the entity responsible for each in order to facilitate FTA's compliance with preparation of the Contractor Performance Assessment Report required by 49 U.S.C. 5309(l)(2),

and provide a discussion of the key uncertainties that may affect achievement of the forecasts.

(4) FTA's approval will be based on the results of its evaluation as described in §§ 611.11 through 611.15.

(5) At a minimum, a proposed project must receive an overall rating of ''medium'' and be reasonably expected to continue to meet the requirements of this section to be approved for entry into preliminary engineering.

(6) This part does not in any way revoke FTA approvals to enter preliminary engineering made prior to [effective date of the final rule]; however, in order to advance to final design, the project would be subject to the requirements of this part.

(7) New Starts projects approved to advance into preliminary engineering receive blanket pre-award authority to incur project costs for preliminary engineering activities prior to grant approval.

(i) This pre-award authority does not constitute a commitment by FTA that future Federal funds will be approved for the project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(d) Final Design. Consistent with 49 U.S.C. 5309(d)(5), FTA will evaluate a proposed New Starts project prior to approval into final design.

(1) Final Design is the phase of project development during which the significant remaining uncertainties in the construction cost estimate that were specified at the end of preliminary engineering are mitigated, detailed specifications and bid documents are produced, all significant third party and relocation agreements are signed, all funding commitments needed to complete the project are finalized, and all remaining technical and regulatory issues relating to readiness to begin construction are completed.

(2) A proposed project can be considered for advancement into final design only if:

(i) The NEPA process has been completed with FTA's issuance of a ROD or FONSI, or FTA's concurrence in a categorical exclusion;

(ii) All of the conditions described in § 611.17(c)(1) and as further defined in FTA's policy guidance for completion of preliminary engineering have been met.

(iii) The project is reaffirmed in its final configuration and costs (after NEPA and preliminary engineering) in the metropolitan transportation plan if significant changes have occurred in the project definition or cost compared to the project that was approved to enter preliminary engineering;

(iv) FTA and the project sponsor have agreed on the final New Starts program funding amount that generally may not be exceeded in any subsequent Full Funding Grant Agreement. FTA will entertain requests for higher levels of New Starts funding when, during final design but prior to execution of the Full Funding Grant Agreement, FTA determines that the increase in costs is beyond the project sponsor's control. These cost increases are expected to be limited to unforeseen cost increases due to unusual occurrences. FTA will decide on a case-by-case basis whether these circumstances apply to a given project and what dollar amount is attributable to these occurrences. FTA would participate in these cost increases proportionate to the previously agreed-to percentage share between FTA and the project sponsor; likewise FTA would participate in any cost reductions identified during final design proportionate to the previously agreed-to percentage share between FTA and the project sponsor.

(v) Project sponsors have demonstrated adequate technical capability to carry out final design for the proposed project; and

(vi) All other applicable Federal and FTA program requirements have been met.

(3) FTA's approval will be based on the results of its evaluation as described in §§ 611.11 through 611.15.

(4) At a minimum, a proposed project must receive an overall rating of ''medium'' and be reasonably expected to continue to meet the requirements of this section to be approved for entry into final design.

(5) Consistent with 49 U.S.C. 5309(g)(2)(C), project sponsors seeking Full Funding Grant Agreements shall submit a complete plan for collection and analysis of information to identify the ''before and after'' impacts of the New Starts project and the accuracy of the forecasts prepared during development of the project. The project sponsor will also submit updated information on project scope, service levels, capital costs, operating and maintenance costs, and ridership of the project produced during preliminary engineering; identify the entity responsible for each in order to facilitate FTA's compliance with preparation of the Contractor Performance Assessment Report required by 49 U.S.C. 5309(l)(2); prepare an analysis of the changes between the current project information and the information prepared during alternatives analysis; and discuss the key remaining uncertainties that may affect achievement of the forecasts.

(i) The plan shall finalize the preliminary ''before and after'' plan developed prior to entry into preliminary engineering. The plan will provide for: Collection of ''before'' data on the current transit system; documentation of the ''predicted'' scope, service levels, capital costs, operating and maintenance costs, and ridership of the project; collection of ''after'' data on the transit system two years after opening of the New Starts project; and analysis of the consistency of ''predicted'' project characteristics with the ''after'' data.

(ii) The ''before'' data collection shall obtain information on transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics. The ''after'' data collection shall consist of information comparable to the before data on transit service levels and ridership patterns, plus information on the as-built scope and capital costs of the New Starts project.

(iii) The analysis of this information shall describe the impacts of the New Starts project on transit services and transit ridership, evaluate the consistency of ''predicted'' and actual project characteristics and performance, and identify sources of differences between ''predicted'' and actual outcomes.

(iv) For funding purposes, preparation of the plan for collection and analysis of data is an eligible part of the proposed project.

(6) Project sponsors shall collect data on the current system, according to the plan required under § 611.17(c)(3) as approved by FTA, prior to the beginning of construction of the proposed New Starts project. Collection of this data is an eligible part of the proposed project for funding purposes.

(7) Projects that are approved into final design are exempt from any changes in New Starts policy, guidance, and procedures.

(8) This part does not in any way revoke prior FTA approvals to enter final design that were made prior to [the effective date of the final rule]; however, if the project has not already been recommended for a Full Funding Grant Agreement, in order to be so recommended the project would be subject to the requirements of this part.

(9) Projects approved to advance into final design receive blanket pre-award authority to incur project costs for final design activities prior to grant approval. Pre-award authority to acquire real property and to relocate residents and businesses in accordance with the

Uniform Relocation and Real Property Acquisition Policies Act is granted upon completion of the NEPA process.

(i) All other activities must receive a Letter of No Prejudice (LONP) to be eligible for Federal reimbursement.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(e) Full-Funding Grant Agreements (FFGAs).

(1) FTA will determine whether to execute an FFGA for proposed New Starts projects based on:

(i) The evaluations and ratings established by this regulation;

(ii) The technical capability of project sponsors to complete the proposed New Starts project; and

(iii) A determination by FTA that no outstanding issues exist that could interfere with successful implementation of the proposed New Starts project.

(2) FTA's funding decision is distinct from project evaluation and rating process. Projects that meet or exceed the criteria described in this section are eligible, but are not guaranteed, to be recommended for funding. FTA will recommend projects for funding in the annual Report on Funding Recommendations and President's Budget only if the project is rated at least ''medium'' overall and has a cost-effectiveness rating of at least ''medium.''

(3) An FFGA shall not be executed for a project that is not authorized for final design and construction in accordance with Federal law.

(4) FFGAs may be executed only for those projects that:

(i) Have an overall rating of ''medium'' or better;

(ii) Have completed the appropriate steps in the project development process;

(iii) Meet all applicable Federal and FTA program requirements; and

(iv) Are ready to utilize New Starts funds, consistent with available program authorization.

(5) In any instance in which FTA decides to provide financial assistance under the Section 5309 Capital Investment program for construction of a New Starts project, FTA will negotiate an FFGA with the grantee during final design of that project. Pursuant to the terms and conditions of the FFGA:

(i) The maximum level of Federal financial contribution under the Section 5309 Capital Investment program will be consistent with the maximum New Starts share determined at the time the project entered final design as provided in paragraph (d)(2)(iv) of this section;

(ii) The grantee will be required to complete construction of the project, as defined in the scope, to the point of initiation of revenue operations, and to absorb any additional costs incurred or necessitated using non-Section 5309 Capital Investment funds;

(iii) FTA and the grantee will establish a schedule for anticipating Federal contributions; and

(iv) Specific annual contributions under the FFGA will be subject to the availability of overall budget authority, Congressional appropriations, and the ability of the grantee to use the funds effectively.

(6) If a project is completed using less than the total funding authorized in the FFGA, the project sponsor may request a grant amendment to spend the remaining funds on other system capital improvements.

(7) Consistent with 49 U.S.C. 5309(h)(3), the FFGA may include an incentive clause that will provide a specified higher than requested New Starts funding share, not to exceed 80 percent, under the following conditions:

(i) Actual opening year ridership is not less than 90 percent of the opening year ridership estimated at the time the project entered preliminary engineering for a project of equivalent scope; and

(ii) The actual scope and construction cost of the project is not more than 10 percent higher than the construction cost estimated at the time the project entered preliminary engineering. The construction costs will be compared in constant dollars for the year the project entered preliminary engineering.

(iii) The higher New Starts share will be in the form of an amendment to the FFGA to be used either to increase the Federal share for costs incurred in completing the project as agreed to in the FFGA, or for other agreed to system capital improvements, prior to closing out the FFGA.

(8) The total amount of Federal obligations under FFGAs and potential obligations under Letters of Intent will not exceed the amount authorized for New Starts under 49 U.S.C. 5309.

(9) FTA may also make a ''contingent commitment,'' which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g)(B) 5338(c), and 5338(f).

(10) Consistent with 49 U.S.C. 5309(g)(2)(C), the FFGA will require implementation of the data collection plan prepared in accordance with § 611.17(d)(5):

(i) Prior to the beginning of construction activities the grantee shall collect the ''before'' data on the existing system, if such data has not already been collected as part of final design, and document the predicted characteristics and performance of the project.

(ii) Two years after the project opens for revenue service, the grantee shall collect the ''after'' data on the transit system and the New Starts project, determine the impacts of the project, and analyze the consistency of the ''predicted'' performance of the project with the ''after'' data. A report on the findings and supporting data will be submitted to FTA no later than 30 months after the project opens for revenue service.

(iii) For funding purposes, collection of the ''before'' data, collection of the ''after'' data, and the development and reporting of findings are eligible parts of the proposed project.

(11) This part does not in any way alter, revoke, or require re-evaluation of existing FFGAs that were issued prior to [the effective date of the final rule].

Subpart C—Small Starts

§ 611.19 Eligibility.

(a) To be eligible for Small Starts funding, a proposed project must meet the following prerequisites:

(1) Be based on the results of planning and alternatives analysis as described in § 611.27.

(2) Must include at least 50 percent of the total project in a fixed guideway during the peak period or when congestion inhibits transit system performance, or be a corridor bus project that includes at least the following elements:

(i) Substantial transit stations;

(ii) Traffic signal priority/pre-emption;

(iii) Low-floor buses or level boarding;

(iv) Branding of the proposed service; and

(v) 10 minute peak/15 minute off peak headways or better for at least 14 hours per day.

(3) Must have a total project cost of under $250 million and request less than $75 million in Section 5309 Capital Investment funds, both in year of expenditure funds. If the project exceeds either of these limits, it shall be considered and evaluated as a New Start under subpart B of this part.

(b) Projects that would otherwise qualify for funding as a New Starts project may not be subdivided into several Small Starts projects. Projects may be built in phases or a series of minimum operable segments, but all potential Small Starts projects envisioned for a single corridor will be considered together as a single project for the purpose of determining Small Starts eligibility. If the combined cost or

total requested funding amount, both expressed in year-of-expenditure dollars, is over the Small Starts limits, the projects will be evaluated as New Starts projects.

§ 611.21 Project justification criteria.

In order to approve a grant for a proposed Small Starts project, and to approve entry into the project development phase as required by 49 U.S.C. 5309(e)(6), FTA must find that the proposed project is meritorious as described in 49 U.S.C. 5309(e)(4).

(a) To make the statutory evaluations and assign ratings for project justification, FTA will evaluate information developed locally through alternatives analyses and refined through the project development phase.

(1) The method used to make this determination will be a multiple measure approach in which the merits of candidate projects will be evaluated in terms of each of the criteria specified by this section.

(2) The ratings for each of the criteria will be expressed in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The application of these descriptors to each of these criteria will be published as policy guidance, subject to notice and comment, at least every two years or when substantial changes are made.

(b) The evaluation criteria and weights assigned to each for Small Starts project justification are as follows:

(1) Effectiveness criteria (50 percent of the summary rating for project justification):

(i) Mobility improvements for the general population (40 percent of the ratings for effectiveness), including congestion relief. Congestion relief shall be measured based on the degree to which the project reduces highway travel demand and the relative level of congestion in the corridor based on estimated delay.

(ii) Economic development/land use (60 percent of the ratings for effectiveness). Economic development/land use shall be measured using factors that address the additional development expected around project stations as a result of the New Start project. Such factors include the extent to which current land use is ripe for development, transit-oriented plans and policies, the economic development climate in the project corridor, the increase in transit accessibility offered by the project, and the economic lifespan of the project.

(2) Cost effectiveness (50 percent of the summary rating for project justification) shall be calculated by dividing annualized capital and operating costs by transportation system user benefits. Cost effectiveness for New Starts will be evaluated based on the forecast made over the planning horizon. Annualized cost shall include all elements necessary for completion of the project with contingency amounts that are reasonable to cover unanticipated cost increases plus annual operating and maintenance costs. The breakpoints corresponding to the cost effectiveness ratings will be adjusted for inflation annually as part of the Reporting Instructions.

(3) Other factors will be considered under the authority provided by 49 U.S.C. 5309(d)(3)(K).

(i) All projects will be evaluated and rated on the severity of the transportation and economic development problem or opportunity in the corridor and consideration of the appropriateness of the proposed project as a response.

(ii) Depending upon the applicability, also considered will be the following factors:

(A) Identification of the project as a principal element of a congestion reduction strategy, in general and a pricing strategy, in particular;

(B) Any factor which the Small Start project sponsor believes articulates the benefits of the proposed project but which is not captured within the other project justification criteria; and

(C) Other factors that the Secretary determines to be appropriate to carry out the evaluation.

(c) In evaluating proposed Small Starts projects under these criteria:

(1) For the effectiveness and cost effectiveness criteria, the proposed Small Starts project will be compared to the baseline alternative.

(2) As a candidate project proceeds through project development, a greater degree of certainty is expected with respect to the scope of the project and a greater level of commitment is expected with respect to the funding strategy and the plans and policies intended to support economic development and transit supportive land use.

(d) Simplified methods may be used for Small Starts projects with prior written approval from FTA. Depending on the scope and complexity of the proposed Small Starts project, information regarding user benefits and ridership could be estimated based on existing ridership, on-board surveys, calculations of stop-to-stop running time improvements, peer project experience, pivot-point and elasticity based methods, or other methods of estimating ridership and user benefits consistent with FTA guidance and industry practice.

(e) The individual ratings for each of the criteria described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' for project justification using the weights provided for above. ''Other factors'' will be considered and applied by adjusting, either upward or downward, the summary project justification rating.

§ 611.23 Local financial commitment criteria.

In order to approve a grant for a Small Starts project under 49 U.S.C. 5309, and to approve entry into project development as required by 49 U.S.C. 5309(e)(6), FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by 49 U.S.C. 5309(e)(5). The financial capability of the project sponsor to build, operate and maintain the proposed project as well as the existing and planned system will be evaluated according to the following measures:

(a) The proposed share of project capital costs to be met using funds from sources other than the Section 5309 Capital Investment Program, including both the non-Federal match required by Federal law and any additional local, State or non-Section 5309 Capital Investment Federal funding (''overmatch''). However, FTA will give priority to financing projects that include more non-Section 5309 Capital Investment funds than are required as local match under section 5309(h). At the same time, FTA will take into consideration the fiscal capacity of State and local governments by not reducing the overall local financial commitment rating below ''medium,'' for projects that, due to state or local fiscal capacity constraints, propose a funding strategy with an 80 percent Section 5309 Capital Investment funding. Unless otherwise specified in Federal law, FTA will not take into account the non-Federal funds expended on a project other than the Small Starts project being evaluated when computing the non-Federal share of the Small Starts project.

(b) The stability and reliability of the proposed capital funding plan for constructing all essential elements of the Small Starts project and transit system, including the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases.

(c) The stability and reliability of the proposed operating funding plan to operate and maintain the entire transit system as planned, and including the

existence of contractual arrangements, including public private partnership arrangements, that are designed to reduce and/or make more predictable the annualized cost of operations.

(d) The capital and operating plans specified in paragraphs (b) and (c) of this section must include costs and revenues up to and including opening year.

(e) For each proposed project, ratings for paragraphs (a), (b) and (c) of this section will be reported in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The application of these descriptors to each of these criteria will be published, subject to notice and comment, in policy guidance at least every two years or when substantial changes are made.

(f) The individual ratings for each measure described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' for local financial commitment. To develop the summary ratings, the rating for capital and operating financial plans will be given equal weights. The rating for the proposed share from other than the Section 5309 Capital Investments program will be used to assign a higher or lower rating should the weighting of the capital and operating financial plan ratings produce a rating which would otherwise fall between the summary rating levels specified above.

§ 611.25 Overall project ratings.

(a) The summary ratings developed for project justification and local financial commitment, adjusted by the degree of reliability of estimates of ridership and costs, as provided in §§ 611.7, 611.21, and 611.23, will form the basis for the overall rating for each project.

(b) FTA will assign overall ratings of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' as required by 49 U.S.C. 5309(e)(6)(B), to each proposed project. To obtain an overall rating of ''medium,'' a project must have at least a ''medium'' rating for project justification, and local financial commitment. To obtain an overall rating of ''medium-high,'' a project must have at least a rating of ''medium-high'' for both project justification and for local financial commitment. To obtain a rating of ''high,'' a project must have a rating of ''high'' for both project justification and for local financial commitment.

(1) These ratings will indicate the overall merit of a proposed project at the time of evaluation.

(2) Ratings for individual projects will be updated annually for purposes of the annual report on funding levels and allocations of funds required by 49 U.S.C. 5309(k)(1), and as required for FTA approvals during the following project development steps:

(i) Advancement of proposed Small Starts projects into project development;

(ii) Decision to recommend Small Starts projects for Project Construction Grant Agreements.

(c) Projects that achieve an overall rating of ''medium'' or better will be allowed to advance into project development and may be recommended for funding.

§ 611.27 Project development process.

All Small Starts projects must emerge from the metropolitan and statewide planning process, consistent with 23 CFR part 450, and be included in the metropolitan transportation plan. Proposed projects must be based on the results of alternatives analysis and proceed through project development before being recommended for Small Starts program funding.

(a) Alternatives analysis. To be eligible for project funding under the Small Starts program, local project sponsors must perform an alternatives analysis consistent with FTA guidance.

(1) The alternatives analysis must develop information on the benefits, costs, and impacts of alternative strategies to address a transportation problem or opportunity in a given corridor, leading to the adoption of a locally preferred alternative.

(2) The alternative strategies evaluated in an alternatives analysis must include a no-build alternative, at least one Transportation System Management (TSM) alternative that is able to serve as the Small Starts project baseline alternative, and an appropriate number of build alternatives. If the alternatives analysis only considers projects that would qualify as Small Starts projects and does not include a new fixed guideway alternative, the Small Starts project already fits the definition of a TSM alternative. In this case, the no-build alternative will serve as the baseline in both the alternatives analysis and in the Small Starts evaluation and rating process.

(3) The locally preferred alternative must be selected from among the evaluated alternative strategies and formally adopted and included in the metropolitan transportation plan.

(b) Project development. Consistent with 49 U.S.C. 5309(e)(6) and 5328(a)(2), FTA will evaluate proposed Small Starts projects for approval into project development. For Small Starts projects, project development combines the goals and activities of preliminary engineering and final design into a single phase with a single FTA approval point. However, under NEPA regulations (23 CFR part 771), final design activities may not commence prior to completion of the NEPA process.

(1) The project development phase of Small Starts is the process of finalizing the project scope, cost, and the financial plan such that:

(i) All environmental and community impacts are identified and adequate provisions made for their mitigation in accordance with 49 U.S.C. 5324(b) and NEPA, with FTA's issuance of a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), unless the project is found to be categorically excluded from the NEPA process by FTA under 23 CFR 771.117;

(ii) All major or critical project elements are designed to the level that no significant unknown impacts relative to their costs will result; and

(iii) All cost estimating is complete to the level of confidence necessary for the project sponsor to implement the financing strategy, including establishing the maximum dollar amount of the Small Starts program financial contribution needed to implement the project.

(iv) The project sponsor has used credible, relevant, identifiable, and cost-effective industry or engineering practices that are uniformly and consistently applied in preparing for and making these determinations. The cost estimating process would specifically identify the main components of the project as identified in FTA's standardized cost categories, including all essential project elements, and add sufficient contingencies to cover unanticipated cost increases.

(v) Detailed specifications and bid documents are produced, all funding commitments needed to complete the project are finalized, and all remaining technical and regulatory issues relating to readiness to begin construction are completed.

(2) A proposed project can be considered for advancement into project development only if:

(i) Alternatives analysis has been completed;

(ii) FTA has approved the alternative that will serve as the baseline alternative against which the proposed project will be compared in the evaluation and rating process;

(iii) The NEPA scoping process has been completed or the project has been granted a categorical exclusion;

(iv) The proposed project has been adopted as the locally preferred alternative in the metropolitan transportation plan;

(v) The proposed financial strategies, planned funding sources, and amounts have been independently endorsed by those agencies identified as responsible for providing or approving the funding. Where future State and/or local government action or public referendum is required to establish (and commit) the proposed funding source, a letter of endorsement and a timeframe for implementation and commitment is required from the appropriate policy-making or decision-making body responsible for providing or approving the proposed funding;

(vi) For project sponsors using traditional travel forecasting procedures (commonly referred to as four-step models) to estimate transportation system user benefits and ridership, the procedures have been rigorously validated using a survey of transit riders that has been completed not more than five years prior to a request to enter project development;

(vii) Project sponsors have demonstrated adequate technical capability to carry out project development for the proposed project; and

(viii) All other applicable Federal and FTA program requirements have been met.

(3) Consistent with 49 U.S.C. 5309(g)(2)(C), project sponsors shall submit a preliminary plan for collection and analysis of information to identify the ''before and after'' impacts of the Small Starts project and the accuracy of the forecasts prepared during development of the project. The project sponsor will also submit the initial information on project scope, service levels, capital costs, operating and maintenance costs, and ridership of the project produced during alternatives analysis, identify the entity responsible for each in order to facilitate FTA's compliance with preparation of the Contractor Performance Assessment Report required by 49 U.S.C. 5309(l)(2), and provide a discussion of the key uncertainties that may affect achievement of the forecasts.

(4) FTA's approval will be based on the results of its evaluation as described in §§ 611.7 and 611.21 through 611.25.

(5) At a minimum, a proposed project must receive an overall rating of ''medium'' and be reasonably expected to continue to meet the requirements of this section to be approved for entry into project development.

(6) This part does not in any way revoke prior FTA approvals to enter project development made prior to [the effective date of the final rule].

(7) Small Starts projects entering project development receive blanket pre-award authority to incur project costs for preliminary engineering prior to grant approval. Pre-award authority for final design and to acquire real estate and to relocate residents and businesses in accordance with the Uniform Relocation and Real Property Acquisition Policies Act is automatically granted upon completion of the NEPA process as evidenced by FTA's issuance of a ROD or FONSI, or FTA's concurrence in a categorical exclusion. All other activities must receive a Letter of No Prejudice (LONP) to be eligible for Federal reimbursement.

(i) This pre-award authority does not constitute a commitment by FTA that future Federal funds will be approved for the project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(c) Project Construction Grant Agreements (PCGAs).

(1) FTA will determine whether to execute a PCGA for Small Starts projects based on:

(i) The results of the evaluations and ratings process contained in this part;

(ii) The technical capability of the project sponsor to complete the proposed Small Starts project;

(iii) The NEPA process has been completed with FTA's issuance of a ROD or FONSI or FTA's concurrent in a categorical exclusion;

(iv) The project is reaffirmed in its final configuration and costs (after NEPA and project development) in the metropolitan transportation plan if significant changes have occurred in the project definition or cost compared to the project that was approved to enter into project development; and

(v) A determination by FTA that no outstanding issues exist that could interfere with successful implementation of the proposed Small Starts project.

(vi) Consistent with 49 U.S.C. 5309(g)(2)(C), project sponsors seeking PCGAs shall submit a complete plan for collection and analysis of information to identify the ''before and after'' impacts of the Small Starts project and the accuracy of the forecasts prepared during development of the project. The project sponsor will also submit updated information on project scope, service levels, capital costs, operating and maintenance costs, and ridership of the project produced during project development, an analysis of the changes between the current project information and the information prepared during alternatives analysis, and a discussion of the key remaining uncertainties that may affect achievement of the forecasts.

(A) The plan shall finalize the preliminary plan developed prior to entering project development as required by § 611.27(c)(3). The plan will provide for: Collection of ''before'' data on the current transit system; documentation of the ''predicted'' scope, service levels, capital costs, operating costs, and ridership of the project; collection of ''after'' data on the transit system one year after opening of the Small Starts project; and analysis of the consistency of ''predicted'' project characteristics with the ''after'' data.

(B) The ''before'' data collection shall obtain information on transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics. The ''after'' data collection shall consist of comparable information on transit service levels and ridership patterns, plus information on the as-built scope and capital and operation and maintenance costs of the Small Starts project.

(C) The analysis of this information shall describe the impacts of the Small Starts project on transit services and transit ridership, evaluate the consistency of ''predicted'' and actual project characteristics and performance, and identify sources of differences between ''predicted'' and actual outcomes.

(D) For funding purposes, preparation of the plan for collection and analysis of data is an eligible part of the proposed project.

(vii) Project sponsors shall collect data on the current system, according to the plan required under § 611.27(b)(3) as approved by FTA, prior to the beginning of construction of the proposed Small Starts project. Collection of this data is an eligible part of the proposed project for funding purposes.

(2) FTA's funding decision is distinct from project evaluation and rating process. Projects that meet or exceed the criteria described in this section are eligible, but are not guaranteed, to be recommended for funding. FTA will recommend projects for funding in the annual Report on Funding Recommendations and President's Budget only if the project is rated at least ''medium'' overall and has a cost-effectiveness rating of at least ''medium.''

(3) A PCGA shall not be executed for a project that is not authorized for construction by Federal law.

(4) PCGAs may be executed only for those projects that:

(i) Have an overall rating of ''medium'' or better;

(ii) Have completed the appropriate steps in the project development process;

(iii) Meet all applicable Federal and FTA program requirements; and

(iv) Are ready to utilize Small Starts funds, consistent with available program authorization.

(5) In any instance in which FTA decides to provide financial assistance under the Section 5309 Capital Investment program for construction of a Small Starts project, FTA will negotiate a PCGA with the grantee during project development. Pursuant to the terms and conditions of the PCGA:

(i) The grantee will be required to complete construction of the project, as defined, to the point of initiation of revenue operations and to absorb any additional costs incurred or necessitated with local or other non-Section 5309 Capital Investment funds;

(ii) FTA and the grantee will establish a schedule for anticipating Federal contributions; and

(iii) Specific annual contributions under the PCGA will be subject to the availability of overall budget, authority, Congressional appropriations, and the ability of the grantee to use the funds effectively.

(6) The total amount of Federal obligations under PCGAs and potential obligations under Letters of Intent will not exceed the amount authorized for Small Starts under 49 U.S.C. 5309.

(7) FTA may also make a ''contingent commitment,'' which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g)(B) 5338(c), and 5338(f).

(8) The PCGA will require implementation of the data collection plan prepared in accordance with paragraph (c)(1)(vi) of this section:

(i) Prior to the beginning of construction activities, the grantee shall collect the ''before'' data on the existing system, if such data has not already been collected during project development, and document the predicted characteristics and performance of the project.

(ii) One year after the project opens for revenue service, the grantee shall collect the ''after'' data on the transit system and the Small Starts project, determine the impacts of the project, analyze the consistency of the ''predicted'' performance of the project with the ''after'' data, and report the findings and supporting data to FTA no later than 18 months after the project opens for revenue service.

(iii) For funding purposes, collection of the ''before'' data, collection of the ''after'' data, and the development and reporting of findings are eligible parts of the proposed project.

Subpart D—Very Small Starts

§ 611.29 Eligibility.

(a) To be eligible for Section 5309 Capital Investment funding for a Very Small Start, a proposed project must meet the following prerequisites:

(1) Be based on the results of planning and alternatives analysis as described in § 611.37.

(2) Have at least 50 percent of the project in a fixed guideway during the peak period or when congestion inhibits transit system performance, or be a corridor bus project that includes at least the following elements:

(i) Substantial transit stations;

(ii) Traffic signal priority/pre-emption;

(iii) Low-floor buses or level boarding;

(iv) Branding of the proposed service; and

(v) 10 minute peak/15 minute off peak headways or better for at least 14 hours per day.

(3) Must have the following characteristics to qualify for pre-approval of the project justification criteria:

(i) Be in a corridor with a minimum of 3,000 existing transit riders who will benefit from the proposed project.

(ii) Have a total project cost of less than $50 million and an average cost of less than $3 million per mile (exclusive of rolling stock). Projects that exceed the limits provided for in paragraph (a)(3) of this section will be considered and evaluated as a Small Starts project, described in Subpart C of this part.

(b) Projects that would otherwise qualify for funding as a New Starts or Small Starts project may not be subdivided into several Very Small Starts projects. Projects may be built in phases or a series of minimum operable segments, but all projects envisioned for a single corridor will be considered together as a single project for the purpose of determining eligibility as a Very Small Starts project. If the combined cost or total requested funding amount, both expressed in year-of-expenditure dollars, is over the Very Small Starts limits, the projects will be evaluated as a New Starts or Small Starts project.

§ 611.31 Project justification criteria.

In order to approve a grant for a proposed Very Small Starts project, and to approve entry into the project development phase as required by 49 U.S.C. 5309(e)(6), FTA must find that the proposed project is meritorious as described in 49 U.S.C. 5309(e)(4).

(a) To make the statutory evaluations and assign ratings for project justification, FTA will evaluate information developed locally through alternatives analyses and refined through the project development phase.

(b) For Very Small Starts projects, a single summary rating of project justification will be provided, based on the project's ability to meet the requirements in § 611.29(a)(3) that takes into account the project's mobility improvements, economic development, land use impacts, and cost effectiveness.

(c) Other factors will be considered under the authority provided by 49 U.S.C. 5309(d)(3)(K).

(1) All projects will be evaluated and rated on the severity of the transportation and economic development problem or opportunity in the corridor and consideration of the appropriateness of the proposed project as a response.

(2) Depending upon the applicability, also considered will be the following factors:

(i) Identification of the project as a principal element of a congestion reduction strategy, in general and a pricing strategy, in particular;

(ii) Any factor which the Very Small Start project sponsor believes articulates the benefits of the proposed project but which is not captured within the other project justification criteria; and

(iii) Other factors that the Secretary determines to be appropriate to carry out the evaluation.

(d) The procedures used to produce the information to support the project justification rating for Very Small Starts will be based on data supporting the existing ridership and average cost per mile required under § 611.29(a)(3) .

(e) Very Small Starts projects are composed of project elements described in § 611.29(a)(3) that are warranted as both effective and cost-effective and shall be rated ''medium'' for project justification. Projects not composed of such elements do not qualify for evaluation as a Very Small Start, and are subject to the requirements of subpart C of this part.

§ 611.33 Local financial commitment criteria.

In order to approve a Very Small Starts project into project development or for a grant under 49 U.S.C. 5309, FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by 49 U.S.C. 5309(e)(5). The financial capability of the project sponsor to build, operate and maintain the proposed project, as well as the existing

and planned system will be evaluated according to the following measures:

(a) The proposed share of project capital costs to be met using funds from sources other than the Section 5309 Capital Investment program, including both the non-Federal match required by Federal law and any local, state or additional non-Section 5309 Capital Investment Federal funding (''overmatch''). However, FTA will give priority to financing projects that include more non-5309 funds than are required as local match under 5309(h). At the same time, FTA will take into consideration the fiscal capacity of State and local governments by not reducing the overall local financial commitment rating below ''medium,'' for projects that, due to state or local fiscal capacity constraints, propose a funding strategy with an 80 percent Section 5309 Capital Investment funding. Unless otherwise specified in Federal law, FTA will not take into account the non-Federal funds expended on a project other than the Very Small Starts project being evaluated when computing the non-Federal share of the Very Small Starts project.

(b) The stability and reliability of the proposed capital funding plan for constructing all essential elements of the Very Small Starts project and transit system, including the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases; and

(c) The stability and reliability of the proposed operating funding plan to operate and maintain the entire transit system as planned and including the existence of contractual arrangements that are designed to reduce and/or make more predictable the annualized cost of operations.

(d) The capital and operating plans specified in paragraphs (a), (b) and (c) of this section must include annual costs and revenues through opening year.

(e) For each proposed project, ratings for paragraphs (a), (b) and (c) of this section will be reported in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The application of these descriptors to each of these criteria, and the weights given to each criterion, will be published, subject to notice and comment, in policy guidance at least every two years or when substantial changes are made.

(f) The individual ratings for each measure described in this section will be combined into a summary rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' for local financial commitment.

§ 611.35 Overall project ratings.

(a) The summary ratings developed for project justification and local financial commitment, adjusted by the degree of reliability of estimates of ridership and costs (as described in §§ 611.7, 611.31, and 611.33), will form the basis for the overall rating for each project.

(b) FTA will assign overall ratings of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low,'' as required by 49 U.S.C. 5309(e)(6)(B), to each proposed project. To obtain an overall rating of ''medium,'' a project must have at least a ''medium'' rating for both project justification and local financial commitment.

(1) These ratings will indicate the overall merit of a proposed project at the time of evaluation.

(2) Ratings for individual projects will be updated annually for purposes of the annual report on funding levels and allocations of funds required by 49 U.S.C. 5309(k)(1), and as required for FTA approvals during the following project development steps:

(i) Advancement of proposed Very Small Starts projects into project development; and

(ii) Decision to recommend Very Small Starts projects for Project Construction Grant Agreements.

(c) Projects that achieve an overall rating of ''medium'' or better will be allowed to advance into project development and may be recommended for funding.

§ 611.37 Project development process.

All Very Small Starts projects must emerge from the metropolitan and statewide planning process, consistent with 23 CFR part 450, and be included in the metropolitan transportation plan. Proposed projects must be based on the results of alternatives analysis and proceed through project development before being recommended for Section 5309 Capital Investment program funding.

(a) Alternatives analysis. To be eligible for project funding under the Section 5309 Capital Investment program, local project sponsors must perform an alternatives analysis consistent with FTA guidance.

(1) The alternatives analysis must develop information on the benefits, costs, and impacts of alternative strategies to address a transportation problem or opportunity in a given corridor, leading to the adoption of a locally preferred alternative.

(2) The alternative strategies evaluated in an alternatives analysis must include a no-build alternative and at least one Very Small Start alternative.

(3) The locally preferred alternative must be selected from among the evaluated alternative strategies and formally adopted and included in the metropolitan transportation plan.

(b) Project development. Consistent with 49 U.S.C. 5309(e)(6) and 49 U.S.C. 5328(a)(2), FTA will evaluate proposed Very Small Starts projects for approval into project development. For Very Small Starts projects, project development combines the goals and activities of preliminary engineering and final design into a single phase with a single FTA approval point. However, under NEPA regulations (23 CFR Part 771), final design activities may not commence prior to completion of the NEPA process.

(c) Project Development.

(1) The project development phase of Small Starts, including Very Small Starts, is the process of finalizing the project scope, cost, and the financial plan such that:

(i) All environmental and community impacts are identified and adequate provisions made for their mitigation in accordance with 49 U.S.C. 5324(b) and NEPA, which results in FTA's issuance of a Record of Decision (ROD) or Finding of No Significant Impact (FONSI), unless the project is found to be categorically excluded from the NEPA process by FTA under 23 CFR 771.17;

(ii) All major or critical project elements are designed to the level that no significant unknown impacts relative to their costs will result; and

(iii) All cost estimating is complete to the level of confidence necessary for the project sponsor to implement the financing strategy, including establishing the maximum dollar amount of the Small Starts program financial contribution needed to implement the project.

(iv) The project sponsor has used credible, relevant, identifiable and cost-effective industry or engineering practices that are uniformly and consistently applied in preparing for and making these determinations. The cost estimating process would specifically identify the main components of the project as identified in FTA's standardized cost categories, including all essential project elements, and add sufficient contingencies to cover unanticipated cost increases.

(v) Detailed specifications and bid documents are produced, all funding commitments needed to complete the project are finalized, and all remaining technical and regulatory issues relating to readiness to begin construction are completed.

(2) A proposed project can be considered for advancement into project development only if:

(i) Alternatives analysis has been completed;

(ii) The NEPA scoping process has been completed, or the project has been granted a categorical exclusion;

(iii) The proposed project has been adopted as the locally preferred alternative in the metropolitan transportation plan;

(iv) The proposed financial strategies, planned funding sources, and amounts have been independently endorsed by those agencies identified as responsible for providing or approving the funding. Where future State and/or local government action or public referendum is required to establish (and commit) the proposed funding source, a letter of endorsement and a timeframe for implementation and commitment is required from the appropriate policy-making or decision-making body responsible for providing or approving the proposed funding;

(v) Project sponsors have demonstrated adequate technical capability to carry out project development for the proposed project; and

(vi) All other applicable Federal and FTA program requirements have been met.

(3) Consistent with 49 U.S.C. 5309(g)(2)(C), project sponsors shall submit a preliminary plan for collection and analysis of information to identify the ''before and after'' impacts of the Very Small Starts project and the accuracy of the forecasts prepared during development of the project. The project sponsor will also submit the initial information on project scope, service levels, capital costs, operating and maintenance costs, and ridership of the project produced during alternatives analysis, as well as a discussion of the key uncertainties that may affect achievement of the forecasts.

(4) FTA's approval will be based on the results of its evaluation as described in §§ 611.21 through 611.25.

(5) At a minimum, a proposed project must receive an overall rating of ''medium'' and be reasonably expected to continue to meet the requirements of this section to be approved for entry into project development.

(6) This part does not in any way revoke prior FTA approvals to enter project development made prior to [the effective date of the final rule].

(7) Very Small Starts projects entering project development receive blanket pre-award authority to incur project costs for preliminary engineering prior to grant approval. Pre-award authority for final design, to acquire real estate and to relocate residents and businesses in accordance with the Uniform Relocation and Real Property Acquisition Policies Act, is automatically granted upon completion of the NEPA process as evidenced by FTA's issuance of a ROD or FONSI or FTA's concurrence in a categorical exclusion. All other activities must receive a Letter of No Prejudice (LONP) to be eligible for Federal reimbursement.

(i) This pre-award authority does not constitute a commitment by FTA that future Federal funds will be approved for the project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(d) Project Construction Grant Agreements (PCGAs).

(1) FTA will determine whether to execute a PCGA for Very Small Starts projects based on:

(i) The results of the evaluations and ratings process contained in this part;

(ii) The technical capability of the project sponsor to complete the proposed Very Small Starts project;

(iii) The NEPA process has been completed with FTA's issuance of a ROD or FONSI or FTA's concurrence in a categorical exclusion;

(iv) The project is reaffirmed in its final configuration and costs (after NEPA and project development) in the metropolitan transportation plan if significant changes have occurred in the project definition or cost compared to the project that was approved to enter into project development; and

(v) A determination by FTA that no outstanding issues exist that could interfere with successful implementation of the proposed Small Starts project.

(2) FTA's funding decision is distinct from project evaluation and rating process. Projects that meet or exceed the criteria described in this section are eligible, but are not guaranteed, to be recommended for funding.

(3) A PCGA shall not be executed for a project that is not authorized for construction by Federal law.

(4) PCGAs may be executed only for those projects that:

(i) Have an overall rating of ''medium'' or better;

(ii) Have completed the appropriate steps in the project development process;

(iii) Meet all applicable Federal and FTA program requirements; and

(iv) Are ready to utilize Small Starts funds, consistent with available program authorization.

(5) In any instance in which FTA decides to provide Section 5309 Capital Investment funding for construction of a Very Small Starts project, FTA will negotiate a PCGA with the grantee during project development. Pursuant to the terms and conditions of the PCGA:

(i) The grantee will be required to complete construction of the project, as defined, to the point of initiation of revenue operations, and to absorb any additional costs incurred or necessitated with local or other non-Section 5309 Capital Investment funds;

(ii) FTA and the grantee will establish a schedule for anticipating Federal contributions; and

(iii) Specific annual contributions under the PCGA will be subject to the availability of budget authority and the ability of the grantee to use the funds effectively.

(6) The total amount of Federal obligations under PCGAs and potential obligations under Letters of Intent will not exceed the amount authorized for Small Starts under 49 U.S.C. 5309.

(7) FTA may also make a ''contingent commitment,'' which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g)(B), 5338(c), and 5338(f).

(8) The PCGA will require implementation of the data collection plan prepared in accordance with paragraph 611.37(c)(3) of this section:

(i) Prior to the beginning of construction activities, the grantee shall collect the ''before'' data on the existing system if such data has not already been collected during project development, and document the predicted characteristics and performance of the project.

(ii) One year after the project opens for revenue service, the grantee shall collect the ''after'' data on the transit system and the Very Small Starts project, determine the impacts of the project, analyze the consistency of the ''predicted'' performance of the project with the ''after'' data, and report the findings and supporting data to FTA within eighteen months after the project opens for revenue.

(A) The Before-and-After Study will consist of a very simple analysis of: A post-construction cost summary in FTA standardized cost categories compared to the cost estimate at the time of entry into project development; a comparison of actual ridership (on's and off's) in the corridor provided in the application to enter project development and new counts done one year after opening; and a comparison of transit schedules and frequencies between the transit services in the corridor as it existed at the time of entry into project development and one year after opening. The results of

this study shall be submitted within eighteen months after project opening.

(B) For funding purposes, collection of the ''before'' data, collection of the ''after'' data, and the development and reporting of findings are eligible parts of the proposed project.

Appendix A to Part 611—Model Project Development Agreement

Project Development Agreement Between the Federal Transit Administration and the [Sponsor] for the [Name of Project]

1.0 Purpose

The Federal Transit Administration (FTA) and the [Sponsor] are executing this Project Development Agreement (''Agreement'') to set forth their intentions for compliance with NEPA, the Metropolitan Planning requirements, and the Major Capital Investment (''New Starts'') requirements that will govern the [name of project]. FTA and [Sponsor] acknowledge that this Agreement may be modified from time to time to accommodate statutory or regulatory changes, changes to the project, or changes to [the Sponsor's] project management or financing plans, as necessary or appropriate.

2.0 Applicable Statutes, Regulations, and Program Requirements

The [name of project] is a ''major federal action'' subject to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and FTA's regulations at 23 CFR Part 771; a ''major metropolitan transportation investment'' subject to the Metropolitan Planning requirements at 23 CFR Part 450; a ''new fixed guideway system or extension of an existing fixed guideway system'' subject to the Major Capital Investment (''New Starts'') requirements at 49 U.S.C. 5309 and 49 CFR Part 611; and a ''major capital project'' subject to the Project Management Oversight requirements at 49 U.S.C. 5327 and 49 CFR Part 633.

3.0 Project Readiness for Preliminary Engineering

As a prerequisite for FTA's approval of entry into Preliminary Engineering, [Sponsor] has identified an operable segment of fixed guideway that will be its candidate for Section 5309 New Starts funds under a Full Funding Grant Agreement. This operable segment is the product of an Alternatives Analysis that considered an appropriate range of alternative modes, alignments, and termini in terms of their likely costs, benefits, and environmental impacts. Specifically:

3.1 Alternatives Analysis

In [month and year] [Sponsor] completed an Alternatives Analysis (''AA'') [or title of the study] consistent with FTA guidance, good practice, and the requirements of 49 CFR part 611, for the purpose of [* * * describe the transportation problem and name the corridor]. This AA evaluated a range of reasonable alternatives for that purpose: [* * * describe the number of alternatives, the modes considered, their varying alignments and lengths, and the range of costs]. FTA is satisfied that this AA presents reliable information on the benefits, costs, and impacts of these alternatives. Further, FTA is satisfied that all interested parties and the general public had ample opportunity to participate in this AA.

3.2 The Candidate Project for New Starts Funds

As the result of this AA, [Sponsor] has identified a project that will be a candidate for Federal financial assistance for final design and construction under 49 U.S.C. 5309 (hereafter, [name of project] or the ''*candidate project*''). [Name of project] is a [* * * describe the project in terms of mode, length, location, and number of stations and rolling stock.] The *candidate project* is described in more detail in Attachment 8.1 to this Agreement (''Scope of the Project''). As of the date of this Agreement, the estimated total cost of the *candidate project* is $_____, and [Sponsor] intends to seek $_____ in Federal financial assistance under the Section 5309 New Starts program for Final Design and Construction of the *candidate project*. The estimated total cost is set forth in more detail in Attachment 8.2 to this Agreement (''Cost Estimate''). The anticipated sources of financing and relevant amounts of that financing are set forth in Attachment 8.3 to this Agreement (''Budget'').

3.3 Baseline Alternative

In accordance with the requirements of 49 CFR part 611, FTA has approved a baseline alternative for further study that will be used for purposes of comparison during the NEPA and New Starts processes: [describe the *baseline* alternative].

3.4 Metropolitan Planning Organization's Plan and TIP

The [name of MPO], the Metropolitan Planning Organization for metropolitan [name of city], has adopted a financially constrained long range metropolitan transportation plan (hereafter, the ''Plan'' or [name of the Plan]), and a four-year Transportation Improvement Program, (hereafter, the ''TIP'' or [name of the TIP]), in accordance with 23 CFR part 450. The [Sponsor's] [name of project] has been incorporated into [MPO's] Plan, and [describe the project activities to be accomplished during the four-year TIP] have been incorporated into [MPO's] TIP. Consistent with [MPO's] Plan, [Sponsor's] financial plan for the *candidate project* anticipates that [identify the funding sources other than the New Starts program and the relevant amounts].

3.5 Sponsor's Technical Capacity

As a prerequisite to the execution of this Agreement, [Sponsor] has demonstrated its technical capacity and capabilities to carry out Preliminary Engineering for the *candidate project* in accordance with the milestones identified in Section 5.0 of this Agreement. Specifically, [describe whether the Sponsor will perform Preliminary Engineering with its in-house staff and resources or procure the necessary engineering expertise from consulting contractors or some combination thereof.]

4.0 Approach Towards Project Development

As a prerequisite for FTA's approval of entry into Preliminary Engineering, [Sponsor] has agreed to take an approach towards project development that will ensure consistency in project scope and New Starts funding expectations throughout the successive phases of Preliminary Engineering, Final Design, and Construction. To expedite [Sponsor's] efforts, FTA will take a number of steps to help [Sponsor] comply with the pertinent Federal requirements. Specifically,

4.1 Environmental Impacts

[Option One: If the *candidate project* has been identified prior to the preparation of a DEIS, use the following paragraph.] FTA and [Sponsor] will prepare an Environmental Impact Statement (EIS) [or Environmental Assessment (EA] that will evaluate a No Build alternative, a Baseline alternative described in Section 3.3 of this Agreement, the *candidate project,* and the following modal or alignment alternatives deemed worthy of study as a result of the scoping meeting held on [date]: [Describe the other alternatives.] FTA and [Sponsor] agree that the EIS [or EA] may incorporate by reference the AA data and information that support the elimination of certain other alternatives from further study. Should [Sponsor] retain consultants to assist in the preparation of the EIS [or EA], [Sponsor] will obtain and retain a statement from each such consultant that the consultant has no financial or other interest in the outcome of the alternatives under study. The EIS [or EA] will cover [specify whether the document will cover only the *candidate project* or potential extensions to the *candidate project* that lie within the same corridor]. Consistent with both NEPA and Federal transit law, the public will be given every opportunity to assist in the preparation of the EIS [or EA]. [Sponsor] acknowledges, however, that the EIS [or EA] will not be published unless and until FTA determines that the information to be presented on the costs, benefits, and impacts of the various alternatives is reliable.

[Option Two: If the *candidate project* has been identified as the result of a combined AA/DEIS, use the following paragraph.]

FTA and [Sponsor] published a Draft EIS [or EA] on [date] that led to the selection of the *candidate project* as *the locally preferred alternative* in accordance with the requirements of 49 CFR Part 611. FTA and [Sponsor] will now prepare a Final EIS that will complete the evaluation of the No Build alternative, the Baseline alternative described in Section 3.3 of this Agreement, the *candidate project,* and [identify any other modal or alignment alternatives to be carried forward]. The Final EIS will cover [specify whether the document will be limited to the *candidate project* or potential extensions to the *candidate project* that lie within the same corridor]. Currently, FTA and [Sponsor] expect to publish the Final EIS in or about [month, year] and FTA expects to issue a Record of Decision [or Finding of No Significant Impact] for the *candidate project* in or about [month, year]. [Sponsor] acknowledges, however, that the Final EIS

will not be published unless and until FTA determines that the information to be presented on the costs, benefits, and impacts of the various alternatives is reliable.

4.2 Project Scope, Cost Estimate, and Budget

The fundamental purpose of Preliminary Engineering will be [Sponsor's] development of a definitive project scope, a reliable estimate of total project costs, and a viable financing plan for the *candidate project* which will be used to strictly limits the amount of Section 5309 New Starts funds that will be available at the time the project is approved for entry into Final Design. Attached to this Agreement are a preliminary project scope, a preliminary estimate of total project costs, and a preliminary budget for the *candidate project* (Attachments 8.1, 8.2, and 8.3, respectively).

[Use the following paragraph if the NEPA document will cover both the *candidate project* and potential extensions to the *candidate project* that lie within the same corridor.]

[Sponsor] acknowledges that only the *candidate project* is being approved for entry into Preliminary Engineering pursuant to 49 CFR part 611. [Sponsor] will perform engineering for potential extensions to the *candidate project* so far as necessary for compliance with NEPA—including the study of cumulative impacts and necessary mitigation—to disclose the implications of those extensions for Federal and local decisions on the *candidate project* and allow for acquisition of right-of-way upon completion of compliance with NEPA.

At the conclusion of Preliminary Engineering—and as a condition precedent to FTA's approval of the *candidate project* for entry into Final Design—[Sponsor] will produce a Baseline Cost Estimate for the *candidate project* in Year Of Expenditure dollars in a level of detail sufficient for validation by FTA, its Project Management Oversight consultant, [MPO], and state and local agencies. [Sponsor] acknowledges that the maximum 5309 New Starts share will be set upon entry into final design.

4.3 Travel Forecasting

During the course of Preliminary Engineering [Sponsor] will continually revise its travel forecasts to reflect any changes to the project scope and the most recent information on any matter pertinent to travel demand, such as newly adopted population and employment forecasts. [Sponsor] will be expected to use the most recent model enhancements available for travel forecasting. Any revisions to [Sponsor's] forecasts will be made consistent with good professional practice and FTA guidance.

4.4 Project Management Plan

Critical to the success of [Sponsor's] further development of the *candidate project* will be [Sponsor's] own plan for managing that development, including, specifically, [Sponsor's] management of its contractors, budget, and schedule for Preliminary Engineering. [Sponsor's] draft Project Management Plan for Preliminary Engineering is set forth in Attachment 8.4 to this Agreement. [Sponsor] will revise and refine this Project Management Plan, as necessary or appropriate, throughout the course of Preliminary Engineering and again upon FTA's approval of the *candidate project* for entry into Final Design.

4.5 Project Financing Plan

Consistent with Sections 4.2 of this Agreement, during the course of Preliminary Engineering [Sponsor] will develop a financing plan that supports the award of a maximum amount of Federal financial assistance under the Section 5309 New Starts program for Final Design and Construction of the *candidate project.* This Financing Plan will specify a schedule for securing the commitment of additional State, local, and private funding for the *candidate project,* as necessary or appropriate. This Financing Plan will also reflect the endorsement of any State, local, or private entity whose approval is necessary for securing the commitment of the funding sources identified by that schedule.

4.6 FTA Oversight

As soon as practicable after the execution of this Agreement FTA will retain the services of a Project Management Oversight Contractor (PMOC) to assist FTA in its oversight of the *candidate project.* FTA will use the services of its PMOC during Preliminary Engineering and any subsequent phases of project development. In its discretion, FTA may also retain the services of a Financial Management Oversight Contractor (FMOC) during any phase of project development, for the purposes of obtaining an objective, independent evaluation of [Sponsor's] plans for financing both the capital costs of constructing the *candidate project* and the continuing operation and maintenance of [Sponsor's] bus and rail services.

Additionally, in its discretion, FTA may retain the services of consultants in land use, financing, procurement systems management, environmental mitigation and monitoring, and other fields related to the development of transportation infrastructure, for the purposes of evaluating the *candidate project* and the other alternatives under study. [Sponsor] pledges its utmost cooperation in enabling FTA and its PMOC and FMOC to monitor [Sponsor's] adherence to its project management and financing plans, and to provide FTA and its PMOC and FMOC all records, data, and access to property as may be reasonably required for that purpose.

4.7 Risk Assessments

Both [Sponsor] and FTA intend to assess the risks inherent in the *candidate project* during Preliminary Engineering and any subsequent phase of project development. Principally, [Sponsor] and FTA intend to assess the risks inherent in constructing the *candidate project* on schedule and within budget. Such risks may include, but are not limited to, property acquisitions, property and utility relocations, differing and unknown field and subsurface conditions, integration of pre-existing buildings and structures, availability of labor and materials, environmental impacts, adverse impacts on historic resources, and transactions of third party agreements. In its discretion, FTA may also choose to conduct baseline reviews of [Sponsor's] financial and procurement systems for the purpose of determining whether [Sponsor] has protocols in place to adequately manage the *candidate project* in compliance with applicable Federal law and regulation. [Sponsor] agrees that specific risks identified and prioritized by either [Sponsor] or FTA will be reported to FTA, mitigated, monitored, and updated on a continuous basis, as the *candidate project* progresses through Preliminary Engineering and any subsequent phase of project development. [Sponsor] also pledges its utmost cooperation in enabling FTA and its consulting contractors both to critique [Sponsor's] risk assessments and perform any separate risk assessments FTA may deem appropriate during the course of the *candidate project.*

4.8 Best Available Documents

The project scope, cost estimate, and budget and the draft Project Management Plan attached to this Agreement are the best available documents at this stage of the *candidate project.* [Sponsor] expects to continually revise and refine these documents, however, as the *candidate project* progresses through Preliminary Engineering and any subsequent phase of project development. [Sponsor] pledges to promptly provide FTA and its consulting contractors all successive iterations of each of these documents throughout the course of the *candidate project.*

4.9 Review and Comment

FTA and [Sponsor] will expedite one another's review and comment on the administrative drafts of NEPA documents, project management and financing plans, risk assessments, scopes of work, budgets, schedules, and the like by forwarding those documents to the appropriate persons in both agencies to allow for timely responses. FTA and [Sponsor] will make every reasonable effort to complete their reviews of study deliverables, technical reports, and the like, within thirty days of receiving the material for review.

4.10 Private Sector Participation

FTA recognizes that [Sponsor] may choose to seek private sector participation in the engineering, design, construction, operation, maintenance, or financing of the *candidate project.* FTA will make every effort to facilitate [Sponsor's] public-private partnerships in the development of the *candidate project.*

4.11 Pre-Award Authority

Upon the execution of this Agreement and FTA's approval of the *candidate project* for entry into Preliminary Engineering [Sponsor] will have pre-award authority for all reasonable and allocable costs of Preliminary Engineering for the *candidate project.* [Sponsor] acknowledges, however, that the pre-award authority to acquire real property that accompanies FTA's issuance of a Record of Decision is not an administrative, contractual, implied, or moral commitment of any kind towards the *candidate project,* nor is it any commitment to reimburse

[Sponsor] for any associated costs or to participate in any project on the acquired property. [Sponsor] will use its pre-award authority with discretion and with full knowledge of the risks in doing so.

4.12 Contacts

FTA and [Sponsor] will each designate a contact person who has the authority to speak for and represent that person during Preliminary Engineering on the *candidate project*. The contact persons will be available, upon adequate notice, to attend and participate in coordination meetings or otherwise provide timely input into the preparation and review of all documents necessary to the development of the *candidate project*.

5.0 Milestones

[Sponsor] intends to accomplish Preliminary Engineering as expeditiously as possible. FTA will measure [Sponsor's] progress in Preliminary Engineering against the following milestones:

- [Date]: FTA validation of [Sponsor's] travel demand and ridership forecast methodologies
- [Date]: Expected publication of a draft EIS or EA
- [Date]: Expected publication of a final EIS or EA
- [Date]: Expected issuance of a ROD or FONSI
- [Date]: FTA approval of [Sponsor's] Project Management Plan
- [Date]: PMO's completion of risk assessment
- [Date]: [Sponsor's] adoption of a definitive scope of work for the *candidate project* that will be the basis of [Sponsor's] request for entry into Final Design
- [Date]: [Sponsor's] adoption of a Baseline Cost Estimate for the *candidate project,* in Year of Expenditure dollars, which will be the basis for [Sponsor's] request for entry into Final Design
- [Date]: [Sponsor's] adoption of a Financing Plan for the *candidate project* that will be the basis of [Sponsor's] request for entry into Final Design
- [Date]: [State and local agency] commitments to help finance the *candidate project*
- [Date]: [Sponsor's] request for entry into Final Design

6.0 Rescission or Suspension of Preliminary Engineering

[Sponsor] acknowledges that, in its discretion, FTA may rescind or suspend the *candidate project's* status in Preliminary Engineering if [Sponsor] fails to make adequate progress towards a request for entry into Final Design; there is any significant change to the scope or cost estimate for the *candidate project*; or the *candidate project* is not rated or rated ''not recommended'' in FTA's Annual Report on New Starts for two consecutive years.

7.0 Modifications

Modifications to this Agreement may be proposed at any time during Preliminary Engineering on the *candidate project* and will become effective upon approval by both FTA and [Sponsor].

8.0 Attachments

Each and every Attachment to this Agreement is incorporated by reference and made a part of this Agreement.

Dated: _____

_____
[Name]
Regional Administrator [Title]
Federal Transit Administration

Dated: _____
[Name]
[Title]
[Sponsor]

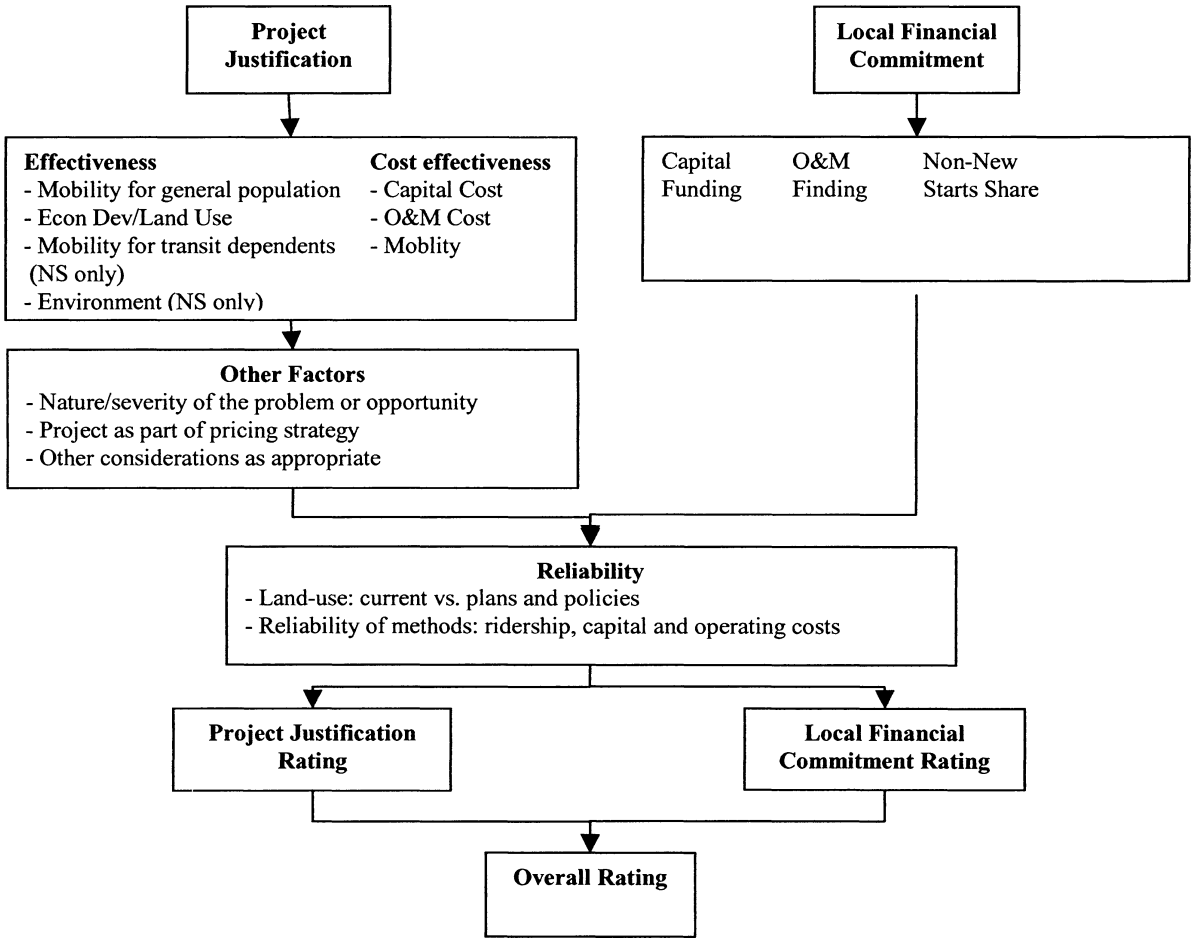
Attachment 8.1 Scope

Attachment 8.2 Cost Estimate

Attachment 8.3 Budget

Attachment 8.4 Draft Project Management Plan

Appendix B to Part 611—Project Evaluation Framework



Appendix C to Part 611: Section 5309
Capital Investment Program Categories

	New starts	Small starts	Very small starts
Project Cost	≥$250 million	<$250 million	<$50 million ($3 million/mile excluding vehicles).
New Starts Funding Amount	Or ≥$75 million	And <$75 million	<$40 million.
Eligible Project Types	New or expanded fixed guideway	New or expanded fixed guideway or arterial bus with: —Transit stations. —Signal priority/pre-emption. —Level boarding or low floor vehicles. —Branded service. —10 min peak/15 min off-peak service for at least 14 hours/day.	Small as Small Starts.
Minimum Benefiting Riders	None	None	3,000 per average weekday.
Project Development Steps	2-Steps —Preliminary Engineering. —Final Design.	1-Step —Project development.	1-Step —Project development.
Funding Mechanism	FFGA	PCGA	PCGA.

Issued in Washington, DC this 19th day of July, 2007.

James S. Simpson,

Administrator, Federal Transit Administration.

[FR Doc. E7–14285 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA–2007–28780]

Notice of Availability of Proposed Policy Guidance on Evaluation Measures for New Starts/Small Starts

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of the Federal Transit Administration's (FTA) Proposed Policy Guidance on Evaluation Measures for New Starts/Small Starts and requests your comments on it. This document complements the Notice of Proposed Rulemaking for Major Capital Investments by describing the detailed measures proposed for evaluation of projects seeking New and Small Starts funding and the way these measures will be used in project ratings. The Proposed Evaluation Measures for New Starts/Small Starts is available in DOT's electronic docket and on FTA's Web site. FTA requests comment on the proposed detailed measures and associated policy in the Proposed Policy Guidance on Evaluation Measures for New Starts/Small Starts. After receiving and considering public input on the proposed guidance, FTA will respond to the comments it has received and issue final guidance concurrently with a final rule for Major Capital Investments.

DATES: Comments must be received by November 1, 2007. Late filed comments will be considered to the extent practicable.

ADDRESSES: *Comments:* You may submit comments [identified by the DOT DMS Docket number FTA–2007–28780] by any of the following methods:

Web site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the first 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.

Instructions: You must include the agency name (Federal Transit Administration) and the docket number (FTA–2007–28780). You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to the Department Docket Management System (DMS) Web site located at *http://dms.dot.gov*. This means that if your comment includes any personal identifying information, such information will be made available to users of DMS.

FOR FURTHER INFORMATION CONTACT: Ron Fisher, Office of Planning and Environment, telephone (202) 366–4033, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *Ronald.Fisher@dot.gov*.

SUPPLEMENTARY INFORMATION: On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). Section 3011 of SAFETEA–LU made a number of changes to 49 U.S.C. 5309, which authorizes the Federal Transit Administration's (FTA) fixed guideway capital investment program known as ''New Starts'', and created a new program category known as ''Small Starts''. FTA is responding to changes made by the SAFETEA–LU provisions in a Notice of Proposed Rulemaking (NPRM) for Major Capital Investments, which is being issued concurrently. The NPRM addresses the eligibility, project justification and local financial commitment criteria, overall project ratings and project development process for New Starts, Small Starts and Very Small Starts. While the NPRM provides the framework and criteria weights for project justification and local financial commitment, the document that is the subject of this notice complements the NPRM by providing detailed descriptions of the measures for project justification and local financial commitment and the way they will be used in the ratings for project evaluation.

This notice announces the availability of FTA's Proposed Policy Guidance on Evaluation Measures for New Starts/Small Starts and requests your comment as described below. The document is available in the docket, which can be accessed by going to *http://dms.dot.gov* at any time, or you can view the document on FTA's Web site at *http://www.fta.dot.gov/15052_ENGHTML.html*.

The evaluation measures, once announced as final, will apply to all New and Small Starts submittals received after the effective date announced in the Notice of Availability published in the **Federal Register** for Policy Guidance on Evaluation Measures for New Starts/Small Starts. FTA intends to publish the final Policy Guidance on Evaluation Measures for New Starts/Small Starts concurrently with the final rule for Major Capital Investments. Comments received will be used to develop the detailed measures and evaluations for projects seeking funds from the New and Small Starts programs. FTA will respond to comments received in response to this Notice in a second **Federal Register** notice to be published after the close of the comment period. The notice will announce the availability of the Policy Guidance on Evaluation Measures for New Starts/Small Starts, reflecting the changes implemented as a result of the comments received thereon.

Issued in Washington, DC this 19th day of July, 2007.

James S. Simpson,

Administrator, Federal Transit Administration.

[FR Doc. E7–14279 Filed 8–2–07; 8:45 am]

BILLING CODE 4910–57–P

Federal Register

Friday,
August 3, 2007

Part III

Millennium Challenge Corporation

Notice of Entering Into a Compact With the Government of the Kingdom of Lesotho; Notice

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 07–07]

Notice of Entering Into a Compact With the Government of the Kingdom of Lesotho

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Kingdom of Lesotho. Representatives of the United States Government and the Government of the Kingdom of Lesotho executed the Compact documents on July 23, 2007.

Dated: July 26, 2007.

William G. Anderson Jr.,

Vice President & General Counsel, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Government of the Kingdom of Lesotho

A. Introduction

Lesotho is strategically located within the rapidly growing Southern African Development Community which will become a common market in 2008. It could benefit greatly from the expected economic upsurge in the region led by the private sector, but it will miss this opportunity if it is unable to unlock the potential of its two greatest resources—its water and its people. Without immediate and sustainable interventions to harness its abundant water resources and to improve the health of the productive workforce, Lesotho has limited prospects of achieving economic growth. Another critical element to Lesotho's future economic growth is a dynamic private sector. In recent years, the Government of Lesotho (''GoL'') has embarked on a major reform program developed jointly with the World Bank and other bilateral donors, to remove legal and regulatory impediments to private sector growth, improve access to credit and increase the participation of women in the economy.

B. Program

1. Goal and Objectives

The $362.6 million Compact focuses on water, health and private sector development (the ''Program''), as summarized in the table below. The Program is focused on improving the provision of water supplies for industrial and domestic use, improving health outcomes and productivity through strengthening the health infrastructure, and removing barriers to foreign and local private sector investment. The Compact is designed to have a high economic growth impact, and its potential impact on poverty reduction is significant and widespread due to its broad geographical scope.

Multi-year financial plan (by project)	Totals including contingencies (in millions USD)						
	CIF	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Water Sector Project	4.913	21.092	24.233	49.074	47.878	16.838	164.028
2. Health Sector Project	4.436	17.961	27.927	37.616	24.846	9.612	122.398
3. Private Sector Development Project	0.710	7.142	10.906	8.525	5.47	3.352	36.105
4. Monitoring & Evaluation	0.5	2.605	0.684	0.755	0.664	2.6	7.808
5. Program Management and Oversight	5.109	4.173	5.395	6.196	6.926	4.413	32.212
Total MCC Contribution	15.668	52.973	69.145	102.166	85.784	36.815	362.551

C. Program Description

1. Water Sector Project ($164 million)

The Water Sector Project is aimed at improving water supply for industrial and domestic needs. With respect to the industrial sector, the Project will provide infrastructure to deliver water to garment and textile operations. Domestic users in selected urban and rural areas will benefit from water system upgrades and expansion to achieve better sanitation and a reliable supply of water. Finally, the Project is designed to enhance rural livelihoods through improved watershed management.

The Water Sector Project activities include: (a) Construction of a bulk water conveyance system and establishment of a program management unit for the Metolong Dam construction activity; (b) extension and rehabilitation of the urban and peri-urban water network; (c) provision of improved sanitation services to rural households through construction of ventilated improved pit latrines and water systems; and (d) restoration of degraded wetlands at three areas in the highland pastures and preparation of a strategic environmental assessment to support development of a national watershed management and wetlands conservation plan.

2. Health Sector Project ($122 million)

Approximately 24 percent of adults ages 15–49 in Lesotho are Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (''HIV/AIDS'') positive, the third highest prevalence rate in the world. The Health Sector Project is designed to mitigate the negative economic impacts of poor maternal health, HIV/AIDS, tuberculosis (''TB'') and other diseases by substantially strengthening the country's health care infrastructure. MCC funding will support the GoL's efforts to significantly increase access to life-extending anti-retroviral therapy (''ART'') by providing a sustainable platform to deliver this and other essential health services throughout the country. This has the potential to result in a measurable extension of productive life-years for people living with HIV/AIDS, TB and other debilitating diseases.

A major issue in Lesotho, as in the rest of southern Africa, is the crisis in human health resources. The country has difficulty retaining nurses and clinicians due to opportunities outside the country and poor working conditions in Lesotho. Extensive studies have been conducted on improving the retention of health care workers. Top concerns are salary levels, physical working conditions and supervision and career management structures. Together with the GoL, the President's Emergency Plan for AIDS Relief (''PEPFAR''), and other donor efforts, the Health Sector Project is designed to address these issues. Currently the GoL is proposing salary reforms and PEPFAR is providing assistance to improve training curricula and programs, reduce red tape in hiring new graduates, and rationalize Ministry of Health and Social Welfare

(''MoHSW'') staff positions. The Project is designed to improve health sector infrastructure, including residences for rural health staff, improve supervision and management of staff, increase the number of nurses and allied health professionals trained, and provide opportunities for staff to build skills and competencies through continuing education. These efforts are designed to increase production and retention of health workers for delivery of essential health services.

The Health Sector Project activities include: (a) Renovation of up to 150 health centers in order to establish a national stock of health centers that achieve a common standard; (b) establishment of ART clinics in and improved management of up to 14 hospital out-patient departments (''OPDs''); (c) construction and equipping of a new central laboratory and training laboratory staff; (d) construction of a dedicated, central facility for collecting and processing blood and provision of mobile blood collection and storage equipment; (e) an increase in the number of dormitories and staff residences at Lesotho's National Health Training College (''NHTC''); (f) strengthened health systems through increased capacity for pre-service and in-service nurse training and improved district-level public human health care resources management; and (g) improved occupational health and safety and medical waste management practices.

3. Private Sector Development (''PSD'') Project ($36 million)

The PSD Project is designed to increase private sector economic activity in Lesotho by improving access to credit, reducing transaction costs and increasing the participation of women in the economy. The activities within the PSD Project represent an essential component of the GoL's major policy reform program and are designed to contribute to the broader efforts to attract foreign investment and stimulate growth of Basotho-owned companies.

The PSD Project activities include: (a) Reform of the civil legal system through the development of the Commercial Court, including creation of case management systems for courts, and promotion of alternative dispute resolution; (b) support for the production and issuance costs of national identification cards as well as establishment of the necessary legal and regulatory reforms for data privacy and establishment and operations of a cross-border credit bureau; (c) support for implementation of a new payments and settlement system in Lesotho; (d) technical assistance to the GoL in the development of land policy in Lesotho, and funding for the implementation of a systematic land regularization program for urban and peri-urban areas and development of a new land administration authority; and (e) implementation of a training and public awareness program dedicated to implementing gender equality in economic rights and building of local capacity to continue advocacy.

D. Impacts

The Program, if successfully implemented, could nearly double GDP growth by the end of the Compact implementation period (using a baseline of 2.6 percent). The acceleration of GDP growth is expected to continue beyond Compact completion, propelling growth towards seven percent per annum within five years after Compact completion. This acceleration is required to reduce poverty significantly in line with the objectives of the GoL's Poverty Reduction Strategy Papers (''PRSP'').

The Water Sector Project is expected to benefit urban and rural communities through each of the four activities: (1) The Metolong Dam—Bulk Water Conveyance System activity is expected to preserve existing industrial production and 28,000 jobs and create an additional 6,000 jobs by the end of the Compact; (2) The Urban and Peri-Urban Water Network activity has the potential to benefit approximately 304,000 people or 50,700 households by Compact end; (3) The Rural Water Supply and Sanitation activity has the potential to directly benefit approximately 150,000 people or 25,000 households; and (4) The Wetlands Restoration and Conservation activity has the potential to improve rangeland productivity and benefit rural livelihoods for an estimated 55,000 people who live within a 16 kilometer radius of the three target wetland sites.

The Health Sector Project is designed to directly improve delivery of health care services to the entire population. The health center activity is designed to improve service quality and availability for health center clients, including: Most of the 90 percent of pregnant women who seek prenatal care; the more than 90 percent of infants and young children who are immunized against childhood infectious diseases; the approximately 9,000 TB patients treated at the health center level each year; and the 34,000 persons expected to have ART services follow up at the health center during the life of the Project. The ART clinic activity is designed to reduce waiting times and TB co-infection of clients seeking care at an OPD, particularly the predicted additional 17,000 new clients seeking ART services during the Compact, the 80 percent of those clients expected to be co-infected with TB, and the clients of other OPD services in these 14 hospitals. This activity is designed to complete national coverage of ART services at the hospital level. The central laboratory and blood transfusion activities are designed to benefit all Basotho by expanding the capacity of the MoHSW to conduct needed laboratory tests and assuring access to safe blood. The NHTC activity is designed to expand the number of graduates in the health field, filling some of the numerous vacancies in rural areas for community nurses and allied health professionals. As a result, more than 1.3 million individuals in the rural areas are more likely to have an adequate level of service provision at the local health center level. The health systems strengthening and medical waste management activities are designed to impact the quality and level of services provided, particularly at the health center level and improve environmental health and safety conditions throughout the health sector. All activities focus on improving physical working conditions and safety for health workers and on human resources management.

The Private Sector Development Project has the potential to benefit approximately 2,000 persons and companies operating in the formal sector through more efficient commercial court procedures. Through the Land Administration Reform activity, potentially up to 55,000 urban households may benefit from having formally recognized titles. The National ID activity has the potential to directly benefit the entire national population by providing an identification card and/or unique identification number to every citizen within the country, improving the availability of credit and other financial services to a wider cross-section of the population. Finally, the Payments and Settlements system has the potential to directly benefit more than 86,000 government pensioners and more than 98,000 employed outside Lesotho by lowering the costs of receiving and sending money.

E. Program Management

1. Governance Structure

The GoL will establish an autonomous body within the Ministry of Finance and Development Planning known as MCA-Lesotho that will serve as the accountable entity responsible for

the implementation of the Program. The MCA-Lesotho board of directors will be made up of government officials representing each of the GoL ministries associated with the Program as well as private sector and civil society members representing constituencies impacted by the Program. This board will have independent decision making authority and will be the final authority with respect to implementation of the Compact. It will provide oversight and be responsible for the success or failure of the Program.

A management unit will support the board of directors in implementing the Program and will be responsible for the day-to-day management and operations of MCA-Lesotho. A stakeholders committee will inform the various constituent groups about Program implementation, provide advice and input to MCA-Lesotho concerning the Program, and select the private sector members of the board of directors.

External procurement and fiscal agents will be used during Compact implementation. A procurement process is currently underway with a target date of August 2007 to sign contracts for these services.

2. Implementation Arrangements

Line ministries, project implementation units and the Central Bank of Lesotho will serve as implementing entities (''IEs'') and service providers for the various projects related to the Compact under contractual relationships with MCA-Lesotho. IEs will be responsible for developing the operational requirements for the Projects and performance monitoring of contractors. Teams will be located within the IEs to ensure institutional strengthening and close collaboration and communication. To help ensure Program success, the Compact has budgeted nearly $75 million for technical assistance, capacity building, and institutional strengthening. In addition, competitively selected external service providers will perform the Procurement and Fiscal Agent functions. MCA-Lesotho will remain ultimately responsible for the successful implementation of the Program.

F. Other Highlights

1. Transformational Change

The Program has the potential for significant transformational change to help unlock the economic potential of the country by providing additional water supplies for industrial and domestic use, improving health outcomes and productivity and by removing barriers to foreign and domestic investment. Overall the Program is expected to impact a broad cross-section of the country through its various activities. In additional, the Compact is designed to have a substantive impact on extending full economic rights to women in Lesotho.

2. Consultative Process

The Program builds upon the GoL's PRSP and the Lesotho Vision 2020. The consultative processes associated with these two initiatives identified the following as top priorities for poverty reduction and economic growth: (a) Private sector development; (b) provision of infrastructure; (c) natural resource management; and (d) improved access to health care.

Shortly after Lesotho was selected as an MCC-eligible country in 2004, the GoL established a consultative proposal development process that included the private sector, non-governmental organizations (''NGOs'') and civil society organizations. Recognizing that consultations are ongoing and must be meaningful, timely and participatory, the MCA-Lesotho Core Team within the Ministry of Finance and Development Planning was proactive in developing an outreach and consultative process strategy in early 2007 to plan for consultations and outreach activities beyond Compact signing and into implementation.

3. Government Commitment and Effectiveness

The 2006 enactment of the Legal Capacity of Married Persons Act was a strong signal of the GoL's commitment to remove barriers to married women's full participation in the economy, thereby enhancing the Program's prospects of successful implementation and sustainability. This significant commitment to gender equality was recently acknowledged by resolutions adopted by both the U.S. Senate and the U.S. House of Representatives. Prior to first disbursement of Compact funds, the GoL will submit to its Parliament legal reforms designed to assure that economic rights achieved in the Legal Capacity of Married Persons Act are not contradicted in other laws.

The GoL has agreed with the World Bank on a comprehensive water sector reform program. In the rural water and sanitation sub-sectors, the GoL—consistent with its policy on decentralization—is divesting financial management, project planning, supervisory services and asset ownership to locally elected water committees.

In 2000, the GoL embarked on a ten year plan to improve health service delivery. The GoL has successfully piloted decentralized health services in three districts and is expanding decentralized management to the remaining seven districts. New financial management and procurement systems have been put in place, and a new human resources system is being developed. The Health Sector Project is designed to complement other donor funded activities. Despite the HIV/AIDS epidemic, Lesotho has met both MCC eligibility indicators on immunization and health expenditure which signals the GoL's commitment to good performance in the health sector.

The GoL, as chair of the Southern Africa Development Community, has committed to regional integration of financial systems. They also have initiated the process of implementing policy reforms to improve the business and investment climate with the support of donors such as the World Bank. In order to realize the maximum economic benefits for the PSD Project activities, the GoL must continue this policy reform momentum and harmonize its legislation with other Common Monetary Area countries, especially South Africa.

G. Sustainability

The Program is designed to enhance the sustainability of its benefits by: (a) Supporting policy reforms in relevant sectors; (b) ensuring adequate funding will be allocated to fully cover additional recurrent costs; (c) requiring adherence to environmental and social standards; (d) building capacity within the GoL to facilitate implementation of the Program and to develop long-term management capabilities of GoL institutions; (e) assuring improved maintenance programs to maintain the economic life of assets; and (f) promoting participation of a large cross section of Basotho, especially women and the poor.

1. Water Sector

The sustainability of the Water Sector Project activities depends on the GoL's pace of implementation of sector policy reforms and its commitment to ensure that tariff levels provide for cost recovery of operations and maintenance costs. Disbursements of Compact funding will be tied to agreed progress on implementing water sector reforms.

2. Health Sector

The sustainability of health services is a critical issue, particularly given the increase of donor-supported provision of ART. In partnership with donors, the

GoL is developing a national health financing strategy to identify the costs of the essential health services package, including ART, and gaps and potential sources of funds. This strategy will be jointly monitored by MCC and other health donors.

3. Private Sector Development

The sustainability of several PSD Project activities is expected to be enhanced because they will be carried out with the assistance of established private sector entities with a successful track record in the Southern African region. Compact funding also is designed to help establish sustainable improvements in land administration through an active capacity building, training, and public education effort.

4. Environmental and Social Impacts

The assessment, management, and monitoring of potential environmental and social impacts is an integral part of the Compact. The Compact will fund several measures to: (a) Mitigate the adverse effects of infrastructure construction or rehabilitation; (b) promote natural resource management and environmental conservation consistent with the priorities of the GoL's PRSP; (c) assure women's participation in the economy and as beneficiaries in the Compact; and (d) integrate HIV/AIDS awareness programs into all construction contracts. The Compact will also support measures to strengthen the regulatory framework and build institutional capacity required to improve occupational health and safety and waste management practices in the health sector.

The Metolong Dam activity is a Category A project under MCC's Environmental Guidelines due primarily to the potential environmental and social risks associated with the project, which include loss of communal resources, loss of traditional access routes across the river, inundation of cultural resources and alteration of downstream surface water hydrology. The entities funding the dam have agreed that the entire project, including advanced infrastructure, the dam and reservoir and downstream bulk water conveyance system, will be designed and constructed according to common standards that meet MCC's Environmental Guidelines, the MCC Gender Policy, GoL law, and World Bank Operational Policy 4.12 on Involuntary Resettlement. Compact funding for the bulk water conveyance system will be conditioned on strict adherence with the larger project's environmental management plan (''EMP'') and resettlement action plan (''RAP''), completed earlier this year with World Bank funding. The urban, peri-urban and rural water activities are considered Category B and Category C projects under MCC's Environmental Guidelines and do not pose significant adverse environmental and social impacts. Standard EMPs will be developed for each activity to assure compliance with MCC's Environmental Guidelines and GoL laws. The wetlands restoration and conservation activity is expected to result in mostly positive environmental and socioeconomic impacts by rehabilitating three severely degraded wetland areas which support livestock grazing and other rural livelihood benefits.

The Health Sector Project consists of both Category A and Category B projects under MCC's Environmental Guidelines due to greenfield construction and concerns regarding current medical waste management practices in Lesotho. To make long-term improvements to the current situation and assure that MCC-funded facilities comply with MCC's Environmental Guidelines, Compact funds will be used to update Lesotho's 2005 National Health Care Waste Management Plan, develop medical waste management regulations and standards, prepare a financial plan and provide technical assistance to the relevant GoL agencies. Additionally, all proposed health infrastructure activities must comply with MCC's Environmental Guidelines and applicable GoL environmental permitting requirements.

The PSD Project, a Category C project, is not likely to have adverse environmental or social impacts. The MCA-Lesotho social-gender specialist will work to ensure that social safeguards are integrated into project design, implementation and monitoring to ensure that the activities do not, unnecessarily or unlawfully, infringe upon rights or privacy.

H. Donor Coordination

The design and technical aspects of many of the Compact Program activities have benefited significantly from the experiences of other donors working in Lesotho. The MCA-Lesotho Core Team has engaged the donor community frequently in all phases of the consultative process and has coordinated with donors to refine Compact activities, collaborate on shared objectives to prevent duplication of efforts, and ensure complementary activities throughout Compact implementation.

In the various Health Sector Project activities, including those associated with HIV/AIDS, MCC has maintained regular communications and participated in joint donor reviews. These donors include: PEPFAR; Irish Aid; World Bank; African Development Bank; United Nations agencies; and the Global Fund for AIDS, Tuberculosis and Malaria. These and other donors provided design support to the MoHSW and assisted MCC in the due diligence process. The Compact's Health Sector Project is designed to support the GoL's reform efforts and fits within the combined donor strategy for the health sector. In particular, the MCC Health Sector Project and planned PEPFAR activities are mutually reinforcing. As MCC has moved forward with the proposed Health Sector Project, PEPFAR has provided encouragement and support at central and country level. In-country PEPFAR staff has grown from one person in 2006 to a staff of seven professionals by end of 2007, with an expected concomitant increase in resources. Together, MCC and PEPFAR inputs are expected to result in a major increase in the quality and quantity of ART services and in the production and retention of human resources for health.

The Metolong Dam activity is being developed in coordination with several donors, including the OPEC Fund for International Development, the Kuwait Fund for Arab Economic Development, the Arab Bank for Economic Development in Africa and the Saudi Fund for Development. The European Union also has a sustained presence in Lesotho's water sector and is currently funding detailed designs for components of the Metolong Dam bulk water conveyance system, as well as components of the larger lowlands water supply system. Irish Aid is also a significant donor in the water sector.

MCC has also been actively collaborating with other donors on the PSD Project. These donors include: the World Bank with respect to the national identification card; the United Kingdom's Department for International Development on matters concerning civil legal reform and land administration reform; the German development agency Deutsche Gesellschaft fü Technische Zusammenarbeit (GTZ) on land administration reform; and USAID through its Women's Legal Rights Initiative project.

Millennium Challenge Compact Between The United States of America Acting Through the Millennium Challenge Corporation And The Government of The Kingdom of Lesotho

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Millennium Challenge Compact

Preamble

This Millennium Challenge Compact (this ''Compact'') is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (''MCC''), and the Government of the Kingdom of Lesotho (the ''Government'') (individually a ''Party'' and collectively, the ''Parties'').

Recalling that the Government consulted with the private sector and civil society of the Kingdom of Lesotho (''Lesotho'') to determine the priorities for the use of Millennium Challenge Account assistance and developed and submitted to MCC a proposal focused on providing water supplies for industrial and domestic use and improving watershed management, improving health outcomes and productivity through strengthening the health system, and removing barriers to foreign and local private sector investment; and

Recognizing that MCC wishes to help Lesotho implement a program to achieve the goal and objectives described herein (the ''Program'');

The Parties hereby agree as follows:

Article 1. Goal and Objectives

Section 1.1 Compact Goal.

The goal of this Compact is to reduce poverty in Lesotho through economic growth (the ''Compact Goal'').

Section 1.2 Program Objectives.

The objectives of this Program (as further described in Annex I) (the ''Objectives'') are to:

(a) Improve the water supply for industrial and domestic needs and enhance urban and rural livelihoods through improved watershed management;

(b) Increase access to life-extending anti-retroviral therapy and essential health services by providing a sustainable delivery platform; and

(c) Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.

The Government will take all the steps necessary or appropriate to achieve the Objectives during the term of this Compact.

Article 2. Funding and Resources

Section 2.1 MCC Funding.

(a) MCC grants to the Government, under the terms of this Compact, an amount not to exceed Three Hundred Sixty-Two Million, Five Hundred Fifty-One Thousand United States dollars (US$362,551,000) (''MCC Funding'') to help the Government implement the Program.

(b) Annex II of this Compact describes the use of MCC Funding.

Section 2.2 Compact Implementation Funding

(a) Of the total amount of MCC Funding, MCC will make up to Fifteen Million Six Hundred and Sixty-Nine Thousand United States dollars (US$15,669,000) (''Compact Implementation Funding'') available to the Government under Section 609(g) of the Millennium Challenge Act of 2003, as amended, to support:

(i) provision of fiscal and procurement agent services;

(ii) start-up costs including staff salaries and administrative support and related goods and services;

(iii) baseline surveys for monitoring and evaluation and administrative support for the surveys as appropriate;

(iv) initiation of environmental and social assessments and design work in conjunction with certain water and health sector activities;

(v) additional gender assessment and input for project design;

(vi) additional work with respect to activities to remove forms of discrimination, in laws or policies, affecting the economic rights of women;

(vii) additional work with respect to clarifying roles and responsibilities for decentralized health services at the central and district levels, and in developing a training plan for health sector project activities;

(viii) technical assistance to support development of terms of reference for consultants, including, without limitation, health system strengthening, capacity building, and medical waste management;

(ix) procurement of field monitoring equipment and initiation of environmental baseline studies for the wetlands conservation project;

(x) a study of land administration services in Lesotho and recommendations for modernization and improvement of those services;

(xi) a review of existing payments and settlements and cross-border financial transactions legislation and related regulations;

(xii) a review of existing legislation authorizing credit bureaus and a national identification card and any related regulations;

(xiii) a review of data privacy legislation and regulations;

(xiv) establishment of Project Implementation Units (as defined in Annex I) and related start-up costs including recruitment of key personnel, staff salaries and administrative support and related goods and services; and

(xv) other Compact implementation expenses approved by MCC.

(b) Notwithstanding anything to the contrary in this Compact, this Section 2.2 will provisionally apply, after MCC and the Government sign this Compact, without regard to whether this Compact has entered into force under Section 7.3.

(c) Compact Implementation Funding is subject to: (i) The limitations on the use or treatment of MCC Funding set forth in Sections 2.6 and 2.7 as if such provisions were in full force and effect, and (ii) any other requirements and limitations as may be required by MCC in writing.

Section 2.3 Disbursement

In accordance with this Compact and the Program Implementation Agreement

(as defined in Section 3.1), MCC will disburse MCC Funding for expenditures incurred in furtherance of the Program (each instance, a ''Disbursement''). The proceeds of such Disbursements will be made available to the Government, at MCC's sole election, (a) by deposit to a bank account established by the Government and acceptable to MCC (a ''Permitted Account'') or (b) through direct payment to a provider of goods, works or services under this Compact. MCC Funding may be expended only to cover Program expenditures as provided in this Compact and the Program Implementation Agreement.

Section 2.4 Interest

The Government will pay to MCC any interest or other earnings that accrue on MCC Funding in accordance with the Program Implementation Agreement.

Section 2.5 Government Resources; Budget

(a) The Government will provide all funds and other resources, and will take all actions, that are necessary to carry out the Government's responsibilities and obligations under this Compact.

(b) The Government will use its best efforts during each year it receives MCC Funding to ensure that all MCC Funding it receives or is projected to receive in such year is fully accounted for in the annual budget of Lesotho. To the extent feasible under the budgeting processes of Lesotho, MCC Funding will be accounted for on a multi-year basis.

(c) The Government will not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the activities contemplated under this Compact.

(d) Unless the Government discloses otherwise to MCC in writing, MCC Funding will be in addition to the resources that the Government would otherwise receive or budget for the activities contemplated for the Program.

Section 2.6 Limitations on the Use of MCC Funding

The Government will ensure that MCC Funding will not be used for any purpose that would violate United States law or policy, as specified in this Compact or as further notified to the Government in writing or by posting on the MCC Web site (*http://www.mcc.gov*) (the ''MCC Web site''), including but not limited to the following purposes:

(a) For assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(b) For any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(c) To undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard, where the phrase ''likely to cause a significant environmental, health, or safety hazard'' has the meaning set forth in environmental guidelines delivered by MCC to the Government or posted by MCC on the MCC Web site or otherwise publicly made available, as the guidelines may be amended from time to time (the ''MCC Environmental Guidelines''); or

(d) To pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

Section 2.7 Taxes

(a) Unless the Parties otherwise specifically agree in writing, the Government will not impose, and will not permit any other governmental or taxing authority to impose any taxes, duties, levies, contributions or other charges (''Taxes'') in Lesotho on the Program, MCC Funding, interest or earnings on MCC Funding, any Project or activity implemented under the Program, goods, works, services and other assets and activities related to the Program or any Project, persons and entities that provide such goods, works, services and assets or perform such activities, and income, profits and payments with respect thereto. The Government will exempt from Taxes, inter alia, value added and other transfers (including exemption therefrom with credit), property and ad valorem items, import and export of goods (including exemptions for goods imported and re-exported for personal use of expatriate employees and their family members) and income and profit.

(b) Before the initial Disbursement is made, the Government and MCC may, at MCC's discretion, enter into one or more agreements setting forth the mechanisms for implementing this Section 2.7, including exemptions from filing and compliance requirements relating to Taxes. If entered into, it is expected that such agreement(s) will provide that the Government may impose: (i) Taxes on certain individuals who are nationals or permanent residents of Lesotho; (ii) Taxes other than transfer Taxes and import and export Taxes on certain entities that are organized in Lesotho; and (iii) fees or charges for services that are generally applicable in Lesotho, reasonable in amount and imposed on a non-discriminatory basis.

Article 3. Implementation

Section 3.1 Program Implementation Agreement

The Government will implement the Program in accordance with this Compact and as further specified in an agreement to be entered into by MCC and the Government and dealing with, among other matters, implementation arrangements, fiscal accountability, disbursement and use of MCC Funding, procurement and applicable tax exemptions (the ''Program Implementation Agreement'').

Section 3.2 Government Responsibilities

(a) The Government has principal responsibility to oversee and manage the implementation of the Program.

(b) With the prior written consent of MCC, the Government may designate an entity to implement some or all of the Government's obligations or to exercise any rights of the Government under this Compact or the Program Implementation Agreement. Such a designation will not relieve the Government of any designated obligations and rights, for which the Government will retain full responsibility.

(c) The Government will ensure that no law or regulation in Lesotho now or hereinafter in effect makes or will make unlawful or otherwise prevent or hinder the performance of any obligation under this Compact, the Program Implementation Agreement or any other agreement related thereto or any transaction contemplated thereunder.

(d) The Government will ensure that any assets or services funded in whole or in part (directly or indirectly) by MCC Funding will be used solely in furtherance of this Compact and the Program unless otherwise agreed by MCC in writing.

Section 3.3 Policy Performance

In addition to the specific policy and legal reform commitments identified in Annex I, the Government will seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the Millennium Challenge Act of 2003, as amended, and the selection criteria and methodology used by MCC.

Section 3.4 Government Assurances

The Government assures MCC that:

(a) As of the date this Compact is signed by the Government, the information provided to MCC by or on behalf of the Government in the course of reaching agreement with MCC on this Compact is true, correct and complete in all material respects;

(b) This Compact does not, and will not, conflict with any other international agreement or obligation of the Government or any of the laws of Lesotho; and

(c) The Government will not invoke any of the provisions of its internal law to justify or excuse a failure to perform its duties or responsibilities under this Compact.

Section 3.5 Implementation Letters

From time to time, MCC may provide guidance to the Government through implementation letters on the frequency, form or content of requests for Disbursements or on any other matter relating to MCC Funding, this Compact or implementation of the Program (each, an ''Implementation Letter''). The Government will apply such guidance in implementing this Compact.

Section 3.6 Procurement

The Government will ensure that the procurement of all goods, works and services by the Government or any Provider (as defined in Section 3.7(c)) in furtherance of this Compact will be consistent with the program procurement guidelines of which MCC will inform the Government in writing or by posting on the MCC Web site or otherwise make publicly available, as the guidelines may be amended from time to time (the ''MCC Program Procurement Guidelines''), which MCC Program Procurement Guidelines will include but will not be limited to the following requirements:

(a) open, fair and competitive procedures must be used in a transparent manner to solicit, award and administer contracts and to procure goods, works and services;

(b) solicitations for goods, works and services must be based upon a clear and accurate description of the goods, works and services to be acquired;

(c) contracts must be awarded only to qualified contractors that have the capability to perform the contracts in accordance with their terms on a cost effective and timely basis; and

(d) no more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, will be paid to procure goods, works and services.

Section 3.7 Records; Accounting; Covered Providers; Access.

(a) Government Books and Records. The Government will maintain, and will use its best efforts to ensure that all Covered Providers (as defined in clause (c) below) maintain, accounting books, records, documents and other evidence relating to this Compact adequate to show to MCC's satisfaction the use of all MCC Funding (''Compact Records''). In addition, the Government will furnish or cause to be furnished to MCC upon its request all Compact Records.

(b) Accounting. The Government will maintain, and will use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with MCC's prior written approval, other accounting principles, such as those (i) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (ii) then prevailing in Lesotho. Compact Records must be maintained for at least five (5) years after the end of the Compact Term (as defined in Section 7.4) or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Covered Provider. Unless the Parties agree otherwise in writing, a ''Provider'' is (i) any entity of the Government that receives or uses MCC Funding or any other Program asset in carrying out activities in furtherance of this Compact or (ii) any third party that receives at least US$50,000 in the aggregate of MCC Funding (other than as salary or compensation as an employee of an entity of the Government) during the Compact Term. A ''Covered Provider'' is (1) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$300,000 or more of MCC Funding in any Government fiscal year or any other non-United States person or entity that receives, directly or indirectly, US$300,000 or more of MCC Funding from any Provider in such fiscal year or (2) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$500,000 or more of MCC Funding in any Government fiscal year or any other United States person or entity that receives, directly or indirectly, US$500,000 or more of MCC Funding from any Provider in such fiscal year.

(d) Access. Upon MCC's request, the Government, at all reasonable times, will permit, or cause to be permitted, authorized representatives of MCC, an authorized United States inspector general, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect facilities and activities funded in whole or in part by MCC Funding.

Section 3.8 Audits; Reviews.

(a) Government Audits. Except as the Parties may otherwise agree in writing, the Government will, on at least a semi-annual basis, conduct, or cause to be conducted, financial audits of all disbursements of MCC Funding covering the period from signing of this Compact until the earlier of the following December 31 or June 30 and covering each six-month period thereafter ending December 31 and June 30, through the end of the Compact Term, in accordance with the terms of the Program Implementation Agreement. As requested by MCC in writing, the Government will use, or cause to be used, to conduct such audits an auditor approved by MCC and named on the list of local auditors approved by the Inspector General of the Millennium Challenge Corporation (the ''Inspector General'') or a United States-based Certified Public Accounting firm selected in accordance with the ''Guidelines for Financial Audits Contracted by MCA'' (the ''Audit Guidelines'') issued and revised from time to time by the Inspector General. Audits will be performed in accordance with the Audit Guidelines and be subject to quality assurance oversight by the Inspector General. An audit must be completed and the audit report delivered to MCC no later than ninety (90) days after the first period to be audited and no later than ninety (90) days after each June 30 and December 31 thereafter, or such other period as the Parties may otherwise agree in writing.

(b) Audits of United States Entities. The Government will ensure that agreements between the Government or any Provider, on the one hand, and a United States nonprofit organization, on the other hand, that are financed with MCC Funding state that the United States organization is subject to the applicable audit requirements contained in OMB Circular A–133. The Government will ensure that agreements

between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, that are financed with MCC Funding state that the United States organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(c) Corrective Actions. The Government will use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of the Government's records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(d) Audit by MCC. MCC will have the right to arrange for audits of the Government's use of MCC Funding.

(e) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact, including as reflected on Annex II.

Article 4. Communications

Section 4.1 Communications.

Any document or communication required or submitted by either Party to the other under this Compact must be in writing and, except as otherwise agreed with MCC, in English. For this purpose, the address of each Party is set forth below.

To MCC

Millennium Challenge Corporation, Attention: Vice President for Operations (with a copy to the Vice President and General Counsel), 875 Fifteenth Street, N.W., Washington, D.C. 20005, United States of America, Facsimile: +1 (202) 521–3700, Phone:+1 (202) 521–3600, E-mail: *VPOperations@mcc.gov* (Vice President for Operations), *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel)

To the Government

Government of the Kingdom of Lesotho, Attention: Minister of Finance and Development Planning, (with a copy to the Principal Secretary), Address: P.O. Box 395, Maseru—100, The Kingdom of Lesotho, Facsimile: +266 223 10622/223 10157, Phone: +266 223 23703/223 16304/223 11101, E-mail: *ps@finance.gov.ls.*

Section 4.2 Representatives

For all purposes of this Compact, the Government will be represented by the individual holding the position of, or acting as, the Minister of Finance and Development Planning of the Kingdom of Lesotho, and MCC will be represented by the individual holding the position of, or acting as, Vice President for Operations (each, a ''Principal Representative''), each of whom, by written notice to the other Party, may designate one or more additional representatives for all purposes other than signing amendments to this Compact. A Party may change its Principal Representative to a new representative that holds a position of equal or higher rank upon written notice to the other Party.

Section 4.3 Signatures

With respect to all documents other than this Compact or an amendment to this Compact, a signature delivered by facsimile or electronic mail will be binding on the Party delivering such signature to the same extent as an original signature would be.

Article 5. Termination; Suspension; Refunds

Section 5.1 Termination; Suspension

(a) Subject to Section 5.2, either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days written notice.

(b) MCC may, upon written notice to the Government, suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC as a basis for suspension or termination (whether such circumstance is notified in writing to the Government or by posting on the MCC Web site) has occurred, which circumstances include but are not limited to the following:

(i) The Government fails to comply with its obligations under this Compact, the Program Implementation Agreement or any other agreement or arrangement entered into by the Government in connection with this Compact or the Program;

(ii) An event has occurred that MCC determines makes it improbable that the Objectives will be achieved during the term of this Compact or that the Government will be able to perform its obligations under this Compact;

(iii) A use of MCC Funding or continued implementation of this Compact would violate applicable law or United States Government policy, whether now or hereafter in effect;

(iv) The Government or any other person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is engaged in activities that are contrary to the national security interests of the United States;

(v) An act has been committed or an omission or an event has occurred that would render Lesotho ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(vi) The Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Lesotho for assistance under the Millennium Challenge Act of 2003, as amended; and

(vii) The Government or another person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(c) All Disbursements will cease upon expiration, suspension, or termination of this Compact; provided, however, that MCC Funding may be used, in compliance with the Program Implementation Agreement, to pay for (i) reasonable expenditures for goods, works and services that are properly incurred under or in furtherance of this Compact before expiration, suspension or termination of this Compact, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within 120 days after the expiration, suspension or termination of this Compact.

(d) Subject to clause (c) of this Section 5.1, upon the expiration, suspension or termination of this Compact, (i) any amounts of MCC Funding not disbursed by MCC to the Government will be automatically released from any obligation in connection with this Compact, and (ii) any amounts of MCC Funding disbursed by MCC but not expended under Section 2.3 before the expiration, suspension or termination of this Compact, plus accrued interest thereon will be returned to MCC within thirty (30) days after the Government receives MCC's request for such return; provided, however, that if this Compact is suspended or terminated in part, MCC may request a refund for only the amount of MCC Funding allocated to the suspended or terminated portion.

(e) MCC may reinstate any suspended or terminated MCC Funding under this Compact if MCC determines that the Government or other relevant person or entity has committed to correct each condition for which MCC Funding was suspended or terminated.

Section 5.2 Refunds; Violation

(a) If any MCC Funding, any interest or earnings thereon, or any asset acquired in whole or in part with MCC Funding is used for any purpose in violation of the terms of this Compact, then MCC may require the Government to repay to MCC in United States Dollars the value of the misused MCC Funding, interest, earnings or asset, plus interest within thirty (30) days after the Government's receipt of MCC's request for repayment. The Government must use national funds (and no assets of the Program) to make such payment.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 5.2 for a refund will continue during the term of this Compact and for a period of (i) five years thereafter or (ii) one year after MCC receives actual knowledge of such violation, whichever is later.

Section 5.3 Survival

The Government's responsibilities under Sections 2.4, 2.5, 2.6, 2.7, 3.2, 3.4(a), 3.5, 3.7, 3.8, 4.1, 4.2, 4.3, 5.1, 5.2, 5.3, 6.1, 6.2, 6.3, 6.4 and 6.5 of this Compact will survive the expiration, suspension or termination of this Compact.

Article 6. Compact Annexes; Amendments; Governing Law

Section 6.1 Annexes

Each annex attached hereto constitutes an integral part of this Compact.

Section 6.2 Inconsistencies

In the event of any conflict or inconsistency between:

(a) Any annex to this Compact and any of Articles 1 through 7, such Articles 1 through 7 will prevail; or

(b) This Compact and any other agreement between the Parties regarding the Program, this Compact will prevail.

Section 6.3 Amendments

The Parties may amend this Compact only by a written agreement signed by the Principal Representatives and subject to the respective domestic approval requirements to which this Compact was subject.

Section 6.4 Governing Law

This Compact is an international agreement and as such will be governed by the principles of international law.

Section 6.5 Additional Instruments

Any reference to activities, obligations or rights undertaken or existing under or in furtherance of this Compact or similar language will include activities, obligations and rights undertaken by or existing under any agreement, document or instrument related to this Compact and the Program.

Section 6.6 References to MCC Web site

Each reference in this Compact, the Program Implementation Agreement, or any other agreement entered into in connection with this Compact, to a document or information available on, or notified by posting on, the MCC Web site will be deemed a reference to such document or information as updated or substituted on the MCC Web site by MCC from time to time, and will be deemed to be incorporated by reference into, and to constitute an integral part of, this Compact, the Program Implementation Agreement or such other agreement entered into in connection with this Compact.

Section 6.7 References to Laws, Regulations, Policies and Guidelines

Each reference in this Compact, the Program Implementation Agreement, or any other agreement entered into in connection with this Compact, to a law, regulation, policy, guidelines or similar document shall be construed as a reference to such law, regulation, policy, guidelines or similar document as it may, from time to time, be amended, revised, replaced or extended and shall include any law, regulation, policy, guidelines or similar document issued under or otherwise applicable or related to such law, regulation, policy, guidelines or similar document.

Article 7. Entry Into Force

Section 7.1 Domestic Requirements

The Government will take all steps necessary to ensure that: (a) This Compact and the Program Implementation Agreement and all of the provisions of this Compact and the Program Implementation Agreement are valid and binding and are in full force and effect under the laws of Lesotho; (b) this Compact, the Program Implementation Agreement and any other agreement entered into in connection with this Compact to which the Government and MCC are parties will be given the status of an international agreement; and (c) no laws of Lesotho, other than the Constitution of Lesotho, whether now or hereafter in effect, will take precedence or prevail over the terms of this Compact or the Program Implementation Agreement.

Section 7.2 Conditions Precedent

Before this Compact enters into force:

(a) The Government and MCC must have executed the Program Implementation Agreement and it must be effective;

(b) The Government will have delivered to MCC:

(i) A certificate signed and dated by the Principal Representative of the Government, or such other duly authorized representative of the Government acceptable to MCC, certifying that the Government has completed all of its domestic requirements in order that the requirements of Section 7.1 have been satisfied;

(ii) A legal opinion from the Attorney General of Lesotho (or other legal opinion acceptable to MCC), in form and substance satisfactory to MCC; and

(iii) Complete, certified copies of all decrees, legislation, regulations or other governmental documents relating to its domestic requirements for this Compact to enter into force and the satisfaction of Section 7.1, which MCC may post on its Web site or otherwise make publicly available; and

(c) MCC must determine that after signature of this Compact, the Government has not engaged in any action or omission that is inconsistent with the eligibility criteria for MCC Funding.

Section 7.3 Date of Entry into Force

This Compact will enter into force on the later of (a) the date of the last letter in an exchange of letters between the Principal Representatives confirming that each Party has completed its domestic requirements for entry into force of this Compact and (b) the date that all conditions set forth in Section 7.2 have been satisfied.

Section 7.4 Compact Term

This Compact will remain in force for five years after its entry into force, unless terminated earlier under Section 5.1 (the ''Compact Term'').

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact this 23rd day of July, 2007.

Done at Washington, D.C.

For Millennium Challenge Corporation, on behalf of the United States of America,

Name: John J. Danilovich,

Title: Chief Executive Officer.

For the Government of the Kingdom of Lesotho,

Name: Mohlabi Kenneth Tsekoa,

Title: Minister of Foreign Affairs and International Relations.

Annex I Program Description

A. Overview

This Annex I describes the Program that MCC Funding will support in Lesotho during the term of this Compact and the results to be achieved using MCC Funding. In all cases, an activity described herein will be carried out subject to any relevant approvals on the part of MCC and to the extent funds are made available under this Compact for purposes of that activity.

1. The Program and Its Projects

The Program will include the Water Sector Project, the Health Sector Project, and the Private Sector Development Project as further described in this *Annex I* (the ''Projects'').

The Parties may agree to modify, amend, terminate or suspend these Projects or to create a new project by written agreement signed by the Principal Representative of each Party without amending this Compact; provided, however, that any such modification or amendment of a Project or creation of a new project does not (a) cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact, (b) cause the Government's responsibilities or contribution of resources to be less than specified in this Compact, or (c) extend the term of this Compact.

2. Program Implementation

The implementation framework for the use of MCC Funding is summarized in this Annex I.

(a) MCC and the Government will sign the Program Implementation Agreement, and may sign other agreements contemplated by this Compact, all of which, together with this Compact, will set out certain rights, responsibilities, duties and other terms relating to the implementation of this Compact and the Program.

(b) The Government will:

(i) Enact or cause to be enacted an act of Parliament to form the entity empowered to implement some or all of the Government's obligations or to exercise any rights of the Government as provided under the terms of this Compact and the Program Implementation Agreement (''MCA-Lesotho''); and

(ii) Take all necessary and appropriate actions to carry out each of the other Government responsibilities in connection with this Compact and the Program Implementation Agreement, including, but not limited to, the actions necessary to ensure (1) this Compact, the Program Implementation Agreement and any other agreement entered into in connection with this Compact to which the Government and MCC are parties will be given the status of an international agreement and (2) no laws of Lesotho, other than the Constitution of Lesotho, whether now or hereafter in effect, will take precedence or prevail over the terms of this Compact, the Program Implementation Agreement or such other agreement.

(c) MCC will take all necessary and appropriate actions to carry out each of its responsibilities in connection with this Compact and the Program Implementation Agreement, including the exercise of its various approval rights in connection with the implementation of this Compact and the Program.

(d) MCA-Lesotho will take all necessary and appropriate actions to implement this Compact and the Program, including the performance of the rights and responsibilities designated to it by the Government pursuant to the Program Implementation Agreement.

3. Fiscal Accountability

(a) Fiscal Agent. The Government will ensure that a fiscal agent (''Fiscal Agent'') is appointed in accordance with the terms of this Compact and the Program Implementation Agreement. The Fiscal Agent will provide a broad range of financial management services required by MCA-Lesotho to implement this Compact and the Program. The Government and MCA-Lesotho will take all necessary and appropriate actions to ensure the Fiscal Agent performs these services in accordance with the terms of this Compact, the Program Implementation Agreement and any agreements to which the Fiscal Agent is a party and in accordance with internationally accepted standards of accounting and financial management. This will include, but not be limited to, the Fiscal Agent's responsibilities to collect and report information useful to the governing board and senior management of MCA-Lesotho, managers charged with supervision of the Projects, MCC and certain other entities responsible for the verification of the manner in which MCC Funding is used. The roles and responsibilities of the Fiscal Agent will be set out in a Fiscal Agent Agreement to be entered into between MCA-Lesotho and the Fiscal Agent (the ''Fiscal Agent Agreement''). The role of the Fiscal Agent and the terms of the Fiscal Agent Agreement are more fully described in the Program Implementation Agreement.

(b) Permitted Accounts. The Government will ensure that the Permitted Accounts are established, and banking services provided, in accordance with the terms of this Compact, the Program Implementation Agreement and any other agreements related to the Permitted Accounts. The Central Bank of Lesotho will not provide banking services to MCA-Lesotho or otherwise in connection with MCC Funding.

(c) Procurement Agent. The Government will ensure that a procurement agent (the ''Procurement Agent'') is appointed in accordance with the terms of this Compact and the Program Implementation Agreement. The Procurement Agent will act on behalf of MCA-Lesotho to provide specified procurement activities required by MCA-Lesotho to implement this Compact and the Program. The Government and MCA-Lesotho will take all necessary and appropriate actions to ensure the Procurement Agent performs these services in accordance with the terms of this Compact, the Program Implementation Agreement, the MCC Program Procurement Guidelines and any agreements to which the Procurement Agent is a party. The roles and responsibilities of the Procurement Agent will be set out in a Procurement Agent Agreement to be entered into between MCA-Lesotho and the Procurement Agent.

(d) Proposals for Goods, Works and Services. Public solicitations for proposals are anticipated to procure goods, works and services, as appropriate, to implement the Program and its Projects. All such procurements will be conducted in accordance with Section 3.6 of this Compact. MCA-Lesotho may also consider, using a process approved by MCC in writing, any unsolicited proposals it might receive.

4. Management and Consultation Arrangements of MCA-Lesotho

(a) Board of Directors. MCA-Lesotho will be governed by a board of directors that will have independent decision making authority and will be the final authority with respect to implementation of this Compact. It will make strategic decisions, provide oversight and be responsible for the success or failure of the Program. The initial board of directors will be comprised of 11 voting members, representing: (i) The Ministry of Finance and Development Planning; (ii) the Ministry of Foreign Affairs; (iii) the Ministry of Health and Social Welfare; (iv) the Ministry of Local Government; (v) the Ministry of Natural Resources; (vi) the Ministry of Justice, Human Rights and Rehabilitation; (vii) three members from the private sector; and

(viii) two members from the Lesotho Council of Non-Governmental Organizations (''LCNGO''). The members of the board of directors representing the private sector will be selected by the stakeholders committee (described in clause (c) below) and the members of the board of directors representing the LCNGO will be selected by the LCNGO through the stakeholders committee, in each case in accordance with a process agreed upon by the Government and MCC. A representative of MCC and the chief executive officer of MCA-Lesotho will serve as non-voting members of the MCA-Lesotho board of directors.

(b) Management Unit. A management unit will support the board of directors in implementing the Program. A chief executive officer will manage the day-to-day activities of MCA-Lesotho and will be supported by key officers, to include a: (i) Chief financial officer; (ii) head of administration; (iii) head of procurement; (iv) head of infrastructure; (v) head of environment and social assessment; (vi) head of monitoring and evaluation; (vii) head of operations; (viii) legal officer; (ix) communications and public outreach specialist; and (x) such other key officers as may be agreed upon by the Government and MCC. The key officers will be supported by appropriate administrative and other personnel deemed to be necessary for implementing the Program. The CEO will be selected and hired by the board of directors following an open and competitive recruitment and selection process. The other key officers and staff will be selected and hired by the CEO following an open and competitive recruitment and selection process. The appointment of the CEO and all other MCA-Lesotho management unit personnel will be subject to MCC's prior approval.

(c) Stakeholders Committee. A stakeholders committee, in form satisfactory to MCC, will be created to represent the constituencies of the various Projects. MCA-Lesotho will use the stakeholders committee to continue the consultative process throughout Compact implementation. The stakeholders committee will be used primarily to inform the various constituent groups about Program implementation, provide advice and input to MCA-Lesotho concerning the Program, and select the private sector members and civil society members of the board of directors.

5. Gender Integration Plan

MCA-Lesotho will draft, implement and monitor a Program-wide gender integration plan (''Gender Integration Plan'') to ensure compliance, optimum program design and maximum beneficiary impact across all Compact Project activities. This Gender Integration Plan will include, as appropriate, recommendations for meaningful and inclusive consultations with women and other vulnerable and underrepresented groups; project-specific gender analyses; and strategies for incorporating findings of the gender analyses into final Project designs.

MCA-Lesotho will also hire a full-time, dedicated social/gender specialist for the entire term of this Compact to ensure that social safeguards are fully integrated into the design, terms of references, work plans and monitoring and evaluation plans, and to ensure that all Project activities in every aspect of the Program are compliant with the gender policy delivered by MCC to the Government or posted by MCC on its Web site or otherwise publicly made available, as the policy may be amended from time to time (the ''MCC Gender Policy''), and with the rights afforded to married women in the 2006 Legal Capacity of Married Persons Act.

6. HIV/AIDS Risk Mitigation Plans

MCA-Lesotho will assure that all construction contractors develop, implement and monitor an HIV/AIDS awareness program acceptable to MCC that includes, but is not limited to, the following elements:

(a) Activities directed to construction laborers and all associated formal and informal sector workers engaged in building and supporting construction works, including components for those who provide food, laundry and any other services providers and sub-contractors;

(b) Activities directed to the communities affected by the construction works;

(c) Activities designed to be gender and age-appropriate in content and delivery, reflecting an analysis of gender differences and inequalities to ensure the most effective program to reach various stakeholders;

(d) A component for independent monitoring of contractor compliance;

(e) Testing made available on or near construction sites; and

(f) Components necessary to ensure the contractor's program is coordinated with other HIV/AIDS awareness and prevention programs being implemented in Lesotho during the time of construction works.

B. Water Sector Project

1. Summary of Project and Related Activities

This Project is designed to provide additional access to improved water supplies and sanitation facilities for rural and urban domestic, commercial and industrial users. In its design, funding under the Water Sector Project will be used to (a) construct a conveyance system from the Metolong Dam and establish a project management unit to manage the implementation, (b) rehabilitate existing infrastructure returning it to a functional state and expand the reticulated network to unconnected urban and peri-urban areas, (c) provide additional access to improved water supply and sanitation facilities in remote, rural areas through the rehabilitation and/or construction of up to 250 water supply points and up to 10,000 ventilated improved pit (''VIP'') latrines and (d) execute a pilot-scale wetlands restoration and conservation program at three project areas in the Lesotho highlands.

In the industrial sector, the Project will provide the critical infrastructure necessary to provide additional water to support the growth of garment and textile operations—the country's principal engine of economic growth and poverty reduction. Currently, Lesotho's textile sector accounts for approximately 40 percent of the country's gross domestic product and employs nearly 50,000 individuals, many of whom support extended families.

Expansion and rehabilitation of rural water supply and sanitation facilities, coupled with public health and hygiene awareness training for rural communities, supports the goals of Lesotho's 2004 Poverty Reduction Strategy Paper (''PRSP''), which highlights the need for investment in rural infrastructure to help foster conditions for economic growth and poverty reduction. The wetlands restoration activity also supports the goals of the PRSP by helping Lesotho conserve and manage natural resources that are vital to sustainable development and directly contribute to the livelihoods and well-being of Lesotho's poorest people.

In connection with the Water Sector Project activities, MCA-Lesotho will assist and take all necessary steps to ensure that, where and when required by MCC Environmental Guidelines, MCC Gender Policy and/or Lesotho laws, an environmental impact assessment (each, an ''EIA'') or, as applicable, environmental assessment

(each, an ''EA''), an environmental management plan (each, an ''EMP''), an HIV/AIDS awareness plan, and a resettlement action plan (each, a ''RAP'') or resettlement policy framework (each, a ''RPF'') (consistent with World Bank Operational Policy 4.12 on Involuntary Resettlement) are prepared to the satisfaction of MCC and in accordance with the Lesotho National Environment Act of 2001 and Lesotho Guidelines for Environmental Impact Assessment, in each case as the same may be amended from time to time. MCA-Lesotho shall also ensure that, for each activity requiring an environmental license under the Lesotho National Environment Act of 2001, a ''Project Brief'' (as defined in the Lesotho National Environment Act of 2001) and any necessary supporting studies will be submitted to, and approved by, the Government's environmental authorities prior to the initiation of construction activities, and that such environmental license will be maintained in good standing throughout the Compact Term. MCC Funding will support implementation of the environmental and social mitigation measures identified in the EIA(s) and/or EA(s), EMP(s), and RAP/RPF(s). The following summarizes each Project activity under the Water Sector Project:

(a) Metolong Dam—Bulk Water Conveyance System and Metolong Program Management Unit.

The Metolong Dam bulk water conveyance system activity involves the construction of downstream works for the supply of water to Maseru and the neighboring towns of Mazenod, Roma and Morija.

Furthermore, MCC Funding will support the establishment of an independent project management unit, the Metolong Program Management Unit (the ''Metolong Program Management Unit'' or ''MPMU''), which will act as a dedicated project management unit for the Metolong Dam activity, as well as a portion of the estimated costs for environmental and social mitigation associated with the Metolong Dam project.

The construction of downstream works relating to the Metolong Dam project includes the following:

(i) An 800m, 700mm diameter raw water transmission main from the dam to a downstream water treatment facility;

(ii) A 75 ML/day water treatment plant with a peak capacity of 93.8 ML/day;

(iii) A transmission system to Maseru that includes:

(1) A pump station (Ha Seeiso PS) at the WTP with an average pumping capacity of 859 l/s (74.25 ML/day) and a peak discharge capacity of 1,088 L/S (94 ML/day),

(2) A break pressure tank on a high ground near the Village of Ha Nchela with a capacity of 4ML or 4,000m ^{3},

(3) A 7.54km–700mm transmission main from Ha Seeiso PS (at WTP) to the Ha Nchela break pressure tank,

(4) A 23.5km–800mm gravity main from Ha Nchela break pressure tank to the High South Reservoir (''HSR'') outside of Maseru, and

(5) Expansion of the HSR with two additional storage units, each with a capacity of 27ML or 27,000m^3;

(iv) Bulk water supply components for Roma and Mazenod, which include:

(1) A 29 l/s booster pump station at Roma,

(2) A 300mm diameter transmission main toward Roma & Mazenod,

(3) A 13.5 km, 160mm diameter transmission line for Roma,

(4) An 8.8 km, 250mm diameter transmission line for Mazenod, and

(5) 3 ML reservoirs for each town;

(v) Bulk water supply components for Morija, which include:

(1) A 25 km, 160mm diameter transmission main between Mazenod & Morija,

(2) A 19 l/s Booster Pump Station at Morija, and

(3) A 0.5 to 1.0 ML reservoir at Morija;

(vi) Detailed designs for the Teyateyaneng (''TY'') conveyance system, pending successful completion of feasibility studies for TY water supply from Metolong (funded by the European Union); and

(vii) Implementation of environmental and social mitigation measures, including preparation of supplemental studies and management plans pertaining to the construction and operation of the bulk water conveyance system funded under this Compact, in accordance with the requirements of the Metolong Dam Environmental and Social Impact Assessment (''ESIA''), EMP, RAP and the MCC Environmental Guidelines.

(b) Urban and Peri-Urban Water Network Activity.

The Urban and Peri-Urban Water Network activity involves reticulation extensions and infrastructure rehabilitation of the urban and peri-urban water network, including reticulation extension to the towns of Semonkong and augmented supply to the town of Mazenod.

This activity includes the following components:

(i) Infrastructure rehabilitation including the following:

(1) Reservoir rehabilitation; including repair and replacement of existing reservoirs,

(2) Pipeline rehabilitation; including repair and replacement of existing pipelines,

(3) Water treatment works rehabilitation; including rehabilitation and/or replacement of sand filters, pre-settlement tanks and water treatment facilities, and

(4) Other rehabilitation works; including rehabilitation of a limited number of boreholes, pump houses and sewer pipes;

(ii) Reticulation extensions including the following:

(1) Extensions in Maseru, Mohales' Hoek, Mafeteng, Maputsoe, Mokhotlong and Butha-Buthe, and

(2) Rising main extensions in Mafeteng-Thabaneng;

(iii) The Semonkong water supply system including the following:

(1) Rehabilitation of the existing distribution system,

(2) 15.75 km of transmission pipelines diameter 90 mm PVC,

(3) 18.4 km of distribution network diameter 32 mm–90 mm PVC,

(4) Two reservoirs of 990 m ^{3} and 424 m ^{3} storage capacity,

(5) Water kiosks,

(6) One office building and three staff houses,

(7) Chlorination and nitrates treatment facility,

(8) Service roads,

(9) Nine borehole pumps,

(10) Nine spring pumps,

(11) 604 house connections, and

(12) Allowance for additional abstraction with boreholes;

(iv) Mazenod Reticulation:

(1) Extension of the existing distribution 250mm pipeline from the existing 5ML High South Reservoir that is serving the Maseru southeast reticulation system, to a 1ML reservoir in Mazenod for approximately 5.8km,

(2) Connection of the airport pump station to an extended pipeline,

(3) Connection of the Mazenod Reservoir to the existing pipeline between the airport pump station and the airport reservoir, and

(4) Construction of the reticulation system for Mazenod.

MCC Funding will also support the following preparation activities for the urban water supply components:

(v) Development of detailed design, and specifications that can be procured through tendering; and

(vi) Preparation of environmental ''Project Briefs'' and any supporting EA/EIA, EMP, and/or RAP/RPF required to meet MCC Environmental Guidelines and environmental licensing requirements under the Lesotho National Environment Act of 2001.

The activity will also support the following components:

(vii) Implementation of environmental and social mitigation measures pertaining to the construction and operation of urban water supply projects funded under this Compact per the requirements of the EA/EIA(s), EMP(s), and RAP/RPF(s) referenced above; and

(viii) Establishment of a small, dedicated project implementation unit for the activity (the ''WASA PIU'') within the Lesotho Water and Sewerage Authority (''WASA'').

(c) Rural Water Supply and Sanitation Activity.

MCC Funding will assist the Government in meeting its goal of providing improved water and sanitary services to the entire rural population. The total target population impacted by this project is 150,000 persons. The VIP latrine construction approach is based on training and employing local artisans in latrine construction, and then providing materials and support to construct latrines with input, both in kind and financial, on an individual basis. The activity will be managed by an existing project implementation unit, and MCC will provide funding for the enhancement of capacity and capability of that project implementation unit.

Specifically, MCC Funding will support the following:

(i) Construction, rehabilitation, and/or expansion of up to 250 water systems;

(ii) Construction of up to 10,000 VIP latrines; and

(iii) Public health and hygiene awareness training and support.

MCC Funding will support the following preparation activities for the rural water supply and sanitation projects:

(iv) Preparation of feasibility studies, detailed design, and tender documents; and

(v) Preparation of environmental ''Project Briefs'' and any supporting EA/EIA, EMP, and/or RAP/RPF required to meet MCC Environmental Guidelines and environmental licensing requirements under the Lesotho National Environment Act of 2001.

Additionally, MCC Funding will support the following:

(vi) Implementation of environmental and social mitigation measures pertaining to the construction and operation of rural water supply and sanitation projects funded under this Compact, per the requirements of the EA/EIA(s), EMP(s), and RAP/RPF(s) referenced above; and

(vii) Strengthening of the existing project implementation unit for the activity (the ''DRWS PIU'') within the Department of Rural Water Supply (''DRWS'') and appointing project coordinators to manage the public health and hygiene programs.

(d) Wetlands Restoration and Conservation Activity.

The wetlands restoration and conservation activity will help Lesotho address widespread overgrazing and degradation of alpine wetlands, which are prevalent throughout the highlands of Lesotho and are an important ecological and economic resource that naturally regulates flow in the Senqu/Orange River Basin and provides livestock pasture, medicinal plants, thatch, and other rural livelihood benefits. Using MCC Funding, a pilot-scale project will be implemented to design and apply restoration measures and examine alternative land management prescriptions at three target study areas, including wetlands at Khalong-la-Lithunya (Oxbow area), Kotisephola (Sani Pass area), and Letśeng-la-Letsie (an internationally protected Ramsar site near Quithing). In conjunction with the pilot studies, a broad-based assessment of Lesotho's wetlands will be undertaken to characterize the environmental, social, and economic implications of current management practices and to identify potential economic opportunities beyond herding. Based on the results of the pilot studies and environmental and socio-economic assessment, a strategic action plan will be developed that outlines requirements for establishing a national watershed management and wetlands conservation program, focusing on specific measures to restore degraded wetlands, protect water resources, improve and maintain the productivity of highland pastures, and promote expanded economic development through community-based resource management and conservation programs.

Specifically, MCC Funding will support the following tasks:

(i) Establishment of a project implementation unit within the Lesotho Department of Water Affairs (i.e., the DWA PIU referred to in Section B.2(d) of this Annex I) that will be responsible for executing the MCC wetlands restoration and conservation activity;

(ii) Environmental and social baseline data collection and monitoring at each of the three target wetland areas, including purchase and installation of field monitoring equipment;

(iii) Restoration of degraded wetlands and assessment of alternative long-term management prescriptions at each of the three target wetland areas; and

(iv) Preparation of a strategic environmental and socio-economic assessment (''SEA'') of Lesotho's wetlands that will, as part of its primary objectives, provide a basis for establishing a national watershed management and wetlands conservation program.

2. Project Implementation

(a) Metolong Dam—Bulk Water Conveyance Activity.

The preferred institutional arrangement for delivering the Metolong Dam project is within the MPMU with the appropriate staffing, structure and business processes to deliver the entire project within the costs and schedule objectives of the Government. The MPMU chief executive will report through a responsible Government agency project director to a Metolong project advisory board representing other donors and key stakeholders. The Government's project director will obtain independent input from expert panels on dam safety and environmental and social responsibility, and report on compliance with donor covenants to the funding agencies. The MPMU will house the capability and responsibility for delivering both the ancillary bulk water supply components and the Metolong Dam itself. In the interest of time and resource effectiveness, the MPMU function will be outsourced to a private program management or construction management firm, with prior successful experience in Africa. An international competitive bidding process, using a qualifications and cost-based selection protocol will be employed to select this firm.

(b) Urban and Peri-Urban Water Network Activity.

WASA will have primary responsibility for the implementation of this activity. WASA is a parastatal public corporation which reports to the Lesotho Commissioner of Water under the Ministry of Natural Resources. The primary responsibility of WASA is to provide potable water supplies and sewerage treatment and disposal facilities to the urban areas in both the lowlands and the highlands. The WASA PIU will be responsible for implementation of this activity.

(c) Rural Water Supply and Sanitation Activity.

The DRWS will be responsible for the implementation of this activity. Water system design, construction and operation is built around the DRWS ''project life cycle'' which is a revolving and continuous implementation methodology by which rural water system designs are continuously developed at the district level through the coordinated efforts of the target community, through their water committee and chief and from the DRWS village affairs coordinator,

district project officer and district engineer. Historically, the Ministry of Health and Social Welfare has had the primary responsibility for implementing sanitation initiatives, including the provision of VIP latrines. However, in line with the Government's policy on decentralization, the DRWS will retain responsibility for this activity as well.

(d) Wetlands Restoration and Conservation Activity.

The wetlands restoration and conservation activity will be implemented by the Department of Water Affairs (''DWA''). Compact funds will be allocated to staffing a dedicated project implementation unit (the ''DWA PIU'') that will work on behalf of, and report to, the head of the wetlands management unit within the DWA. The DWA PIU will be responsible for managing procurements, coordinating work activities, and assuring the work meets the cost, schedule and technical objectives of the project. The DWA PIU will work closely with DWA district project officers to execute project activities at each of the three target wetland sites and will assist the DWA, as necessary, with inter-agency coordination, stakeholder engagement, and performance monitoring and reporting. International consultants working with local partners will be procured to carry out the wetlands restoration and SEA activities. The National Wetlands Committee (''NWC''), which consists of representatives from various Government agencies, will play an advisory role in the implementation of the wetlands restoration and conservation activity.

3. Beneficiaries

The Metolong Dam and Urban Water project activities will include a reduction in unaccounted-for-water, increased connections to the urban water supply system, and expanded employment in industries that depend on a reliable water supply. At the household level, results are expected to include a reduction in water-borne diseases through increased availability of clean water and sanitation facilities for domestic use. The project also will contribute to time savings, which could allow time to be used more productively than for collecting water. The wetlands restoration activity is expected to improve livestock productivity and benefit rural livelihoods in communities in the vicinity of the three target wetland areas, while also providing a basis for implementation of a national watershed management plan that would have much broader environmental, social and economic benefits to the country as a whole over the long-term.

4. Donor Coordination; Role of Private Sector and Civil Society

The Metolong Dam project is being developed in coordination with several donors, including the OPEC Fund for International Development, the Kuwait Fund for Arab Economic Development, the Arab Bank for Economic Development in Africa (BADEA), the Saudi Fund for Development, and the World Bank. The European Union has a sustained presence in Lesotho's water sector. The European Union is currently funding detailed designs for components of the Metolong bulk water conveyance system, as well as components of the larger lowlands water supply system. The European Investment Bank is currently funding the Greater Maseru wastewater improvement project.

The World Bank has been an active development partner in Lesotho's water sector, primarily through the 2004 Lesotho Water Sector Improvement Project. Performance benchmarks, as defined in the Water Sector Improvement Project, will be monitored against, and in some cases will be linked to, Disbursements for this activity.

Irish Aid has been the only active donor in Lesotho's rural water supply and sanitation sub-sectors. Through Irish Aid, a total of €2.35 million was disbursed during 2005 for continued implementation of the DRWS five-year strategic plan. Outputs included the maintenance of 626 hand pumps and over 15 villages were provided with new tapped water sources. Fifty-five more sources were designed and are now under construction. Finally, the DRWS's new maintenance strategy was implemented over the course of the year with the inspection of 1,786 existing waster systems.

5. USAID

USAID currently has no water sector projects within Lesotho.

6. Sustainability

Sustainability of the Water Sector Project activities is dependent upon the Government's pace of implementation of water sector policy reforms. Institutional reform and establishment of a regulatory regime, both of which are critical to sustainability, are expected to be completed in the second year of the Compact Term. Disbursements of MCC Funding will be tied to agreed progress on specific salient components of the water sector reforms.

The estimated additional annual budget requirement to meet the increase in operations and maintenance cost is: US$2,850,000 for the Metolong Dam Project activity and US$820,000 for the Urban and Peri-Urban Water Network activity. Financial sustainability, at a minimum, will depend on the ability of WASA to independently cover the incremental budget requirement for the additional operations and maintenance. With an effective annual tariff increase of five percent, revenues generated by WASA are expected to fully cover operations and maintenance cost and the assumed costs of Metolong raw water within the period of this Compact.

This Compact provides funding for capacity building and technical assistance to WASA, DRWS and the DWA to facilitate the implementation and long-term management capabilities of these institutions.

The most critical component of environmental and social sustainability of the Water Sector Project is implementation of long-term environmental management and monitoring plans, including on-going public outreach and other social impact mitigation measures, in accordance with project-specific EIAs, EMPs, and, where necessary, RAPs or RPFs. Disbursements of MCC Funding will be conditioned on the Government completing each of these studies to the satisfaction of MCC prior to construction and then demonstrating continued compliance with applicable EMPs and RAPs throughout the life of the Project.

Environmental sustainability also depends on WASA maintaining an environmental management unit which will be responsible for environmental compliance of the urban water supply and Metolong bulk water conveyance systems. The DWA, which will (a) implement the wetlands restoration activity, (b) in conjunction with the DRWS, monitor performance of rural water supply systems and (c) in conjunction with the Ministry of Health and Social Welfare (''MoHSW''), monitor performance of rural sanitation systems, must continue to expand field staff in its district offices to strengthen its monitoring and oversight capabilities. Technical assistance will be provided to the DWA through the course of this Compact to assure sufficient resources to implement Compact activities.

C. Health Sector Project

1. Summary of Project and Related Activities

The latest demographic and health survey estimated that 24 percent of adults ages 15–49 in Lesotho are HIV/AIDS positive; the third highest prevalence rate in the world. This has

the potential to severely hamper the country's efforts to reduce poverty and promote economic growth.

This Project is designed to mitigate the negative economic impacts of poor maternal health, HIV/AIDS, tuberculosis (''TB'') and other diseases by strengthening the country's health care system. The primary Project activities include: rehabilitating health centers, rehabilitating and constructing anti-retroviral therapy (''ART'') clinics in selected hospital out-patient departments, constructing a central laboratory and blood transfusion center and strengthening key complementary inputs to the health care system (including training, medical waste management, health management information systems and decentralized management). MCC Funding will support the Government's efforts to significantly increase access to life-extending ART by providing a sustainable platform to deliver this and other essential health services throughout the country. This has the potential to result in a measurable extension of productive life-years for people living with HIV/AIDS, TB and other debilitating diseases. In-country staff of the President's Emergency Plan for AIDS Relief (''PEPFAR'') and other donors have worked with the Government and MCC staff in the design and assessment of this Project activity.

In connection with the Health Sector Project activities, MCA-Lesotho will assist and take all necessary steps to ensure that where and when required by the MCC Environmental Guidelines, the MCC Gender Policy or the laws of Lesotho, an EIA or EA, an EMP, an HIV/AIDS awareness plan, and, if necessary, a RAP or RPF (consistent with World Bank Operational Policy 4.12 on Involuntary Resettlement) are prepared to the satisfaction of MCC and in accordance with the Lesotho National Environment Act of 2001 and Lesotho Guidelines for Environmental Impact Assessment, in each case as the same may be amended from time to time. MCA-Lesotho also will ensure that, for each activity requiring an environmental license under the Lesotho National Environment Act of 2001, a ''Project Brief'' (as defined in the Lesotho National Environment Act of 2001) and any necessary supporting studies will be submitted to, and approved by, the Government's environmental authorities prior to the initiation of construction activities, and that such environmental license will be maintained in good standing throughout the Compact Term. MCC Funding will support implementation of the environmental and social mitigation measures identified in the EIA(s) or EA(s), EMP(s), and RAP/RPF(s).

The following summarizes each Project activity under the Health Sector Project:

(a) Health Centers Activity.

This Project activity focuses on renovation and rehabilitation of up to 150 health centers, to bring the national stock of health centers up to a common standard. These centers play a primary role in the provision of HIV/AIDS prevention, TB treatment and maternal and child health services. Renovations are timely given the devolution of responsibility for these centers to districts and communities. The MoHSW and the Ministry of Local Government can use this visible opportunity of renovated health services to empower local leaders with revitalizing community health services. The renovation of associated staff housing and improvement of water, power and communications will also improve retention of nurses and health personnel at these facilities.

The 150 health centers are owned by MoHSW, the Christian Health Association of Lesotho (''CHAL''), and the Red Cross of Lesotho. Eighteen of these facilities will be enlarged due to current and projected patient loads and facility conditions, and six health centers will be relocated.

Construction and rehabilitation contracts will include capital project maintenance for the life of this Compact. In addition, during years two and three of the term of this Compact, MCC Funding will support technical assistance to work with the MoHSW in developing maintenance systems options for decentralized services.

Specifically, MCC Funding will support the following:

(i) The design and construction supervision for up to 150 health centers;

(ii) The rehabilitation and/or construction of these health centers, including, but not limited to, the rehabilitation of related staff housing where appropriate;

(iii) Preparation of environmental ''Project Briefs'' and any supporting EA or EIA, EMP, and/or RAP or RPF required to meet MCC Environmental Guidelines and environmental licensing requirements under the Lesotho National Environment Act of 2001, as the same may be amended from time to time;

(iv) Implementation of environmental and social mitigation measures pertaining to the rehabilitation and/or construction of health centers funded under this Compact per the requirements of the EA/EIA(s), EMP(s), and RAP/RPF(s) referred to in clause (iii) above;

(v) Power, water, telecommunications equipment as needed to reach MoHSW standards for these health centers; and

(vi) Medical equipment and instruments and clinical furniture as required to meet MoHSW clinic standards.

(b) ART Clinics Activity.

This Project activity will improve infrastructure in up to 14 hospital out-patient departments (''OPDs'') and provide management training to support extension of ART. This will complete national coverage of ART at the hospital level. Designs for reconfiguring the current OPD to include adequate space and appropriate patient flow for incorporating ART services will be tailored to each hospital. The status of OPD facilities for managing TB co-infection will also be addressed in the design.

Specifically, MCC funding will support the following:

(i) The design and construction supervision to incorporate ART services for up to 14 hospital out-patient departments;

(ii) The rehabilitation and/or construction of up to 14 expanded hospital out-patient departments;

(iii) Preparation of environmental ''Project Briefs'' and any supporting EA or EIA, EMP, and/or RAP or RPF required to meet MCC Environmental Guidelines and environmental licensing requirements under the Lesotho National Environment Act of 2001, as the same may be amended from time to time;

(iv) Implementation of environmental and social mitigation measures pertaining to the rehabilitation and/or construction of ART clinics funded under this Compact per the requirements of the EA/EIA(s), EMP(s), and RAP/RPF(s) referred to in clause (iii) above;

(v) Power, water and telecommunications equipment as needed to reach MoHSW standards for hospital OPDs;

(vi) Medical equipment and instruments, clinical furniture, and office equipment and furniture as required to meet MoHSW ART standards; and

(vii) Training for medical and administrative personnel on OPD management.

(c) Central Laboratory Activity.

The central laboratory to be constructed with MCC Funding is critical to the national HIV/AIDS prevention, ART and TB programs. The current laboratory is too small to house the current level of testing, and has no

room for expansion. It is also slated for decommissioning when the new National Reference Hospital is developed. In-country and short-term external training for laboratory staff also will be supported through this Project activity.

Specifically, MCC Funding will support the following:

(i) design and construction of the new central laboratory;

(ii) equipping of the new central laboratory;

(iii) preparation of environmental ''Project Briefs'' and any supporting EA or EIA, EMP, and/or RAP or RPF required to meet MCC Environmental Guidelines and environmental licensing requirements under the Lesotho National Environment Act of 2001, as the same may be amended from time to time;

(iv) implementation of environmental and social mitigation measures pertaining to the rehabilitation and/or construction of the central laboratory funded under this Compact per the requirements of the EA/EIA(s), EMP(s), and RAP/RPF(s) referred to in clause (iii) above; and

(v) training for new equipment, service expansion and quality assurance associated with the new central laboratory.

(d) Blood Transfusion Service Activity.

Safe blood for transfusions is an important element of a health system. A more formal system of blood supplies is needed. Countries that have expanded ART services have also seen the need for transfusions increase, as severely anemic patients are able to recover when on medication. A dedicated, central facility for collecting and processing blood, two mobile collection units, and blood storage equipment for two Government-owned and operated regional centers will be funded by this Project activity. The central blood collection and processing facility will be developed at Botsabelo, in Maseru.

Specifically, MCC Funding will support the following:

(i) the design and construction of the new central blood collection and processing facility;

(ii) equipping of the new central blood collection and processing facility;

(iii) preparation of environmental ''Project Briefs'' and any supporting EA or EIA, EMP, and/or RAP or RPF required to meet MCC Environmental Guidelines and environmental licensing requirements under the Lesotho National Environment Act of 2001, as the same may be amended from time to time;

(iv) implementation of environmental and social mitigation measures pertaining to the rehabilitation and/or construction of the blood transfusion service activity funded under this Compact per the requirements of the EA/EIA(s), EMP(s), and RAP/RPF(s) referred to in clause (iii) above;

(v) training for new equipment, service expansion and quality assurance;

(vi) two mobile blood collection vehicles;

(vii) one blood transportation vehicle; and

(viii) refrigeration equipment for blood storage and limited blood collection furniture for two Government owned collection sites operated by the Blood Transfusion Service at Leribe and Mohales' Hoek.

(e) National Health Training College Activity.

The human resources situation has deteriorated over the past decade in all the countries of Southern Africa. Lesotho has undertaken a number of initiatives to reverse this trend. This Program activity will support efforts to increase the number of graduates from nursing and allied health (for example, pharmacy and lab technicians) programs by developing additional dormitories and staff residences at Lesotho's National Health Training College (''NHTC''). Other inputs, discussed in the Health Systems Strengthening Activity section below, will strengthen tutor and mentoring capacities.

Specifically, MCC Funding will support the following:

(i) the design and construction of 120 dormitory spaces and 6 apartment residences at the NHTC, which apartments will be initially allocated for use on a priority basis by tutors and international technical staff working in connection with the Project;

(ii) preparation of environmental ''Project Briefs'' and any supporting EA or EIA, EMP, and/or RAP or RPF required to meet MCC Environmental Guidelines and environmental licensing requirements under the Lesotho National Environment Act of 2001, as the same may be amended from time to time;

(iii) implementation of environmental and social mitigation measures pertaining to the rehabilitation and/or construction of NHTC dormitories and staff residences funded under this Compact per the requirements of the EA/EIA(s), EMP(s), and RAP/RPF(s) referred to in clause (ii) above; and

(iv) furniture, appliances, and furnishings for these new dormitories and staff residences.

(f) Health Systems Strengthening Activity.

The overall success of this Project hinges upon improved delivery of the national essential health services package, including HIV/AIDS prevention and treatment. In the context of Lesotho, the poor quality of infrastructure was identified by the Government as a constraint to improved and expanded service delivery. In addition, key health systems areas have been identified for Program support. These key interventions are necessary to ensure that improved, vital services are cost-effectively provided at the community level.

Training

This Project activity will strengthen pre-service and in-service training capacities. Currently, a large number of qualified applicants are rejected by the training institutions due to a lack of tutors for the program; this, in turn, results in too few graduates to fill MoHSW and CHAL vacancies resulting from retirement, death, and out-migration. This Project activity will assist in developing qualified tutors, mentoring programs, and improved curricula for preparing a consistently larger cadre of nurses to provide health services at the community level.

In-service training is a vital element of job satisfaction, professional growth, and quality assurance. Currently, there is no plan for continuing education of MoHSW and CHAL professionals. The Project will assist the Government in developing an in-service training plan within the context of devolved services, and assist in implementing the most critical elements of the plan. This is likely to include health center level training of health center staff, local administrations, and communities regarding the new roles and responsibilities of each.

Decentralization

The Government is in the process of devolving service delivery to the district level. The MoHSW is one of the first ministries to implement the new plan. To date, three districts have piloted decentralized health services. Between 2007 and 2010, this is to be expanded to the remaining seven districts. In Lesotho, as well as in other countries, there is evidence that the process of decentralization—particularly if not well-managed—can disrupt health services delivery. This is a critical point for health status and health services in Lesotho. This Project activity will provide additional support, in collaboration with the World Bank, to ensure that decentralization is rapidly and sustainably effected in the health sector. Areas of particular attention

include health information systems, district health management, TB surveillance and infection control, health services quality, health facility maintenance, communications and public outreach.

Research and Development Unit within MoHSW

Medicine is strongly evidence-based and research plays a vital role in developing interventions and assessing practices. The MoHSW has a two person health research unit with a mandate to provide oversight to research activities in the health sector. This team will be supported through MCC Funding to increase their capacity to coordinate research activities and to share vital lessons learned from Lesotho-specific health research.

Specifically, MCC Funding will support the following:

(i) expatriate tutors and mentors;

(ii) in-service, in-country and limited short-term external training of nurse and allied professional tutors;

(iii) incentives for current tutors to increase the number of students trained;

(iv) consulting services in continuing education and decentralization;

(v) in-service training on health center management, decentralization, research and infection control;

(vi) office equipment and computers for program management, district health information offices and the research unit; and

(vii) limited funding for external travel for Program related activities.

(g) Medical Waste Management Activity.

MCC funding will be used to help the Government improve occupational health and safety and medical waste management practices, which at present pose significant environmental, health, and safety hazards and do not comply with MCC Environmental Guidelines. In 2005, in conjunction with a World Bank health sector reform project, the Government conducted a comprehensive assessment of its medical waste management practices and prepared a National Health Care Waste Management Plan (''WMP''), though little progress has been made in its implementation. The primary objective of this activity will be to update and implement the WMP, provide institutional strengthening of Government agencies that will be responsible for implementing, monitoring, and enforcing the policies and standards established under the new WMP, and support public outreach and awareness campaigns. All work conducted under this activity will be closely coordinated with the World Bank and other donors involved in health sector reform.

This activity is critical to ensuring that health sector interventions under this Compact comply with MCC Environmental Guidelines. Moreover, meaningful improvements in medical waste management and occupational health and safety are considered an important factor in the environmental and social sustainability of the health sector overall.

Specifically, MCC Funding will support the following activities:

(i) supplement previous studies (including the 2005 WMP) with new field investigations and literature reviews in order to characterize baseline conditions and identify the environmental, health, and safety risks of current occupational health and safety and medical waste management practices;

(ii) based on the results of supplemental studies, update the 2005 WMP and the estimated capital and recurrent costs for implementing the plan;

(iii) develop a comprehensive finance plan for funding capital and recurrent costs;

(iv) develop new hazardous waste management policies, regulations, standards, and operating procedures, per the recommendations in the updated WMP;

(v) develop an environmental management and monitoring system, per the recommendations in the updated WMP;

(vi) develop occupational health and safety and waste management licensing and accreditation procedures, per the recommendations of the updated WMP;

(vii) provide technical assistance and capacity building to Government agencies pertinent to the implementation and sustainability of the updated WMP; and

(viii) support and/or conduct public awareness and training programs.

2. Project Implementation.

The Government and the donor community have collaborated to build capacity to undertake donor-financed programs in the health sector. Currently, a large portion of the total health resources are provided through bilateral and multilateral donors. The Health Sector Project's implementation structure has been developed in an effort to take advantage of and build on current capacities and structures, while being careful not to overwhelm them.

Specifically, the major elements of the Health Sector Project's implementation structure consist of:

(a) MCA-Lesotho.

MCA-Lesotho will include a full-time health sector project manager who reports to the director of operations. This person will be responsible for overseeing smooth Project implementation across all activities. He or she will ensure that critical milestones are met and activities progress as planned. This program manager will be responsible for ensuring that implementation problems are resolved and alerting the Government of any constraints. The manager will ensure that Procurement Agent actions for the Health Sector Project are prioritized based on the Project's implementation plan. This person will also serve as MCA-Lesotho's liaison to the Health Sector PIU (as defined below) and to health donors' forums.

(b) MoHSW.

The MoHSW has overall responsibility for oversight of implementation of the Health Sector Project. The MoHSW also will be responsible for technical quality, timeliness of implementation, and integration into MoHSW of Project activities. The MoHSW will coordinate activities in relation to the Ministry of Local Government, and with CHAL and the Lesotho Red Cross Society.

A dedicated Health Sector Project Implementation Unit (''Health Sector PIU'') will be established within the MoHSW to administer the Project. The establishment of the Health Sector PIU will be the responsibility of the MoHSW with assistance from MCA-Lesotho. The MoHSW will be responsible for integrating Project activities within the framework of the MoHSW as appropriate. For purposes of this Compact, the Health Sector PIU, the MPMU, the DRWS PIU, the DWA PIU and the WASA PIU, may each be referred to as a ''Project Implementation Unit'' and, collectively as the ''Project Implementation Units.''

The Health Sector PIU will draft technical specifications and terms of reference for the following:

(i) design and construction supervision of health clinics and related staff accommodation including the supply of equipment and furniture for renovation, relocation or rebuild of up to 150 health centers;

(ii) design and construction supervision of the Botsabelo complex activities, including the Blood Transfusion Services center, the Central Laboratory, and NHTC dormitories and residences, including laboratory equipment, furnishings, furniture and IT equipment;

(iii) design and construction supervision of ART centers in 14

hospitals including the supply of equipment, instruments and furniture per region;

(iv) preparation of EA(s) or EIA(s), EMP(s), and if necessary RAP(s) or RPF(s) for the above infrastructure activities in accordance with MCC Environmental Guidelines and the National Environment Act of 2001;

(v) engagement of technical assistance contracts/contractors for capacity building in human resources, decentralization and waste management; and

(vi) Project-related training activities.

The Health Sector PIU will be responsible for the above-listed activities which include, but are not limited to, design reviews, tender document reviews, environmental management and compliance, and public outreach and stakeholder engagement.

Rehabilitation of the health centers will require participation of the local government structures, CHAL and the Lesotho Red Cross Society. The MoHSW is responsible for developing formal agreements with CHAL and the Lesotho Red Cross Society with respect to MCA-funded infrastructure improvements.

The Ministry of Local Government, CHAL and the Lesotho Red Cross Society will each identify a main counterpart to represent the organization on Compact activities. These individuals will have responsibility and authority for coordination and implementation of Program activities within their respective organizations.

In addition, consultations will be conducted with affected parties and other stakeholders in support of preparation of any EA (or EIA as applicable), EMP, and, if necessary, RAP (or RPF as applicable) for the Health Sector Project activities in accordance with MCC Environmental Guidelines and Government environmental regulations.

3. Beneficiaries

The immediate primary beneficiaries of the Health Sector Project are the 17,000 HIV positive persons in need of ART that are not currently receiving it, who will be able to access these expanded clinic and laboratory services from the Government, CHAL and the Lesotho Red Cross Society. Additionally, many of the 17,000 persons already enrolled in ART services will be able to access medication and follow-up from a local health center, rather than having to wait hours in line at a hospital-based center, with much higher risk of exposure to TB and other co-infectious diseases. Services will also benefit the additional 38,000 Basotho who are estimated to need ART services in the coming ten years. The majority of these beneficiaries are adults, aged 15–49. Currently, more women than men seek services, as expected given that HIV rates are higher for women than for men. Program statistics will be periodically reviewed to ensure that age, gender, income, or geographic biases are not reflected in client statistics. Mitigation efforts will be instituted if needed.

Other primary beneficiaries of this Project include poor urban and rural citizens who seek and receive improved health services from the nearest Government, CHAL, or Lesotho Red Cross Society health centers. These persons will have the opportunity to learn of life-saving programs; locally obtain referrals, medical follow-up and medications; and have a resource to protect the health of mothers and newborns. More than one million visits are made to health facilities per year—with Project success, this number will increase, especially at lower levels of facilities. This will result in cost-savings, time-savings, and improved health status and longevity, and ultimately in improved productivity and incomes. In particular, services that reduce co-infection with TB and improve maternal health and safe delivery will benefit the poor.

Secondary beneficiaries include those who, because of the Project activities, are less exposed to infectious TB, particularly multi-drug and extreme drug resistant TB, from other patients and from the population at large due to improved facility design and management, and better disease management.

Secondary beneficiaries also include nurses and medical workers who will have the skills and materials to lower their risk of infection from hazardous wastes in the workplace. Communities will also benefit with reduced risks of infection from improper disposal of hazardous wastes by health personnel.

4. Donor Coordination; Role of Private Sector and Civil Society.

Other donors and health partners are working together on health systems issues. MCC inputs in these areas are coordinated with these donors and with Government programs.

In 2000, the Government embarked on a 10-year reform of the health sector with donor assistance, particularly Irish Aid and the World Bank. The reform program is oriented to improving health services delivery, financial management and accountability, monitoring and evaluation, and donor coordination. Key features include decentralization of public and primary health services to the district level, greater involvement of local administrations and communities in health decision making, new financial management systems, improved medical waste management, increased partnerships for health delivery, and better planning and management of infrastructure and human resources. The Project activities are also in concordance with broader public administration and financial reforms being undertaken across ministries and sectors by the Government.

As part of this reform process, a sector-wide approach (SWAP) mechanism for health is being developed, with the World Bank and others likely to contribute to basket funding by 2009. Participating donors have already agreed to common health sector indicators based on the 10-year reform program and participate in annual joint reviews.

This Project's activities have been designed within this coordinated context. The Project will strengthen the infrastructure for integrated delivery of services and will provide HR strengthening. Major donors of particular relevance to the Health Sector Project include the United States government (through PEPFAR), Irish Aid, the World Bank, the African Development Bank, United Nations agencies and the Global Fund for AIDS, Tuberculosis and Malaria (''GFATM''). Multiple consultations have been undertaken by MCC with each of these parties.

In addition, donor relations in the health sector are coordinated by the MoHSW and through two consortia: the Health Partners who provide assistance more broadly to the health sector, and the UN Expanded Theme Group on HIV/AIDS. Both fora meet monthly, and there is overlap between the groups. There is also an AIDS Country Coordinating Mechanism for the GFATM, currently chaired by the Principal Secretary of MoHSW, that meets monthly, or as needed, and includes national organizations involved in AIDS prevention and outreach, and major donors in these efforts. The United States government also has monthly meetings of all US-based partners working on HIV/AIDS. MCA-Lesotho is expected to become an active participant in these fora as appropriate.

In Lesotho, the major non-government providers of health services are the mission and church-related providers under the umbrella organization, CHAL.

CHAL provides roughly half of the health services in Lesotho, with the MoHSW the main provider of the remaining fifty percent. CHAL operates health centers and hospitals, and for the past decade, has received subvention from the Government for providing basic services. The relationship between the public and non-government sectors has recently been strengthened by signing of a formal Memorandum of Understanding between the MoHSW and CHAL. Under this Project, MCA funding will be made available for renovation of health infrastructure under CHAL auspices.

Civil society organizations that will influence and participate in Project activities include the Lesotho Red Cross Society, the Lesotho Nurses Association, the Lesotho Association of People Living with AIDS, and community-based organizations with interests in community health. International NGOs, including Medecins Sans Frontiers, Partners In Health, and others have been consulted in program development and assessment.

An extensive consultative process was undertaken in designing this activity.

The World Bank has taken the lead in providing funding for the initial waste management assessment for the health sector in 2005. As the World Bank's program has been defined for the next five years, MCC and MCA-Lesotho have and will continue to collaborate with the World Bank team to ensure that our respective interventions in waste management have complementary short and long-term objectives and a mutually agreed upon strategy for action.

MCC has closely coordinated with other donors in the health sector to ensure that the Project supports national health priorities and does not duplicate other donor efforts. MCC has maintained regular communications and participated in joint reviews with the donors most involved in HIV/AIDS and health. These and other donors provided design support to the MoHSW, and assisted MCC in the due diligence process. In addition, MCC periodically met with and briefed the donor coordinating groups for the health sector: the Health Partners, chaired jointly by the World Health Organization Representative and Irish Aid, the UN Expanded Theme Group on HIV/AIDS and US-based partners working on HIV/AIDS with the support of PEPFAR funding. The proposed project strengthens the infrastructure for integrated delivery of services and would provide support to augment human resources. It supports the Government's reform efforts and fits within the combined donor strategy for the health sector.

The U.S. Government does not have a large bi-lateral program with Lesotho. The only agency which has a significant program with a presence in Lesotho is PEPFAR, focused on HIV/AIDS. The U.S. Government's HIV/AIDS Coordinator based in Lesotho has provided guidance to MCC in undertaking due diligence on the health sector project since May 2006. The Project has been designed partially with support from PEPFAR Regional HIV/AIDS Program partners, including the Centers for Disease Control and Prevention, Southern Africa Regional Office, the Capacity Project, and Safe Blood for Africa. In addition, the Clinton Foundation, Partners in Health, the African Development Bank, and other MoHSW health partners have contributed.

5. USAID

Current USAID involvement in health in Lesotho is through support for and oversight of PEPFAR activities. The Health Sector Project was designed and will be implemented in close coordination with United States government efforts relating to HIV/AIDS, including PEPFAR interventions. Formal mechanisms, including joint meetings, for in-country coordination already exist and will be utilized.

6. Sustainability

Sustainability of health services is a critical issue, particularly given the rapid increase of donor-supported ART. In partnership with the World Bank and other donors, the Government is developing a national health financing strategy to identify the costs of the essential health services package, including ART, and to identify gaps and potential sources of funds. This strategy will include means of regular dialogue with health donors in order to ensure continued financing and identify potential commitment gaps early. Implementation of the critical elements of this strategy will be jointly monitored by MCC and other health donors.

In other areas, the relationship between CHAL and the MoHSW has been formalized through a January 2007 Memorandum of Understanding in an effort to improve the quality of service delivery throughout the country. The Government is working with the International Finance Corporation to replace the current national referral hospital through a public-private partnership arrangement, hoping to free up a portion of the 26 percent of the health budget utilized for that hospital.

The Health Sector Project was designed with an eye toward containing incremental recurrent costs. Facilities were slated for rehabilitation or development where the use of incremental staff and financial resources could provide the most impact and only where staff and budget increments were deemed manageable and within the framework of the Government's ''Medium Term Expenditure Framework'' for health. Architectural and engineering briefs for all facilities aim to reduce long-term maintenance and utility costs. Decentralization of health services management to the district level will increase the local voice in assuring that quality health services are delivered. Training activities will largely be undertaken in Lesotho, to reduce potential staff migration. Capacity building activities in the areas of district health management, outpatient department management, laboratory quality assurance, and in-service training of district health providers will increase program sustainability.

The environmental and social sustainability of the Health Sector Project is dependent on the implementation of a national medical waste management plan. This activity is both an immediate safeguard against infection and environmental risk with MCC investments in the heath sector and also an opportunity for MCC to contribute to a sustainable regulatory structure that will last beyond MCC's five-year Compact schedule. MCC will also require political and financial assurances that the plan be institutionalized within the regulatory framework, funded by the recurrent budget and overseen by a qualified government entity by the completion of the five-year program.

In addition, long-term environmental management and monitoring plans, including on-going public outreach and other social impact mitigation measures, will be implemented in accordance with project-specific EIAs, EMPs, and, where necessary, RAPs or RPFs. Disbursements of MCC Funding will be conditioned on the Government completing each of these studies to the satisfaction of MCC prior to construction and then demonstrating continued compliance with applicable EMPs and RAPs throughout the life of the Project.

Special efforts will be undertaken to attract male rural health care workers through the human resources nurse outreach training program. This should encourage more men in the rural areas to seek out medical assistance, to discuss sexual histories and to address

ongoing risky behavior which puts all Basotho at risk.

D. Private Sector Development Project

1. Summary of Project and Related Activities

This Project is designed to increase private sector activity in Lesotho by improving access to credit, reducing transaction costs and increasing the participation of women in the economy. The activities include improving land administration, modernizing the commercial legal system, strengthening payment and settlement systems, supporting the provision of credit bureau services, including assisting the roll-out of a national ID scheme, and training and outreach to support gender equality in economic rights. These Project activities are an essential component of the Government's major policy reform program and will contribute to the broader efforts to attract foreign investment and stimulate growth of Basotho-owned companies. The Government has already obtained funding for several components related to the Private Sector Development Project from the World Bank, which recently approved a private sector competitiveness and economic diversification credit.

The following summarizes each Project activity under the Private Sector Development Project:

(a) Credit Bureau and National Identification Card Activity.

The main objective of the credit bureau activity is to establish a register that facilitates the exchange of information and the screening of prospective debtors. Establishing a credit bureau has been cited by credit grantors as a prerequisite to expanding access to financial services, especially credit, to poor and rural populations.

The Government has opted to link with one or more private credit bureaus now operating outside of Lesotho. Several South African credit bureau operators have expressed an interest in extending existing infrastructure and expertise into Lesotho to support its credit bureau needs. The cross-border solution selected is less expensive and more comprehensive than a ''Lesotho only'' credit bureau. In addition to cost savings, linking with a South African credit bureau will allow members to track the heavy volume of cross-border borrowing. In order to implement a cross-border credit bureau, the Government will have to undertake a legal and regulatory review and update its legislation and regulations as needed to ensure harmonization with South African privacy and information protection principles and relevant provisions of the South African National Credit Act.

Development of a national identification card (''NIDC'') is a necessary step in the process of establishing a credit bureau. The NIDC will restrict all citizens and lawful residents to a single unique identity number that can be used to recognize individuals in multiple information technology (''IT'') systems. MCC will collaborate with the World Bank, which has approved the engagement of an international consultant to conduct a feasibility study that will determine the most effective and cost efficient approach to launch the NIDC, in the final design of this activity. The NIDC will be implemented by a third party and managed by the Lesotho Ministry of Home Affairs (''MoHA''), with oversight provided by the Public-Private Steering Committee, an existing ministerial committee chaired by the Deputy Prime Minister. MCC Funding will support training and capacity building for MoHA employees to assure sustainability.

The social/gender specialist employed by MCA-Lesotho will review the World Bank's feasibility study and provide inputs to assure that the NIDC program is safeguarded against human rights abuses and is compliant with the MCC Gender Policy. This system should help protect against gender, HIV and marital status discrimination in banking and credit schemes by providing lenders accurate and objective information on an individual's credit history regardless of gender or HIV/AIDS status. In addition, human rights groups will be consulted during the course of the development and implementation of the scheme to prevent potential human rights abuses or infringements on individuals' private lives.

Specifically, MCC Funding will support the following:

(i) Production and issuance costs for NIDC cards, including hardware, software, data capture, staff training and development for the MoHA;

(ii) Consultation in respect of necessary legal and regulatory reforms; and

(iii) Development and execution of a public awareness campaign with respect to the NIDC.

(b) Payments and Settlement Systems Activity.

The main objectives of the payment system modernization Project activity are the introduction of automated clearing and alternative payment options that will reduce payment and settlement times and lessen the use of cash and checks. Automated clearing and additional payment options should facilitate trade and improve clearing times for all payment streams, decrease costs associated with funds transfer, reduce fraud, widen access to financial services and reduce poverty by increasing economic growth. Another objective is to strengthen Lesotho's financial infrastructure and promote further integration of its payment and settlement systems with those of its neighbor, South Africa.

A large percentage of the population of Lesotho is ''unbanked,'' including an estimated 85 percent of businesses. In many parts of the country, people travel up to 120 kilometers to access banking services. One of the primary focuses of this activity is to expand the reach of, and institutional participation in, the payments system by, among other things, adding functionality for telephone and other smart card transactions. Another focus is to include the Post Bank in the payments system, which will greatly expand its reach and will provide benefits to rural populations relatively quickly. Adding payment options and channels, such as payments through remote, battery or crank operated point-of-sale terminals will make access more convenient and economical for much of the unbanked population.

Specifically, MCC funding will support the following:

(i) Reviewing the legal and regulatory structure governing domestic and cross-border payments;

(ii) Harmonizing laws regarding cross-border payments and currency controls;

(iii) Paying for the initial year of the Automated Clearing House (''ACH'') provider's fee for implementation, consultation, training and contract execution in connection with making multiple payment streams available in Lesotho;

(iv) Paying for the costs associated with two imaging machines and ancillary hardware, software and training for operations at the Central Bank of Lesotho if the Central Bank of Lesotho and financial institutions agree to a system for delivering checks directly to the Central Bank of Lesotho from all bank branches for imaging and subsequent forwarding to the ACH provider;

(v) Paying for the costs associated with the distribution of payment options and channels, such as point of sales terminals; and

(vi) Implementing a public awareness campaign for banks and consumers with respect to this Project activity.

(c) Land Administration Reform Activity.

Policy and Legal Reform

Under this Project activity, MCC Funding will support technical assistance to the Government to revise land reform legislation currently in draft form and to develop its land policy, thereby promoting the use of land as an economic asset. Gender analysis will ensure that revisions to the draft Land Bill are congruent with the Legal Capacity of Married Persons Act and other gender equality reforms and principles. MCC Funding will permit the Government to obtain technical assistance to draft laws and related implementing regulations as needed to realize land policy reforms. Finally, MCC Funding will support the education and training of land administration officials, community councils and the public on land administration issues and the formalization of rights to land. The expected outcomes of this Project activity include adopting a new land policy reinforced by the passage of a new Land Act and the promulgation of its implementing regulations and spreading a wider understanding and awareness of the new land policy among officials and citizens.

Systematic Regularization of Land in Urban Areas and Improvement of Rural Land Allocation Processes

This Project activity will fund the systematic regularization and upgrading of informal settlements in urban and peri-urban areas, beginning in Maseru and extending to other cities and towns to the extent MCC Funding is available. As part of systematic regularization, local adjudication teams and surveyors will work with occupants to define the boundaries of parcels and establish cadastral plans, design access roads and utility rights of way as needed, and issue leases to the legally recognized title holders. Registration of existing land occupants will be based on inclusive adjudication provisions enacted as part of the legal and regulatory framework. Activities related to systematic regularization of land and improvement of the land allocation process will be designed to increase gender equity through mandatory joint titling of rights to married couples.

A public outreach and training program will support the activity by informing occupants of regularization activities and encouraging their cooperation with adjudication teams. Special efforts will be made to ensure that training, public awareness and access to information is available to women and socially vulnerable individuals. MCC Funding will also assist community councils to improve their records of rural land allocations and to support the Government's efforts to train community councils and traditional authorities on the land allocation process. This Project will help train district land teams to complete an inventory of existing land allocations and establish improved record keeping procedures. MCC Funding will also support the Government's (and other donors') ongoing efforts to train community councils and traditional authorities on their roles in land allocation and land management. The expected outcomes of these activities include the formalization and registration of the rights to over 55,000 parcels of informally occupied land in Maseru and other cities of Lesotho; the improvement of records on rural land allocations maintained by community councils; and the training of community councils, traditional authorities, and rural citizens on land allocation and management procedures.

Modernization and Improvement of Land Administration Services

This Project activity will fund the simplification of land administration procedures and the development of a new land administration authority (''LAA'') that will be:

(i) Professionally managed and operated;

(ii) Operated in a largely autonomous manner in accordance with its objectives;

(iii) Capable of providing cost-effective and efficient services to the public and land information users (including the poor);

(iv) Able to hire and retain qualified managerial and technical staff; and

(v) Self-sustaining.

The LAA will be modeled after the Lesotho Revenue Authority, an autonomous parastatal body that collects taxes for the Government. MCC Funding will support the establishment of the technical platform for operation of the LAA, support hiring and training of managerial and technical staff, and provide material resources for the initial operation of the LAA. The expected outcomes of this Project activity include the adoption of a legal basis for the LAA; establishment of the LAA with qualified managerial and technical staff; and development of an appropriate technical platform (e.g., the appropriate land information systems and internal culture) for delivery of streamlined, cost effective and efficient land administration services to the public.

Public Outreach and Training

This Project activity will fund public outreach and awareness activities in support of all of the land administration reform activities. MCC Funding will support training of land administration staff, community councils and traditional authorities as needed to implement land administration reform in Lesotho. The expected outcomes for this activity are greater public awareness of land matters and the benefits of formal title to land (i.e., a lease) and well-trained land administration staff and community councils.

Gender analysis to ensure that revisions of the new Land Act are congruent with the Legal Capacity of Married Persons Act and other gender equality reforms and gender-responsive methodologies and approaches for training, such as separate meetings and training sessions, will be undertaken to ensure that women are included in all education and training for public officials and the public.

(d) Civil Legal Reform Activity.

This Project activity is an element of a broader Government program of legal reform and will provide faster, fairer and less expensive resolution of commercial disputes, whether large or small. According to the World Bank ''Doing Business'' survey, it takes nearly 700 days to resolve a dispute in the courts. This Project activity aims to cut the time and cost required to resolve a commercial dispute in half. This activity will promote an improved investment environment for businesses of all sizes, and will afford ordinary citizens better access to courts for economic disputes.

Specifically, MCC funding will support the following:

(i) The development of the Commercial Court, including the drafting and promulgation of procedures, capacity building, and—eventually—reconstruction of a currently unused court building to house the Commercial Court. The court's focus will be on larger commercial disputes;

(ii) The creation of modern case management procedures. All the courts of Lesotho suffer from a lack of modern case management procedures and technology. Modern case management will be introduced to the High Court, the new Commercial Court, and the Magistrate Court of Maseru;

(iii) Promotion of alternative dispute resolution (''ADR''). The focus of this sub-activity will be a program of court-annexed mediation for commercial disputes. Increased use of private ADR will also be promoted; and

(iv) The development of a simplified and expedited small claims process. Smaller commercial claims may have limited recourse to the judicial system. Introduction of a small claims process seeks to provide inexpensive and rapid resolution of the smallest commercial disputes.

Any potential gender-based constraints to participation in the Project will be explored during the development of the Program-wide Gender Integration Plan. This Plan will include, as appropriate, recommendations for meaningful and inclusive consultations with women and other vulnerable/underrepresented groups, project-specific gender analyses and strategies for incorporating findings of the gender analyses into final Project designs.

(e) Training and Public Awareness to Support Gender Equality in Economic Rights.

MCC and the Government of Lesotho recognize that gender inequality can be a significant constraint to economic growth and poverty reduction. In December 2006, the Government passed into law the Legal Capacity of Married Persons Act which removes the minority status of married women. With assistance from MCC, the Government has already contracted for two related activities: A gender review of laws and policies with recommendations for reform, and the development of a training and public outreach program to realize in practice gender equality in economic rights.

The gender review of laws and policies and additional due diligence on the effects of the Legal Capacity of Married Persons Act have revealed contradictions in Lesotho law. Removing these contradictions is important to assure the application of rights in the judiciary and also because poor, rural women do not usually have the resources to initiate an appeal if the conflicting law is the basis for a legal decision.

Prior to the first Disbursement, the Government will undertake additional legal reform efforts to assure that the following economic rights are not contradicted by laws enacted prior to the Legal Capacity of Married Persons Act, including the right to:

(i) Enter into a contract, including incurring indebtedness;

(ii) Sue or be sued;

(iii) Register immovable property in her name;

(iv) Act as an executor of a decedent's estate;

(v) Act as a director of a company;

(vi) Act as a trustee of an estate;

(vii) Bind oneself as a surety; and

(viii) Buy, sell and use property as collateral for loans.

The PSD Project includes a training and public awareness activity designed to realize gender equality in economic rights and promote enhanced access to credit for women.

The first sub-activity is a training program to promulgate the Legal Capacity of Married Persons Act and other reforms aimed at gender equality in the economy. Specifically, MCC Funding will support:

(ix) training the legal community, including judges, magistrates, lawyers, prosecutors, and police, and inclusive of the local and central courts that handle most of the matrimonial disputes;

(x) training and training-of-trainers for relevant government ministries; and

(xi) sector-specific training with special attention to the banking industry, potential women borrowers and those Government entities responsible for regulation and oversight.

The second sub-activity is a public awareness and outreach program designed to develop knowledge, awareness and practices in support of these economic rights. This sub-activity will involve traditional authorities, religious leadership, civil society organizations, local government, churches, NGOs, and community-based organizations, including support groups, as stakeholders, and it will be implemented in all ten districts of Lesotho. Specifically, MCC funding will support the following:

(xii) a five-year public awareness campaign dedicated to implementing gender equality in economic rights;

(xiii) activities designed to be appropriate for specific stakeholder groups; and

(xiv) The building of local capacity to continue advocacy for equality in economic rights following the MCC interventions.

2. Project Implementation

(a) Credit Bureau and National Identification Card Activity.

Implementation of the credit bureau activity will be managed by the Central Bank of Lesotho with oversight provided by the Public-Private Steering Committee, an existing ministerial committee chaired by the Deputy Prime Minister. The Public-Private Steering Committee's membership will include representation from the Central Bank of Lesotho, which will also have regulatory responsibility for the credit bureau, and the MoHA, which will have regulatory responsibility for the National Identification Card. MCC Funding will pay for the related legal and regulatory review and the consultation needed to ensure harmonization with South African privacy and information protection principles (as well as other relevant provisions of the South African National Credit Act) and will support training for the Central Bank as the credit bureau regulator. The credit bureau will be privately owned and funded and the private credit bureau operator will be responsible for soliciting credit bureau membership and gathering the information needed to populate the credit bureau data base.

MCC Funding will assist the roll-out of the NIDC in support of the launching and operation of the credit bureau. MoHA will manage the NIDC implementation with oversight provided by the Public-Private Steering Committee. It is expected that the World Bank will engage the services of an international consultant to determine the most effective and cost efficient approach to launch the NIDC. Recommendations will include card design and implementation processes, as well as the appropriate ID card production system and long-term support systems best suited for Lesotho. Additionally, the consultant will design an advertisement and a public awareness campaign and detail final development processes and costs.

(b) Payments and Settlement Systems Activity.

The Government, as the current chair of the South African Development Community, has committed to regional integration of financial systems. In line with that commitment, the Government has opted to implement its payment system improvement by linking with a South African payment system provider rather than developing a standalone, proprietary system with the Central Bank of Lesotho.

Implementation of the payments and settlement systems activity will be managed by the Central Bank of Lesotho with oversight by the Public-Private Steering Committee referenced in subsection (a) above. Representation from the Central Bank of Lesotho, which will have regulatory responsibility for the credit bureau, will be added to this committee to address issues related to both the Credit Bureau activity and the Payments and Settlement System Improvement activity. MCC Funding will pay for the related legal and regulatory review and the consultation needed to ensure harmonization with other countries in the region.

(c) Land Administration Reform Activity.

Implementation of the land administration reform activity will require that a project implementation unit (''Land Administration Reform

PIU'') be established. The Land Administration Reform PIU will provide technical assistance to the Department of Lands, Surveys, and Physical Planning (''LSPP'') and the new LAA during the course of the Project, but will be more specifically focused on supporting the land administration bodies to meet Compact-related requirements for documentation (for example, project work plans, budgets and quarterly reports), procurements (drafting terms of reference for private sector providers) and performance monitoring and coordination of the activities of various implementers as necessary to achieve component objectives. The LSPP and the new LAA are expected to concentrate on day-to-day business and implementation of the changes in land policy expected during the term of this Compact. The Land Administration Reform PIU, although a separate entity, will be located within the LSPP offices or nearby to ensure close collaboration and communication on subjects related to project implementation. The four sub-activities under this Project activity and the implementing arrangement for each are as follows.

Policy and Legal Reform

The main implementer of this sub-activity is to be a legal consulting team made up of a legal specialist familiar with international best practices and lawyers with knowledge of legal practices in Lesotho. The legal consulting team will support the LSPP/LAA in the formation of new land policy, drafting laws and regulations implementing the policy, advocating in support of the adoption and broad acceptance of the new land policy, and implementing the land administration reforms (including, for example, training and public outreach, procedural analysis and reform). The legal team will interact and cooperate with other implementers selected to work on land administration reform, supporting their efforts to implement new land policy and assisting in problem resolution.

Systematic Regularization and Registration of Urban Land and Improvement of Rural Land Allocation Procedures

This sub-activity will be implemented jointly by the LSPP/LAA and a land registration consulting firm that will support the efforts to conduct systematic regularization and registration of urban land rights (focusing on rights to land in informal settlements). The land registration consultant will provide the LSPP/LAA with technical assistance and material resources support (for example, temporary human resource and financial assistance) necessary to complete the systematic regularization and registration task in a timely manner. The LSPP/LAA will also develop and implement improvements in the procedures for recording rural land allocations and the maintenance of such records with technical assistance from the land registration consultant. The consultant, in cooperation with the public outreach consultant and other donor projects, will support the Ministry of Local Government's program for training of community councils and traditional authorities on land allocation procedures under the Law on Local Government of 1997 and new procedures established as part of this activity.

Modernize and Improve Land Administration Procedures

The main implementer of this sub-activity will be a land information systems consulting firm (''LIS Consultant''), which will work with the current land administration authorities and the Director of the new LAA to establish the LAA. Based on a study of land administration services and needs in Lesotho carried out with MCC Funding, the LIS Consultant will develop appropriate business processes, implement necessary software and hardware solutions, train LAA staff and management on new systems, and monitor the implementation of the new procedures and systems to ensure their efficiency and effectiveness in providing land administration services to private and public users. The LIS Consultant will cooperate closely with the land registration consultant and the legal consulting team to ensure that new processes meet the needs of public and private users and are properly established in the regulatory framework.

Public Outreach and Training

The main implementer of this sub-activity will be an outreach and training consultant (an NGO), supported by a public education consultant. The consultants will be responsible for organizing all public outreach activities in support of the various activity implementers, including community councils and the LSPP/LAA. The consultants will draft an outreach and training strategy that meets the needs of the LAA and the implementers of each activity. For example, the consultants will cooperate with the LSPP/LAA to form a strategy for raising public awareness of the new LAA, the new simplified procedures and reduced costs for formalizing one's rights to land, and the benefits of formalizing land rights.

(d) Civil Legal Reform Activity.

The High Court will be the primary implementer of the civil legal reform Project activity, and will coordinate with the Ministry of Justice as appropriate. A consulting firm will be hired to provide a resident advisor for the first two years of the Project, and other short-term experts and support as required. The High Court will also involve other courts, the Law Society of Lesotho, representatives of the private sector and NGOs—in each case, in an advisory capacity—in planning and implementing all aspects of the Project. Compact Implementation Funding will be used to hire a consultant to develop a detailed implementation plan and to draft a scope of work for the consulting firm.

(e) Training and Public Awareness to Support Gender Equality in Economic Rights.

The training and public awareness to support gender equality in economic rights Project activities will be coordinated by the Ministry of Gender, Youth, Sports and Recreation as appropriate. Implementation will be carried out by one or two firms, with partners who have deep knowledge and experience of the context. This firm, or firms, will be selected after an international competition managed by MCA-Lesotho and tendered with the approval of MCC. The social/gender specialist employed by MCA-Lesotho will be charged with providing oversight and general guidance throughout the life of the contract. The social/gender specialist employed by MCA-Lesotho will meet regularly with the representative of the Ministry of Gender, Youth, Sports and Recreation to ensure that benchmarks are being met, the work plan is being followed and that results of the training and public awareness activities are being monitored.

3. Beneficiaries

(a) Credit Bureau, National Identification Card and Payment and Settlement Systems Activity.

All economically active (formal sector and informal sector) citizens and legal residents, including married women, are potential beneficiaries of these Project activities. The activities combine to improve the availability of credit and other financial services. There will be a significant reduction in transaction costs for financial institutions both in gathering the information needed to evaluate credit decisions and the cost of payments and settlement, which should result in a reduction in fees for these

services to clients. The payment and settlement system will likely put competitive pressures on the bank and non-bank service providers since many of the transactions for which they are now charging high fees (such as remittances) can eventually be provided by other parties unless they remain competitive in pricing and service provision.

(b) Land Administration Reform Activity.

The targeted beneficiaries of these Project activities are informal land occupants who now lack formalized rights to land and the security and economic benefits that derive from registered rights in land. All land occupants and right holders will benefit from the adoption of a new land policy that improves access to land and security of land rights. Improvements in land allocation and land record keeping procedures will also benefit all rural land occupants. These improvements will lead to the increased marketability of land, incentives to invest in land and the ability of land to be used to obtain credit. Private business will also benefit from these improvements by generating jobs and increased economic activity in sectors such as mortgage lending, construction, and real property related services (for example, estate agents, property valuers, and land surveyors).

(c) Civil Legal Reform Activity.

All active participants in the formal economy of Lesotho are intended beneficiaries of the civil legal reform Project activity. Initially, those economic actors most greatly impacted by the current backlog of High Court cases, such as banks, will benefit most directly. In addition, those individual citizens who now suffer from limited recourse to courts to settle their economic disputes will also be direct beneficiaries. With increasing access to formal justice, it is hoped that fewer individuals will simply accept unfair results from economic transactions or ''take the law into their own hands'' to settle disputes. Individual Basotho will also benefit by increased access to credit when banks are able to offer increased access to credit, as a result of easier processes developed to collect unpaid debts.

(d) Training and Public Awareness to Support Gender Equality in Economic Rights.

Because gender inequality can be a significant constraint to growth and poverty reduction, reducing the barriers to women's full participation as economic actors will benefit all members of Basotho society.

4. Donor Coordination; Role of Private Sector and Civil Society

MCC has been actively collaborating with other donors on the NIDC system and the legal reform activities. MCC will work with the World Bank in the roll-out of the NIDC sub-activity. The World Bank has approved the engagement of an international consultant to determine the most effective and cost efficient approach to launch the NIDC. MCC will, upon approval of design and cost elements, assist with funding the roll-out.

The development of the private sector development project relied on stakeholder steering committees and consultations with chambers of commerce, textile, and garment industry associations to provide feedback on the impediments to private sector growth and proposed solutions to improving the business and investment climate. In particular, there has been extensive consultation with the banking sector at all stages in establishing the need for and in designing the NIDC, credit bureau and payments and settlement systems sub-activities.

The land administration reform activity has been discussed and continues to be discussed with the United Kingdom's Department for International Development (''DfID'') and the German development agency, Deutsche Gesellschaft fr Technische Zusammenarbeit (''GTZ''). These donors are currently active in Lesotho and have experience addressing land administration reform activities and related activities. In particular, project activities on improvement of land allocation practices in rural areas will be coordinated with GTZ and the establishment of the new LAA will be done in consultation with DfID. The land administration reform activities also include a significant role for the private sector and civil society. Private land surveyors will conduct land surveys as part of mass regularization and registration or urban land and public education and outreach activities will largely be implemented by an NGO.

5. USAID

USAID does not currently have any financial and private sector development initiatives that focus specifically on the areas identified by MCC for funding in this Project.

6. Sustainability

The credit bureau will be privately owned and private sector funded. Formation of a credit bureau has been consistently identified by credit grantors as a prerequisite to granting credit and the cross-border solution selected is less expensive and more comprehensive than a ''Lesotho only'' credit bureau. The banks have indicated that they will become paying members of the credit bureau. The NIDC activity will be implemented by a third party and managed by the MoHA. A significant portion of the cost will be allocated to hiring experienced (third party) consulting experts to manage the implementation, providing technical expertise (hardware and software) and for training and capacity building for MoHA employees in an effort to assure sustainability.

Sustainability is dependent largely on the participation of the four largest banks in Lesotho, three of which have South African parents and already send much of their clearing information to the South African ACH that would likely provide services to Lesotho. The fourth bank is the Post Bank, which is owned by the Government. As a result of the Government's choice to link with a regional payments provider and the consequential reduction in cost and broadening of payment options, the Central Bank of Lesotho has received assurances from each of the banks that they will be a participating (and paying) member of the ACH over the long term. It is also the Central Bank of Lesotho's intent to allow participation of indigenous financial institutions as they become credit worthy and have the capacity to become contributing members.

A primary focus to ensure sustainability in the private sector development Project activities will be to fully realize the rights afforded to women under the Legal Capacity of Married Persons Act in each private sector development component. This will be done by integrating women and other individuals with no formal financial history or access to credit, land or litigation experience into each of the activities through targeted outreach and training. In addition, MCA-Lesotho will ensure that all activities are compliant with The Labor Code of 1992 which establishes the minimum age for employment at 15.

MCC funding will help establish sustainable improvements in land administration reform through an active capacity building, training, and public education effort. Each activity helps improve local capacity by training local stakeholders on all aspects of land administration and educating the public on processes involved in formalizing land rights and transferring rights to land using formal mechanisms. Establishment of a new land administration authority, with the

characteristics described in paragraph D1(c) of this *Annex I*, will raise capacity in land administration, ensuring that the LAA is capable of serving both private and public users of land information efficiently and cost effectively.

Social safeguards and gender integration will be reviewed and monitored by the Social/Gender specialist in coordination with the MCA-Lesotho officer responsible for environmental and social impact assessment (the ''ESI Officer'').

The private sector development Project activity is not expected to result in adverse environmental impacts. However, the MCA-Lesotho ESI Officer will review terms of reference and work plans for all projects and activities to verify that potential environmental impacts are not anticipated. If necessary, the ESI Officer will act in accordance with the MCC Environmental Guidelines and applicable environmental laws and requirements in Lesotho to assess potential impacts, acquire the necessary environmental license and ensure the adequate mitigation is completed during implementation. The Government will be responsible for any environmental mitigation cost not included in the activity budgets.

Annex II Summary of Multi-Year Financial Plan

1. General

The Multi-Year Financial Plan Summary below sets forth the estimated annual contribution of MCC Funding for Program administration, Program monitoring and evaluation, and implementing each Project. The Government's contribution of resources will consist of ''in-kind'' and other contributions or amounts required effectively to satisfy the requirements of Section 2.5(a) of this Compact. In accordance with the Program Implementation Agreement, the Government will develop and adopt on a quarterly basis a detailed financial plan (as approved by MCC) setting forth annual and quarterly funding requirements for the Program (including administrative costs) and for each project, projected both on a commitment and cash requirement basis.

2. Modifications

To preserve administrative flexibility, the Parties may by written agreement (or as otherwise provided in the Program Implementation Agreement), without amending this Compact, change the designations and allocations of funds among the Projects, the Project activities, or any activity under Program administration or monitoring and evaluation, or between a Project identified as of Entry into Force and a new project; provided, however, that any such change (a) is consistent with the Objectives and the Program Implementation Agreement, (b) does not materially adversely affect the applicable Project or any activity under Program administration or monitoring and evaluation, (c) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact and (d) does not cause the Government's obligations or responsibilities or overall contribution of resources to be less than that specified in Section 2.5(a) of this Compact.

MULTI-YEAR FINANCIAL PLAN SUMMARY

[Totals including Contingencies (US$)]

Project	CIF funding	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Water Sector Project							
A. Metolong Dam Bulk Water Conveyance System	1,490,000	5,840,000	5,700,000	21,540,000	32,300,000	5,590,000	72,460,000
B. Metolong Dam Program Management Unit Activity	1,390,000	1,590,000	1,590,000	3,160,000	3,250,000	3,330,000	14,310,000
C. Urban and Peri-Urban Water Infrastructure Activity	1,250,000	6,520,000	6,450,000	16,690,000	5,540,000	1,010,000	37,460,000
D. WASA Project Implementation Unit	459,000	459,000	918,000	918,000	918,000	918,000	4,590,000
E. Rural Water Supply and Sanitation Infrastructure Activity	.....	5,900,000	7,550,000	5,740,000	5,330,000	5,720,000	30,240,000
F. Wetlands Restoration and Conservation Activity	324,000	783,000	2,025,000	1,026,000	540,000	270,000	4,968,000
Subtotal	4,913,000	21,092,000	24,233,000	49,074,000	47,878,000	16,838,000	164,028,000
2. Health Sector Project							
A. Health Care Centers Infrastructure Activity	1,023,000	10,770,000	16,008,000	24,688,000	16,155,000	4,290,000	72,934,000
B. ART Clinic Infrastructure Activity	238,000	922,000	1,393,000	1,393,000	696,000	.....	4,642,000
C. Central Lab Infrastructure	.....	.....	305,000	1,221,000	1,221,000	305,000	3,052,000
D. Blood Transfusion Center	.....	538,000	672,000	1,076,000	403,000	.....	2,689,000

MULTI-YEAR FINANCIAL PLAN SUMMARY—Continued

[Totals including Contingencies (US$)]

Project	CIF funding	Year 1	Year 2	Year 3	Year 4	Year 5	Total
E. National Health Training College Dormitory Infrastructure Activity	.....	741,000	3,336,000	2,966,000	371,000	.....	7,414,000
F. Health System Interventions Activity	500,000	2,650,000	3,100,000	3,000,000	3,000,000	2,750,000	15,000,000
G. Medical Waste Management	87,000	1,046,000	1,172,000	684,000	412,000	326,000	3,727,000
H. Health PIU	2,588,000	1,294,000	1,941,000	2,588,000	2,588,000	1,941,000	12,940,000
Subtotal	4,436,000	17,961,000	27,927,000	37,616,000	24,846,000	9,612,000	122,398,000
3. Private Sector Development Project							
A. Civil Legal Reform Activity	70,000	600,000	775,000	925,000	315,000	185,000	2,870,000
B. National ID/Credit Bureau	95,000	2,977,000	2,481,000	1,900,000	1,455,000	1,092,000	10,000,000
C. Land Administration Reform Activity	510,000	2,415,000	6,800,000	5,200,000	3,600,000	1,975,000	20,500,000
D. Payment and Settlement System Activity	.....	800,000	600,000	300,000	.....	.....	1,700,000
E. Gender Equality in Economic Rights Activity	35,000	350,000	250,000	200,000	100,000	100,000	1,035,000
Subtotal	710,000	7,142,000	10,906,000	8,525,000	5,470,000	3,352,000	36,105,000
4. Monitoring and Evaluation							
Monitoring and Evaluation	500,000	2,605,000	684,000	755,000	664,000	2,600,000	7,808,000
Subtotal	500,000	2,605,000	684,000	755,000	664,000	2,600,000	7,808,000
5. Program Management and Oversight							
A. MCA Lesotho	1,981,000	1,905,000	2,142,000	2,323,000	3,423,000	2,660,000	14,434,000
B. Fiscal Agent [1]	1,250,000	740,000	1,250,000	1,570,000	1,375,000	475,000	6,660,000
C. Procurement Agent [2]	1,250,000	700,000	1,175,000	1,475,000	1,300,000	450,000	6,350,000
D. Bank Contract	5,000	5,000	5,000	5,000	5,000	5,000	30,000
E. Auditing	623,000	623,000	623,000	623,000	623,000	623,000	3,738,000
F. Environmental/Social Oversight (consultants)	.....	200,000	200,000	200,000	200,000	200,000	1,000,000
Subtotal	5,109,000	4,173,000	5,395,000	6,196,000	6,926,000	4,413,000	32,212,000
Total Estimated MCC Contribution	15,668,000	52,973,000	69,145,000	102,166,000	85,784,000	36,815,000	362,551,000

Note: Health and Water Sector infrastructure costs include estimated costs for environmental/social studies and mitigation.

Annex III. Description of the Monitoring and Evaluation Plan

This Annex III to this Compact (the ''M&E Annex'') generally describes the components of the plan to measure and evaluate progress toward achievement of the Compact Goal and the Objectives (the ''M&E Plan''). Except as defined in this M&E Annex, each capitalized term in this M&E Annex will have the same meaning given such term elsewhere in this Compact.

1. Overview

MCC and the Government (or a mutually acceptable Government affiliate or a permitted designee of the Government) will formulate, agree to and the Government will implement, or cause to be implemented, an M&E Plan that specifies (a) how progress toward the Compact Goal, Objectives, and the intermediate results of each Project and Project activity set forth in this M&E Annex (the ''Outcomes'') will be monitored (the ''Monitoring Component''); (b) a methodology, process and timeline for the evaluation of planned, ongoing, or completed Projects and Project activities to determine their efficiency, effectiveness,

impact and sustainability (the ''Evaluation Component''); and (c) other components of the M&E Plan described below.

Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as periodically generated reports, will be made publicly available on the MCA-Lesotho Web site and elsewhere. The Compact Goal, Objectives, and Outcomes of the Program can be summarized as follows:

2. Monitoring Component

To monitor progress toward the achievement of the Compact Goal, Objectives, and Outcomes, the Monitoring Component of the M&E Plan will identify (a) the Indicators (as defined below); (b) the party or parties responsible, the timeline, and the instrument for collecting data and reporting on each Indicator to MCA–Lesotho; and (c) the method by which the reported data will be validated.

(a) Indicators. The M&E Plan will measure the impacts of the Program using objective and reliable information (''Indicators''). Each Indicator will have one or more expected values that specify the expected results and expected time for the impacts to be achieved (''Target''). The M&E Plan will measure and report on Indicators at four levels. First, the Indicator(s) at the Compact Goal level (''Goal Indicator'') will measure the impact of the overall Program and each Project. Second, the Indicators at the Objective level (''Objective Indicator'') will measure the final results of each of the Projects, including impacts on the intended beneficiaries identified in Annex I (collectively, the ''Beneficiaries''). Third, Indicators at the intermediate level (''Outcome Indicator'') will measure the results achieved under each of the Project activities and will provide an early measure of the likely impact under each of the Projects. A fourth level of Indicators (''Output Indicator'') will be included in the M&E Plan to measure the direct outputs of Project activities. Indicators will be disaggregated by sex, income level and age, to the extent practicable. Subject to prior written approval from MCC, MCA-Lesotho may add Indicators or modify the Targets of existing Indicators.

COMPACT GOAL INDICATORS, BASELINES AND TARGETS [3]

Indicator	Baseline	Year 5	Year 10
GDP growth (annual percent)	1.4	5.1	6.75
GDP per capita (US$)	688	788	1040

[3] November 2006 International Monetary Fund Article IV Consultation Paper.

WATER PROJECT INDICATORS AND DEFINITIONS [4]

Objective: "Improve water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management"

Objective-level result	Indicator	Definition of Indicator
Morbidity due to water borne diseases is decreased.	Incidence of water and sanitation related diseases, nationally (number).	Cases of diarrhea reported to health facilities.[5]
Jobs in garment industry are retained/expanded.	Employment (in water related industries) (number).	Total factory workers employed in Thetsane and Tikoe industrial parks.
Outcome-level Result		
Urban domestic water supply is improved	Urban access to potable water supply (percent).	Proportion of urban customers within 150 meters from a water supply.[6]
Bulk water supply to lowlands is increased	Flow delivered after treatment at Metolong site (m^3/year).	The m^3/year of water after treatment at Metolong site.
WASA operations are improved	Unaccounted for urban water (percent)	The percentage of urban water that is not accounted for (non-revenue losses plus physical losses).[7]
Rural water supply is expanded	Number of people covered with MCC rural water supply (number).	New people covered per year in rural areas. Covered: within 150m walking distance, 30l/person/day.
Rural sanitation is improved	Number of new VIP latrines provided to households (number).	Total number of new VIP latrines provided to households.[8]

[4] Note: the wetlands project will be monitored at the output level.
[5] Diarrhea will serve as a proxy for all water borne diseases. This information will be disaggregated by urban and rural communities receiving intervention from MCC.
[6] This will be disaggregated by WASA center.
[7] Ibid.
[8] This information will be disaggregated by District.

WATER PROJECT INDICATORS AND TARGETS

Objective: "Improve water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management"

Objective-level indicator	Baseline	Year 5
Incidence of water and sanitation related diseases (number)	55,045	40,000.
Employment (in water related industries) (number)	22,700	40,000.
Outcome-level Indicator	Baseline	Year 5.
Urban access to potable water supply (percent)	55%	70%.
Flow delivered after treatment at Metolong site (m^3/year)	0	7,640.
Unaccounted for urban water (percent)	27%	22%.
Number of people covered with MCC rural water supply (number)	0	100,000.
Number of new VIP latrines provided to households (number)	0	10,000.

HEALTH PROJECT INDICATORS AND DEFINITIONS

Objective: Increase access to life-extending ART and essential health services by providing a sustainable delivery platform

Objective-level result	Indicator	Definition of Indicator
	Mortality rate (per 1000)	Number of deaths per 1000.[9]
Lives are extended	People with HIV still alive 12 months after initiation of treatment (percent).	Numerator: Number of individuals still alive and on therapy after initiating treatment after 12 months. Denominator: Number of individuals initiating treatment at the same time.
	Prevalence of TB (per 100,000)	Annual notification of all forms of TB per 100,000 population.[10]
Outcome-level result		
Quality of health service delivery is improved	Essential health services available (percent)	Percentage of facilities providing full package of standard services for level of center disaggregated by ownership.[11]
	TB treatment success rate (percent)	Numerator: Number of patients smear positive declared cured + Number of smear positive patients who completed treatment. Denominator: Total number of TB positive smear cases (national figures).
	Facilities staffed with standard number and type of qualified staff (percent).	Percentage of facilities staffed with standard number and type of qualified staff according to level of facility standard.[12]
Usage of health services is increased	Total patient visits (number)	Total number of patients treated in health centers in Lesotho.

HEALTH PROJECT INDICATORS AND DEFINITIONS—Continued

Objective: Increase access to life-extending ART and essential health services by providing a sustainable delivery platform		
Objective-level result	Indicator	Definition of Indicator
	Mortality rate (per 1000)	Number of deaths per 1000.[9]
	Immunization rate (percent)	Percent of children under one year of age receiving measles antigen nationwide.
	Health centers deliveries	TBD.[13]
	Total number of people receiving ARV treatment (number).	Total number with advanced HIV/AIDS receiving ARV treatment per year.[14]
Health centers are equipped and maintained at standards.	Utility availability (percent)	Percent of health facilities with functioning utilities.[15]
Health professionals are trained and retained	Total annual enrollment at NHTC (number)	Number of students enrolled.[16]
Laboratory services are improved	Referred tests performed per quarter (number)	Average referred tests performed at the central laboratory per quarter during the past year.[17]
Blood transfusion services are improved	Blood units collected per quarter (number)	Average number of blood units collected per quarter during the past year.

[9] This information will be disaggregated by age and gender.
[10] This information will be disaggregated by district, age and gender.
[11] This information will be disaggregated by type of facility-MOHSW and CHAL. The summary statistic is the simple average.
[12] Ibid.
[13] This indicator definition still requires confirmation.
[14] This information will be disaggregated by age and gender and health facility (health centers and hospitals).
[15] This information will be disaggregated by electricity, water and communications.
[16] This information will be disaggregated by gender and by area of study (e.g., general nursing, lab science, pharmacy technology, and midwifery).
[17] This information will be disaggregated by test type: clinical chemistry, cytologty, histology (summary statistic is sum of types).

HEALTH PROJECT INDICATORS AND TARGETS

Objective: Increase access to life-extending ART and essential health services by providing a sustainable delivery platform		
Objective-level result	Baseline	Year 5
Mortality rate (per 1000)	Under 5 = 113 F:15–49 = 9.9 M:15–49 = 12.3	Same as baseline.[18]
People with HIV still alive 12 months after initiation of treatment (percent).	82%	90%.
Prevalence of TB (per 100,000)	592	400.
Outcome-level result		
Essential health services available (percent)	TBD[19]	80%.
TB treatment success rate (percent)	64%	85%.
Facilities staffed with standard number and type of qualified staff (percent).	5%	60%.
Total patient visits (number)	800,000	1,000,000.
Immunization rate (percent)	78%	90%.
Number of people receiving ARV treatment (number)	17,966	35,000.
Health centers deliveries	TBD	TBD.
Utility availability (percent)	TBD[20]	90%.
Total annual enrollment at NHTC (number)	350	938.
Referred tests performed per quarter (number)	885	1,800.
Blood units collected per quarter (number)	700	1,500.

[18] Mortality rates would increase in the absence of MCC's intervention.
[19] Baseline should be available with the results of the accreditation exercise—expected to be completed by August 2007.
[20] Ibid.

PSD PROJECT INDICATORS AND DEFINITIONS

Objective: "Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy"		
Objective-level result	Indicator	Definition of Indicator[21]
Increased private sector economic activity	Value of investment (million maluti) Value of credit extended (million maluti)	
Outcome-level Results		
Access to credit is expanded	Private credit bureau coverage (percent)	The percentage of the adult population listed by a private credit bureau with current information on repayment history, unpaid debts or credit outstanding.

PSD PROJECT INDICATORS AND DEFINITIONS—Continued

Objective: "Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy"		
Objective-level result	Indicator	Definition of Indicator [21]
Utilization of electronic funds transfer is increased.	Domestic electronic funds transfers (number)	Total number of payments associated with salaries and pensions made through EFT per year. [22]
Use of land as collateral is increased	Land used as collateral (number)	Total annual number of mortgage bonds registered.
	Land transactions costs (percent of property value).	Official costs required by law for businesses to purchase land and a building to transfer the property title from the seller to the buyer so that the buyer can use the property for expanding its business, as collateral in taking new loans or, if necessary, to sell to another business.
Use of land as collateral is increased	Land transactions times (days)	The median duration that property lawyers or registry officials indicate is necessary to complete a procedure.
Commercial dispute resolution is increased	Pending civil cases (number)	Total number of pending civil cases in the High Court.
Knowledge, attitudes, and practices of women's economic rights are improved.	Gender equality index	Percent change in index of knowledge, attitudes, and practices for supporting gender equality in economic rights.

[21] These indicator definitions still require confirmation.
[22] This number will be disaggregated by salaries and pensions paid by government agencies.

PSD PROJECT INDICATORS AND TARGETS

Objective: "Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy"		
Objective level indicators	Baseline [23]	Year 5
Value of investment (million maluti)	TBD	TBD.
Value of credit extended (million maluti)	TBD	TBD.
Outcome Level Indicators		
Private credit bureau coverage (percent)	0%	13%.
Domestic electronic funds transfers (number)	0	200,000.
Land used as collateral (number)	108	430.
Land transactions costs (percent of property value)	8.40%	4.20%.
Land transactions times (days)	101[24]	30.
Pending civil cases (number)	1031	600.
Gender equality index	TBD[25]	TBD.

[23] These indicator baselines and targets still require confirmation.
[24] This baseline figure is based on the World Bank's "Doing Business" report. As the deeds registry improves its data management, the baseline will be revised according to deeds registry figures.
[25] A baseline survey is planned before the end of Year 1.

(b) Data Collection and Reporting. The M&E Plan will establish guidelines for data collection and a reporting framework, including a schedule of Program reporting and responsible parties. The management of MCA-Lesotho will conduct regular assessments of Program performance to inform the MCA-Lesotho board of directors and MCC of progress under the Program and to alert these parties to any problems. These assessments will report the actual results compared to the Targets on the Indicators referenced in the Monitoring Component, explain deviations between these actual results and Targets, and in general, serve as a management tool for implementation of the Program. With respect to any data or reports received by MCA-Lesotho, MCA-Lesotho will promptly deliver such reports to MCC along with any other related documents, as specified in the M&E Plan or as may be requested from time to time by MCC.

(c) Data Quality Reviews. As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan will be reviewed to ensure that data reported are as reliable, timely and valid as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where consistent levels of quality are not possible, given in-country capacity or other constraints. MCA-Lesotho will enter into an agreement (in a form acceptable to MCC) with the Reviewer to fulfill the provisions set forth in Section 1 of this Annex III and this clause (c).

3. Evaluation Component

The Program will be evaluated on the extent to which the interventions contribute to the Compact Goal. The Evaluation Component of the M&E Plan will contain a methodology, process and timeline for collecting and analyzing data in order to assess planned, ongoing, or completed Project activities to determine their efficiency, effectiveness, impact and sustainability. The evaluations should use state-of-the-art methods for addressing selection bias.

The Government will implement, or cause to be implemented, surveys to collect longitudinal data on both Beneficiary and non-Beneficiary households. The Evaluation Component will contain two types of reports: Final Evaluations and Ad Hoc Evaluations (each as defined below), and will be finalized before any Disbursement for specific Project activities or the Program.

(a) Final Evaluation. MCA-Lesotho will engage an independent evaluator to conduct a program evaluation at the expiration or termination of the Program (''Final Evaluation''). The evaluation methodology, timeline, data collection, and analysis requirements will be finalized and detailed in the M&E Plan. The Final Evaluations must at a minimum (i) estimate quantitatively and in a statistically valid way, the causal relationship between the Compact Goals (to the extent possible), the Objectives and Outcomes; (ii) determine if and analyze the reasons why the Compact Goals, Objectives and Outcomes were or were not achieved; and (iii) assess the overlapping benefits of the Projects.

(b) Ad Hoc Evaluations or Special Studies. Either MCC or MCA-Lesotho may request ad hoc or interim evaluations or special studies of Projects, Project activities, or the Program as a whole prior to the expiration of the Compact Term (each, an ''Ad Hoc Evaluation''). If MCA-Lesotho engages an evaluator for an Ad Hoc Evaluation, the evaluator will be an externally contracted independent source selected by MCA-Lesotho, subject to the prior written approval of MCC, following a tender in accordance with the MCC Program Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter, the Program Implementation Agreement or any other agreement or arrangement entered into by the Government in connection with this Compact or the Program. If MCA-Lesotho requires an ad hoc independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project activity or seeking funding from other donors, no MCC Funding or MCA-Lesotho resources may be applied to such evaluation or special study without MCC's prior written approval.

4. Other Components of the M&E Plan

In addition to the Monitoring Components and the Evaluation Components, the M&E Plan will include the following components for the Program, Projects and Project activities, including, where appropriate, roles and responsibilities of the relevant parties and Providers:

(a) Costs. A detailed annual budget estimate for all components of the M&E Plan.

(b) Assumptions and Risks. Any assumptions and risks external to the Program that underlie the accomplishment of the Objectives and Outcomes; provided such assumptions and risks will not excuse performance of the Parties, unless otherwise expressly agreed to in writing by the Parties.

5. Implementation of the M&E Plan

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, will be in accordance with this M&E Annex, the Program Implementation Agreement or any other agreement or arrangement entered into by the Government in connection with this Compact or the Program.

(b) Stakeholders Committee. The completed portions of the M&E Plan will be presented to the stakeholders committee formed in accordance with the Guidelines for Accountable Entities and Implementation Structures provided on the MCC Web site at such stakeholders committee's initial meeting, and any amendments or modifications to and any additional components of the M&E Plan will be presented to such stakeholders committee at appropriate subsequent meetings of such committee. Such stakeholders committee will have the opportunity to present its suggestions to the M&E Plan, which the board of directors of MCA-Lesotho will take into consideration in its review of any amendments to the M&E Plan during the Compact Term.

(c) Disbursement for a Project Activity. As a condition to each Disbursement there will be satisfactory progress on the M&E Plan for the relevant Project or Project activity, and substantial compliance with the M&E Plan, including any reporting requirements. In addition, for certain activities, collection of baseline data may be a condition precedent for specified Disbursements.

(d) Modifications. Notwithstanding anything to the contrary contained in this Compact, including the requirements of this M&E Annex, the Parties may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending this Compact; provided, however, that any such modification or amendment of the M&E Plan is reviewed by the stakeholders committee referenced in clause (b) above and has been approved by MCC in writing and is otherwise consistent with the requirements of this Compact and its Objectives, the Program Implementation Agreement and any other relevant agreement or arrangement entered into by the Government in connection with this Compact or the Program.

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August 3, 2007

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 409

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 409

[CMS–1545–F]

RIN 0938–AO64

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008

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

ACTION: Final rule.

SUMMARY: This final rule updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2008. In addition, this final rule revises and rebases the SNF market basket, and modifies the threshold for the adjustment to account for market basket forecast error. This final rule also responds to public comments submitted on the proposed rule and makes a technical correction in the regulations text.

DATES: This final rule becomes effective on October 1, 2007.

FOR FURTHER INFORMATION CONTACT:

Ellen Berry, (410) 786–4528 (for information related to the case-mix classification methodology).

Mollie Knight, (410) 786–7948 (for information related to the SNF market basket and labor-related share).

Jeanette Kranacs, (410) 786–9385 (for information related to the development of the payment rates).

Bill Ullman, (410) 786–5667 (for information related to level of care determinations, consolidated billing, and general information).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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Abbreviations

In addition, because of the many terms to which we refer by abbreviation in this final rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

AIDS Acquired Immune Deficiency Syndrome
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
CAH Critical Access Hospital
CBSA Core-Based Statistical Area
CFR Code of Federal Regulations
CMS Centers for Medicare & Medicaid Services
ECI Employment Cost Index
FLSA Fair Labor Standards Act, Pub. L. 75–718
FQHC Federally Qualified Health Center
FR **Federal Register**
FY Fiscal Year
GAO Government Accountability Office
GII Global Insight, Inc.
HCPCS Healthcare Common Procedure Coding System
MCR Medicare Cost Report
MDS Minimum Data Set
MEDPAC Medicare Payment Advisory Commission
MEDPAR Medicare Provider Analysis and Review File
MIEA Medicare Improvements and Extension Act of 2006, Pub. L. 109–432
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173
MSA Metropolitan Statistical Area
OMB Office of Management and Budget
PPI Producer Price Index
PPS Prospective Payment System
RFA Regulatory Flexibility Act, Pub. L. 96–354
RHC Rural Health Clinic
RIA Regulatory Impact Analysis
RUG–III Resource Utilization Groups, Version III
RUG–53 Refined 53-Group RUG–III Case-Mix Classification System
SCHIP State Children's Health Insurance Program
SNF Skilled Nursing Facility
STM Staff Time Measurement
UMRA Unfunded Mandates Reform Act, Pub. L. 104–4

I. Background

On May 4, 2007, we published a proposed rule in the **Federal Register** (72 FR 25526, hereafter referred to as the FY 2008 proposed rule), setting forth the proposed updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for FY 2008. Annual updates to the prospective payment system (PPS) rates for skilled nursing facilities (SNFs) are required by section 1888(e) of the Social Security Act (the Act), as added by section 4432 of the Balanced Budget Act of 1997 (BBA), and amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Our most recent annual update occurred in an update notice (71 FR 43158, July 31, 2006) that set forth updates to the SNF PPS payment rates for fiscal year (FY) 2007. We subsequently published a correction notice (71 FR 57519, September 29, 2006) with respect to those payment rate updates.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. In this final rule, we are updating the per diem payment rates for SNFs for FY 2008. Major elements of the SNF PPS include:

• *Rates.* As discussed in section I.F.1 of the FY 2008 proposed rule, we established per diem Federal rates for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. We update the rates annually using a SNF market basket index, and we adjust them by the hospital inpatient wage index to account for geographic variation in wages. We also apply a case-mix adjustment to account for the relative resource utilization of different patient types. This adjustment utilizes a refined, 53-group version of the Resource Utilization Groups, version III (RUG–III) case-mix classification system, based on information obtained from the required resident assessments using the Minimum Data Set (MDS) 2.0. Additionally, as noted in the August 4, 2005 final rule (70 FR 45028), the payment rates at various times have also reflected specific legislative provisions, including section 101 of the BBRA, sections 311, 312, and 314 of the BIPA, and section 511 of the MMA.

• *Transition.* Under sections 1888(e)(1)(A) and (e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the Federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full Federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments entirely on the adjusted Federal per diem rates, we no longer include adjustment factors related to facility-specific rates for the coming fiscal year.

• *Coverage.* The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the output of beneficiary assessment and RUG–III classifying activities. This approach includes an administrative presumption that utilizes a beneficiary's initial classification in one of the upper 35 RUGs of the refined 53-group system to assist in making certain SNF level of care determinations, as was discussed in greater detail in section II.E. of the FY 2008 proposed rule.

• *Consolidated Billing.* The SNF PPS includes a consolidated billing provision that requires a SNF to submit consolidated Medicare bills to its fiscal intermediary for almost all of the services that its residents receive during the course of a covered Part A stay. While section 313 of the BIPA repealed the Part B aspect of the consolidated billing requirement, SNFs maintain responsibility for submitting consolidated Medicare bills to the fiscal intermediary for physical, occupational, and speech-language therapy that residents receive during a noncovered stay. The statute excludes a small list of services from the consolidated billing provision (primarily those of physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. A more detailed discussion of this provision appeared in section V. of the FY 2008 proposed rule.

• *Application of the SNF PPS to SNF Services Furnished by Swing-bed Hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, these services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. A more detailed discussion of this provision can be found in section VI. of the FY 2008 proposed rule.

• *Technical Correction.* We are also taking this opportunity to make a technical correction in the text of the regulations, as discussed in greater detail in section IV of this final rule.

B. Requirements of the Balanced Budget Act of 1997 (BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish annually in the **Federal Register:**

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.
2. The case-mix classification system to be applied with respect to these services during the FY.
3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG–III classification structure (see section II.E of the FY 2008 proposed rule for a discussion of the relationship between the case-mix classification system and SNF level of care determinations).

Along with a number of other revisions outlined later in this preamble, this final rule provides the annual updates to the Federal rates as mandated by the Act.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA)

There were several provisions in the BBRA that resulted in adjustments to the SNF PPS. We described these provisions in detail in the final rule that we published in the **Federal Register** on July 31, 2000 (65 FR 46770). In particular, section 101(a) of the BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups. In accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired on January 1, 2006, with the implementation of case-mix refinements (see section I.F.1. of this final rule). We included further information on BBRA provisions that affected the SNF PPS in Program Memorandums A–99–53 and A–99–61 (December 1999).

Also, section 103 of the BBRA designated certain additional services for exclusion from the consolidated billing requirement, as discussed in section V. of the FY 2008 proposed rule and in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at *http://www.cms.hhs.gov/transmittals/downloads/AB001860.pdf.* Further, for

swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the July 31, 2001 final rule (66 FR 39562), we made conforming changes to the regulations at § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002, to reflect section 408 of the BBRA.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

The BIPA also included several provisions that resulted in adjustments to the SNF PPS. We described these provisions in detail in the final rule that we published in the **Federal Register** on July 31, 2001 (66 FR 39562). In particular:

- Section 203 of the BIPA exempted CAH swing-beds from the SNF PPS. We included further information on this provision in Program Memorandum A–01–09 (Change Request #1509), issued January 16, 2001, which is available online at *http://www.cms.hhs.gov/transmittals/downloads/a0109.pdf.*
- Section 311 of the BIPA revised the statutory update formula for the SNF market basket, and also directed us to conduct a study of alternative case-mix classification systems for the SNF PPS. In 2006, we submitted a report to the Congress on this study, which is available online at *http://www.cms.hhs.gov/snfpps/downloads/rc_2006_pc-ppssnf.pdf.*
- Section 312 of the BIPA provided for a temporary increase of 16.66 percent in the nursing component of the case-mix adjusted Federal rate for services furnished on or after April 1, 2001, and before October 1, 2002. The add-on is no longer in effect. This section also directed the Government Accountability Office (GAO) to conduct an audit of SNF nursing staff ratios and submit a report to the Congress on whether the temporary increase in the nursing component should be continued. The report (GAO–03–176), which GAO issued in November 2002, is available online at *http://www.gao.gov/new.items/d03176.pdf.*
- Section 313 of the BIPA repealed the consolidated billing requirement for services (other than physical, occupational, and speech-language therapy) furnished to SNF residents during noncovered stays, effective January 1, 2001. (A more detailed discussion of this provision appears in section V. of the FY 2008 proposed rule.)
- Section 314 of the BIPA corrected an anomaly involving three of the RUGs that the BBRA had designated to receive the temporary payment adjustment discussed above in section I.C. of this final rule. (As noted previously, in accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired with the implementation of case-mix refinements on January 1, 2006.)
- Section 315 of the BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes. As discussed in section III.B.3 of this final rule, this has proven not to be feasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of such data.

We included further information on several of the BIPA provisions in Program Memorandum A–01–08 (Change Request #1510), issued January 16, 2001, which is available online at *http://www.cms.hhs.gov/transmittals/downloads/a0108.pdf.*

E. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

The MMA included a provision that results in a further adjustment to the SNF PPS. Specifically, section 511 of the MMA amended section 1888(e)(12) of the Act to provide for a temporary increase of 128 percent in the PPS per diem payment for any SNF resident with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. This special AIDS add-on was to remain in effect until ''* * * such date as the Secretary certifies that there is an appropriate adjustment in the case mix * * *.'' The AIDS add-on is also discussed in Program Transmittal #160 (Change Request #3291), issued on April 30, 2004, which is available online at *http://www.cms.hhs.gov/transmittals/downloads/r160cp.pdf.* As discussed in the SNF PPS final rule for FY 2006 (70 FR 45028, August 4, 2005), we did not address the certification of the AIDs add-on with the implementation of the case-mix refinements, thus allowing the temporary add-on payment created by section 511 of the MMA to continue in effect.

For the limited number of SNF residents that qualify for the AIDS add-on, implementation of this provision results in a significant increase in payment. For example, using fiscal year 2006 data, we identified 2,590 SNF residents with a principal or secondary diagnosis code of 042 (''Human Immunodeficiency Virus (HIV) Infection''). For FY 2008, an urban facility with a resident with AIDS in RUG group ''SSA'' would have a case-mix adjusted payment of almost $250.65 (see Table 4) before the application of the MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted payment of approximately $571.48.

In addition, section 410 of the MMA contained a provision that excluded from consolidated billing certain practitioner and other services furnished to SNF residents by rural health clinics (RHCs) and Federally Qualified Health Centers (FQHCs). (A more detailed discussion of this provision appears in section V. of the FY 2008 proposed rule, as well as in Program Transmittal #390 (Change Request #3575), issued December 10, 2004, which is available online at *http://www.cms.hhs.gov/transmittals/downloads/r390cp.pdf.*)

F. Skilled Nursing Facility Prospective Payment System—General Overview

We implemented the Medicare SNF PPS effective with cost reporting periods beginning on or after July 1, 1998. This PPS pays SNFs through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but were furnished to Medicare beneficiaries in a SNF during a covered Part A stay. A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be

payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. In compiling the database used to compute the Federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA prescribed, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The RUG–III classification system uses beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 53 RUG–III groups. The original RUG–III case-mix classification system included 44 groups. However, under refinements that became effective on January 1, 2006, we added nine new groups—comprising a new Rehabilitation plus Extensive Services category—at the top of the RUG hierarchy. The May 12, 1998 interim final rule (63 FR 26252) included a complete and detailed description of the original 44-group RUG–III case-mix classification system. A comprehensive description of the refined 53-group RUG–III case-mix classification system (RUG–53) appeared in the proposed and final rules for FY 2006 (70 FR 29070, May 19, 2005, and 70 FR 45026, August 4, 2005).

Further, in accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the Federal rates in this final rule reflect an update to the rates that we published in the July 31, 2006 final rule for FY 2007 (71 FR 43158) and the associated correction notice (71 FR 57519, September 29, 2006), equal to the full change in the SNF market basket index. A more detailed discussion of the SNF market basket index and related issues appears in sections I.F.2. and III.C of the FY 2008 proposed rule.

2. Rate Updates Using the Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. We use the SNF market basket index to update the Federal rates on an annual basis. In the FY 2008 proposed rule, we proposed to revise and rebase the market basket to reflect 2004 Medicare-allowable cost data, as detailed in section III.A of that proposed rule. The proposed FY 2008 market basket increase was 3.3 percent. (However, we also noted that both the President's budget and the recommendations of the Medicare Payment Advisory Commission (MedPAC) included a proposal for a zero percent update in the SNF market basket for FY 2008, and that the provisions outlined in the proposed rule would need to reflect any legislation that the Congress might enact to adopt this proposal.)

In the FY 2008 proposed rule, we also proposed to revise the threshold percentage that serves to trigger an adjustment to account for market basket forecast error, which we discuss in greater detail in section III.C.2 of this final rule. Table 1 below shows the forecasted and actual market basket amount for FY 2006.

TABLE 1.—DIFFERENCE BETWEEN THE FORECASTED AND ACTUAL MARKET BASKET INCREASES FOR FY 2006

Index	Forecasted actual FY 2006 increase*	Actual FY 2006 increase**	FY 2006 difference
SNF	3.1	3.4	0.3

*Published in **Federal Register**; based on the second quarter 2005 Global Insight Inc. forecast (97 index).
**Based on the second quarter 2007 Global Insight forecast (97 index).

II. Summary of the Provisions of the FY 2008 Proposed Rule

The FY 2008 proposed rule included proposed updates to the Federal payment rates used under the SNF PPS. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the updates reflect the full SNF market basket percentage change for the fiscal year. We also proposed to revise and rebase the SNF market basket (which would include updating the base year from FY 1997 to FY 2004), and to modify the threshold that serves to trigger an adjustment to account for market basket forecast error. In addition, we proposed to specify an area wage adjustment methodology for those geographic areas that lack hospital wage index data. Further, we invited public comments on additional HCPCS codes that could represent the type of ''high-cost, low probability'' services within certain designated service categories (that is, chemotherapy and its administration, radioisotope services, and customized prosthetic devices) that section 103 of the BBRA has authorized us to exclude from the SNF consolidated billing provision. More detailed information on each of these issues, to the extent that we received public comments on them, appears in the discussion contained in the following sections of this final rule.

III. Analysis of and Response to Public Comments on the FY 2008 Proposed Rule

In response to the publication of the May 4, 2007 proposed rule for FY 2008, we received 17 timely items of correspondence from the public. The comments originated primarily from various trade associations and major organizations, but also from individual providers, corporations, and government agencies.

Brief summaries of each proposed provision, a summary of the public comments we received and our responses to the comments are set forth below.

A. General Comments on the FY 2008 Proposed Rule

In addition to the comments that we received on the proposed rule's discussion of specific aspects of the SNF PPS (which we address later in this final rule), commenters also submitted the following, more general observations on the payment system.

Comment: Some commenters asked us to consider modifications to the SNF PPS payment system that would better recognize the specialized care provided in hospital-based SNFs. A few commenters encouraged us to create a SNF outlier policy. Other commenters requested that we address perceived inadequacies in payment for non-therapy ancillary services, including those services relating to the provision of ventilator care in SNFs.

Response: As noted previously in section I.F.1 of this final rule, the SNF PPS final rule for FY 2006 (70 FR 45034, August 4, 2005) introduced a refined case-mix classification system as of January 1, 2006, which added nine new Rehabilitation plus Extensive Service groups to the RUG hierarchy to account more accurately for patients with both rehabilitation needs and extensive services. At that time, we described the FY 2006 refinements as a first step in updating the SNF PPS. We described our intent to perform a staff time measurement study, in which we would survey SNFs and collect data that better reflects current practice patterns and resource use. We are concerned that incentives of the SNF PPS and the public reporting of nursing home quality measures likely have altered industry practices, and have had a significant impact on the nursing resources required to treat different types of patients.

The Staff Time and Resource Intensity Verification (STRIVE) project started onsite facility data collection in the spring of 2006, and will continue to collect data through the summer of 2007. When complete, the study will have collected data from approximately 200 facilities from approximately 15 States. While facilities were selected largely based on random sampling techniques, targeted sampling was also performed to ensure adequate representation of special populations, such as residents in hospital-based facilities. In addition to providing us with data to analyze and evaluate how current industry practices have affected the Federal classification system, the data will enable us to analyze non-therapy ancillary usage more thoroughly, assess the need for a SNF outlier policy, and gain a better understanding of the resource usage of residents in hospital-based SNFs. We plan to make available some preliminary analysis results in 2008, which should aid us in reviewing and addressing some of the concerns expressed by the commenters.

B. Annual Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

1. Federal Prospective Payment System

This final rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2007. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

a. Costs and Services Covered by the Federal Rates

The Federal rates apply to all costs (routine, ancillary, and capital-related) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295–97)).

b. Methodology Used for the Calculation of the Federal Rates

The FY 2008 rates reflect an update using the full amount of the latest market basket index. The FY 2008 market basket increase factor is 3.3 percent. A complete description of the multi-step process initially appeared in the May 12, 1998 interim final rule (63 FR 26252), as further revised in subsequent rules. We note that in accordance with section 101(c)(2) of the BBRA, the previous, temporary increases in the per diem adjusted payment rates for certain designated RUGs, as specified in section 101(a) of the BBRA and section 314 of the BIPA, are no longer in effect due to the implementation of case-mix refinements as of January 1, 2006. However, the temporary increase of 128 percent in the per diem adjusted payment rates for SNF residents with AIDS, enacted by section 511 of the MMA, remains in effect.

We used the SNF market basket to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal fiscal year beginning October 1, 2006, and ending September 30, 2007, and the midpoint of the Federal fiscal year beginning October 1, 2007, and ending September 30, 2008, to which the payment rates apply. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, we update the payment rates for FY 2008 by a factor equal to the full market basket index percentage increase. We further adjusted the rates by a wage index budget neutrality factor, described later in this section. Tables 2 and 3 reflect the updated components of the unadjusted Federal rates for FY 2008.

TABLE 2.—FY 2008 UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing-case-mix	Therapy-case-mix	Therapy-non-case-mix	Non-case-mix
Per Diem Amount	$146.62	$110.44	$14.54	$74.83

TABLE 3.—FY 2008 UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing-case-mix	Therapy-case-mix	Therapy-non-case-mix	Non-case-mix
Per Diem Amount	$140.08	$127.35	$15.54	$76.21

2. Case-Mix Refinements

Under the BBA, each update of the SNF PPS payment rates must include the case-mix classification methodology applicable for the coming Federal fiscal year. As indicated previously in section I.F.1, the payment rates set forth in this final rule reflect the use of the refined RUG–53 classification system that we discussed in detail in the proposed and final rules for FY 2006 (70 FR 29070, May 19, 2005, and 70 FR 45026, August 4, 2005). As noted in the FY 2006 final rule, we deferred RUG–53 implementation from the beginning of FY 2006 (October 1, 2005) until January 1, 2006, in order to allow sufficient time to prepare for and ease the transition to the refinements (70 FR 45034).

We list the case-mix adjusted payment rates separately for urban and rural SNFs in Tables 4 and 5, with the corresponding case-mix values. These tables do not reflect the AIDS add-on enacted by section 511 of the MMA, which we apply only after making all other adjustments (wage and case-mix).

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Table 4
RUG-53
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
URBAN

RUG-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUX	1.90	2.25	278.58	248.49		74.83	601.90
RUL	1.40	2.25	205.27	248.49		74.83	528.59
RVX	1.54	1.41	225.79	155.72		74.83	456.34
RVL	1.33	1.41	195.00	155.72		74.83	425.55
RHX	1.42	0.94	208.20	103.81		74.83	386.84
RHL	1.37	0.94	200.87	103.81		74.83	379.51
RMX	1.93	0.77	282.98	85.04		74.83	442.85
RML	1.68	0.77	246.32	85.04		74.83	406.19
RLX	1.31	0.43	192.07	47.49		74.83	314.39
RUC	1.28	2.25	187.67	248.49		74.83	510.99
RUB	0.99	2.25	145.15	248.49		74.83	468.47
RUA	0.84	2.25	123.16	248.49		74.83	446.48
RVC	1.23	1.41	180.34	155.72		74.83	410.89
RVB	1.09	1.41	159.82	155.72		74.83	390.37
RVA	0.82	1.41	120.23	155.72		74.83	350.78
RHC	1.22	0.94	178.88	103.81		74.83	357.52
RHB	1.11	0.94	162.75	103.81		74.83	341.39
RHA	0.94	0.94	137.82	103.81		74.83	316.46
RMC	1.15	0.77	168.61	85.04		74.83	328.48
RMB	1.09	0.77	159.82	85.04		74.83	319.69
RMA	1.04	0.77	152.48	85.04		74.83	312.35
RLB	1.14	0.43	167.15	47.49		74.83	289.47
RLA	0.85	0.43	124.63	47.49		74.83	246.95
SE3	1.86		272.71		14.54	74.83	362.08
SE2	1.49		218.46		14.54	74.83	307.83
SE1	1.26		184.74		14.54	74.83	274.11
SSC	1.23		180.34		14.54	74.83	269.71
SSB	1.13		165.68		14.54	74.83	255.05
SSA	1.10		161.28		14.54	74.83	250.65
CC2	1.22		178.88		14.54	74.83	268.25
CC1	1.06		155.42		14.54	74.83	244.79
CB2	0.98		143.69		14.54	74.83	233.06
CB1	0.91		133.42		14.54	74.83	222.79
CA2	0.90		131.96		14.54	74.83	221.33
CA1	0.80		117.30		14.54	74.83	206.67
IB2	0.74		108.50		14.54	74.83	197.87
IB1	0.72		105.57		14.54	74.83	194.94
IA2	0.61		89.44		14.54	74.83	178.81
IA1	0.56		82.11		14.54	74.83	171.48
BB2	0.73		107.03		14.54	74.83	196.40
BB1	0.69		101.17		14.54	74.83	190.54
BA2	0.60		87.97		14.54	74.83	177.34
BA1	0.52		76.24		14.54	74.83	165.61
PE2	0.85		124.63		14.54	74.83	214.00
PE1	0.82		120.23		14.54	74.83	209.60
PD2	0.78		114.36		14.54	74.83	203.73
PD1	0.76		111.43		14.54	74.83	200.80
PC2	0.71		104.10		14.54	74.83	193.47
PC1	0.69		101.17		14.54	74.83	190.54
PB2	0.55		80.64		14.54	74.83	170.01
PB1	0.54		79.17		14.54	74.83	168.54
PA2	0.53		77.71		14.54	74.83	167.08
PA1	0.50		73.31		14.54	74.83	162.68

Table 5
RUG-53
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
RURAL

RUG-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUX	1.9	2.25	266.15	286.54		76.21	628.90
RUL	1.4	2.25	196.11	286.54		76.21	558.86
RVX	1.54	1.41	215.72	179.56		76.21	471.49
RVL	1.33	1.41	186.31	179.56		76.21	442.08
RHX	1.42	0.94	198.91	119.71		76.21	394.83
RHL	1.37	0.94	191.91	119.71		76.21	387.83
RMX	1.93	0.77	270.35	98.06		76.21	444.62
RML	1.68	0.77	235.33	98.06		76.21	409.60
RLX	1.31	0.43	183.50	54.76		76.21	314.47
RUC	1.28	2.25	179.30	286.54		76.21	542.05
RUB	0.99	2.25	138.68	286.54		76.21	501.43
RUA	0.84	2.25	117.67	286.54		76.21	480.42
RVC	1.23	1.41	172.30	179.56		76.21	428.07
RVB	1.09	1.41	152.69	179.56		76.21	408.46
RVA	0.82	1.41	114.87	179.56		76.21	370.64
RHC	1.22	0.94	170.90	119.71		76.21	366.82
RHB	1.11	0.94	155.49	119.71		76.21	351.41
RHA	0.94	0.94	131.68	119.71		76.21	327.60
RMC	1.15	0.77	161.09	98.06		76.21	335.36
RMB	1.09	0.77	152.69	98.06		76.21	326.96
RMA	1.04	0.77	145.68	98.06		76.21	319.95
RLB	1.14	0.43	159.69	54.76		76.21	290.66
RLA	0.85	0.43	119.07	54.76		76.21	250.04
SE3	1.86		260.55		15.54	76.21	352.30
SE2	1.49		208.72		15.54	76.21	300.47
SE1	1.26		176.50		15.54	76.21	268.25
SSC	1.23		172.30		15.54	76.21	264.05
SSB	1.13		158.29		15.54	76.21	250.04
SSA	1.10		154.09		15.54	76.21	245.84
CC2	1.22		170.90		15.54	76.21	262.65
CC1	1.06		148.48		15.54	76.21	240.23
CB2	0.98		137.28		15.54	76.21	229.03
CB1	0.91		127.47		15.54	76.21	219.22
CA2	0.90		126.07		15.54	76.21	217.82
CA1	0.80		112.06		15.54	76.21	203.81
IB2	0.74		103.66		15.54	76.21	195.41
IB1	0.72		100.86		15.54	76.21	192.61
IA2	0.61		85.45		15.54	76.21	177.20
IA1	0.56		78.44		15.54	76.21	170.19
BB2	0.73		102.26		15.54	76.21	194.01
BB1	0.69		96.66		15.54	76.21	188.41
BA2	0.60		84.05		15.54	76.21	175.80
BA1	0.52		72.84		15.54	76.21	164.59
PE2	0.85		119.07		15.54	76.21	210.82
PE1	0.82		114.87		15.54	76.21	206.62
PD2	0.78		109.26		15.54	76.21	201.01
PD1	0.76		106.46		15.54	76.21	198.21
PC2	0.71		99.46		15.54	76.21	191.21
PC1	0.69		96.66		15.54	76.21	188.41
PB2	0.55		77.04		15.54	76.21	168.79
PB1	0.54		75.64		15.54	76.21	167.39
PA2	0.53		74.24		15.54	76.21	165.99
PA1	0.50		70.04		15.54	76.21	161.79

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3. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. We proposed and are finalizing that practice for FY 2008, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage data is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786, July 30, 2004), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments.

Comment: A few commenters requested that we develop a SNF-specific wage index and subsequently allow geographic reclassification.

Response: The regulations that govern the SNF PPS currently do not provide a mechanism for allowing providers to seek geographic reclassification. Moreover, as we have explained on numerous occasions in the past (most recently, in the SNF PPS final rule for FY 2006, 70 FR 45040–45041, August 4, 2005), while section 315 of the BIPA does authorize us to establish such a reclassification methodology under the SNF PPS, it additionally stipulates that such reclassification cannot be implemented until we have collected the data necessary to establish a SNF-specific wage index. This, in turn, has proven not to be feasible due to ''. . . the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data'' (70 FR 45041). We continue to believe that these factors make it unlikely for such an approach to yield meaningful improvements in our ability to determine facility payments, or to justify the significant increase in administrative resources as well as burden on providers that this type of data collection would involve.

We plan to monitor current research efforts on wage index issues nonetheless. Section 106(b)(1)(A) of the Medicare Improvements and Extension Act of 2006 (MIEA, Pub. L. 109–432) requires MedPAC to submit a report to the Congress on the wage index not later than June 30, 2007. MIEA requires the report to include any alternatives the Commission recommends to the method to compute the wage index. MedPAC discusses this issue in its Report to the Congress entitled ''Promoting Greater Efficiency in Medicare'' (June 2007), which is available online at *http://www.medpac.gov/documents/Jun07_EntireReport.pdf.* The Secretary is required to consider MedPAC's recommendations and nine specific aspects of the wage index as part of making one or more proposals in the Hospital Inpatient PPS (IPPS) proposed rule for FY 2009.

Comment: One commenter suggested that CMS provide an adjustment to certain States due to the impact of the new Federal minimum wage on the wage index.

Response: On May 25, 2007, the President signed the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28) that, among other things, amended the Fair Labor Standards Act (FLSA, Pub. L. 75–718) to increase the Federal minimum wage in three steps: to $5.85 per hour effective July 24, 2007; to $6.55 per hour effective July 24, 2008; and to $7.25 per hour effective July 24, 2009. Wage data reflecting the new Federal minimum wage will not be available for the FY 2008 SNF PPS. We plan to monitor current research efforts on all wage index issues, including the MIEA-required MedPAC report and the IPPS proposed rule for FY 2009.

In this final rule, we apply the wage index adjustment to the labor-related portion of the Federal rate, which is 70.152 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2008, using the revised and rebased FY 2004-based market basket. The labor-related relative importance for FY 2007 was 75.839, using the FY 1997-based market basket, as shown in Table 13. We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2008. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2008 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2008 in four steps. First, we compute the FY 2008 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2008 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2008 relative importance for each cost category by multiplying this ratio by the base year (FY 1997) weight. Finally, we add the FY 2008 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, nonmedical professional fees, labor-intensive services, and a portion of capital-related expenses) to produce the FY 2008 labor-related relative importance. Tables 6 and 7 show the Federal rates by labor-related and non-labor-related components.

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Table 6
RUG-53
Case-Mix Adjusted Federal Rates for Urban SNFs
By Labor and Non-Labor Component

RUG-III Category	Total Rate	Labor Portion	Non-Labor Portion
RUX	601.90	422.24	179.66
RUL	528.59	370.82	157.77
RVX	456.34	320.13	136.21
RVL	425.55	298.53	127.02
RHX	386.84	271.38	115.46
RHL	379.51	266.23	113.28
RMX	442.85	310.67	132.18
RML	406.19	284.95	121.24
RLX	314.39	220.55	93.84
RUC	510.99	358.47	152.52
RUB	468.47	328.64	139.83
RUA	446.48	313.21	133.27
RVC	410.89	288.25	122.64
RVB	390.37	273.85	116.52
RVA	350.78	246.08	104.70
RHC	357.52	250.81	106.71
RHB	341.39	239.49	101.90
RHA	316.46	222.00	94.46
RMC	328.48	230.44	98.04
RMB	319.69	224.27	95.42
RMA	312.35	219.12	93.23
RLB	289.47	203.07	86.40
RLA	246.95	173.24	73.71
SE3	362.08	254.01	108.07
SE2	307.83	215.95	91.88
SE1	274.11	192.29	81.82
SSC	269.71	189.21	80.50
SSB	255.05	178.92	76.13
SSA	250.65	175.84	74.81
CC2	268.25	188.18	80.07
CC1	244.79	171.73	73.06
CB2	233.06	163.50	69.56
CB1	222.79	156.29	66.50
CA2	221.33	155.27	66.06
CA1	206.67	144.98	61.69
IB2	197.87	138.81	59.06
IB1	194.94	136.75	58.19
IA2	178.81	125.44	53.37
IA1	171.48	120.30	51.18
BB2	196.40	137.78	58.62
BB1	190.54	133.67	56.87
BA2	177.34	124.41	52.93
BA1	165.61	116.18	49.43
PE2	214.00	150.13	63.87
PE1	209.60	147.04	62.56
PD2	203.73	142.92	60.81
PD1	200.80	140.87	59.93
PC2	193.47	135.72	57.75
PC1	190.54	133.67	56.87
PB2	170.01	119.27	50.74
PB1	168.54	118.23	50.31
PA2	167.08	117.21	49.87
PA1	162.68	114.12	48.56

Table 7
RUG-53
Case-Mix Adjusted Federal Rates for Rural SNFs by Labor and Non-Labor Component

RUG-III Category	Total Rate	Labor Portion	Non-Labor Portion
RUX	628.90	441.19	187.71
RUL	558.86	392.05	166.81
RVX	471.49	330.76	140.73
RVL	442.08	310.13	131.95
RHX	394.83	276.98	117.85
RHL	387.83	272.07	115.76
RMX	444.62	311.91	132.71
RML	409.60	287.34	122.26
RLX	314.47	220.61	93.86
RUC	542.05	380.26	161.79
RUB	501.43	351.76	149.67
RUA	480.42	337.02	143.40
RVC	428.07	300.30	127.77
RVB	408.46	286.54	121.92
RVA	370.64	260.01	110.63
RHC	366.82	257.33	109.49
RHB	351.41	246.52	104.89
RHA	327.60	229.82	97.78
RMC	335.36	235.26	100.10
RMB	326.96	229.37	97.59
RMA	319.95	224.45	95.50
RLB	290.66	203.90	86.76
RLA	250.04	175.41	74.63
SE3	352.30	247.15	105.15
SE2	300.47	210.79	89.68
SE1	268.25	188.18	80.07
SSC	264.05	185.24	78.81
SSB	250.04	175.41	74.63
SSA	245.84	172.46	73.38
CC2	262.65	184.25	78.40
CC1	240.23	168.53	71.70
CB2	229.03	160.67	68.36
CB1	219.22	153.79	65.43
CA2	217.82	152.81	65.01
CA1	203.81	142.98	60.83
IB2	195.41	137.08	58.33
IB1	192.61	135.12	57.49
IA2	177.20	124.31	52.89
IA1	170.19	119.39	50.80
BB2	194.01	136.10	57.91
BB1	188.41	132.17	56.24
BA2	175.80	123.33	52.47
BA1	164.59	115.46	49.13
PE2	210.82	147.89	62.93
PE1	206.62	144.95	61.67
PD2	201.01	141.01	60.00
PD1	198.21	139.05	59.16
PC2	191.21	134.14	57.07
PC1	188.41	132.17	56.24
PB2	168.79	118.41	50.38
PB1	167.39	117.43	49.96
PA2	165.99	116.45	49.54
PA1	161.79	113.50	48.29

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Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. For FY 2008 (Federal rates effective October 1, 2007), we apply the most recent wage index using the hospital inpatient wage data, and also apply an adjustment to fulfill the budget neutrality requirement. We meet this requirement by multiplying each of the components of the unadjusted Federal rates by a factor equal to the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2007. We use the same volume weights in both the numerator and denominator, and derive them from the 1997 Medicare Provider Analysis and Review File (MEDPAR) data. We define the wage adjustment factor used in this calculation as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for this year is 0.9993. The wage index applicable to FY 2008 appears in Tables 8 and 9 of this final rule, which are attached as an addendum.

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), available online at *http://www.whitehouse.gov/omb/bulletins/b03–04.html,* which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In addition, OMB published subsequent bulletins regarding CBSA changes, including changes in CBSA numbers and titles. We clarified that this and all subsequent SNF PPS rules and notices are considered to incorporate the CBSA changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index. The OMB bulletins are available online at *http://www.whitehouse.gov/omb/bulletins/index.html.*

In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, we provided for a 1-year transition with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041, August 4, 2005), subsequent to the expiration of this 1-year transition on September 30, 2006, we use the full CBSA-based wage index values, as presented in Tables 8 and 9 of this final rule.

When adopting OMB's new labor market designations, we identified some geographic areas where there were no hospitals and, thus, no hospital wage index data on which to base the calculation of the SNF PPS wage index (70 FR 29095, May 19, 2005). As in the SNF PPS final rule for FY 2006 (70 FR 45041) and in the SNF PPS update notice for FY 2007 (71 FR 43170, July 31, 2006), we proposed to address two situations concerning the wage index in the FY 2008 proposed rule.

First, we proposed a minor change in the wage index for rural geographic areas that do not have hospitals and, therefore, lack hospital wage data on which to base an area wage adjustment. We proposed to use the average wage index from all contiguous CBSAs as a reasonable proxy for the rural area, consistent with the policy adopted in the CY 2007 Home Health final rule. We note that Massachusetts is the only State that this change would affect; we did not propose to apply this methodology to rural Puerto Rico due to the distinct economic circumstances that exist there, but instead proposed to continue using the most recent wage index (0.4047) previously available for that area.

Comment: One commenter supported our proposal to use the average wage index from all contiguous CBSAs as a reasonable proxy for rural Massachusetts.

Response: We agree that the use of the average wage index from all contiguous CBSAs is a reasonable proxy for rural Massachusetts, which is a rural geographic area that does not have hospitals and, therefore, lacks hospital wage data on which to base an area wage adjustment for use in the SNF PPS. We believe it is appropriate at this point to update our methodology. By using the average wage index from all contiguous CBSAs as a reasonable proxy for those rural areas without hospital wage data, we are able to meet our goals of using pre-floor, pre-reclassified hospital wage data that is easy to evaluate, updateable from year-to-year, and uses the most local data available. Therefore, we are adopting our proposed policy of using the average wage index from all contiguous CBSAs as a reasonable proxy for rural geographic areas that do not have hospitals and, therefore, lack hospital wage data on which to base an area wage adjustment. We note that, at this time, Massachusetts is the only State that this change would affect; we are not applying this methodology to rural Puerto Rico due to the distinct economic circumstances that exist there.

The second situation involved the urban CBSA (25980) Hinesville-Fort Stewart, GA. Again, under CBSA designations there are no urban hospitals within that CBSA. For FY 2006 and FY 2007, we used the average wage indexes of all of the urban areas within the State to serve as a reasonable proxy for the urban area without specific hospital wage index data in determining the SNF PPS wage index for that urban CBSA. In the FY 2008 proposed rule, we proposed to continue this approach for urban areas without specific hospital wage index data. Therefore, we would calculate the wage index for urban CBSA (25980) Hinesville-Fort Stewart, GA as the average wage index of all urban areas in Georgia. We received no comments on this particular aspect of the proposed rule, and we will continue to use the approach that we adopted in FYs 2006 and 2007.

We are finalizing the wage index and associated policies as proposed for the SNF PPS for FY 2008. In addition, we note that we plan to evaluate any policies adopted in the FY 2008 IPPS final rule that affect the wage index, including how we treat certain New England hospitals under § 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21).

4. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act as amended by section 311 of the BIPA, the payment rates in this final rule reflect an update equal to the full SNF market basket, estimated at 3.3 percentage points. We will continue to disseminate the rates, wage index, and case-mix classification methodology through the **Federal Register** before the August 1 that precedes the start of each succeeding fiscal year.

5. *Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria*

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption under the refined RUG–53

classification system that beneficiaries who are correctly assigned to one of the upper 35 of the RUG–53 groups on the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date on the 5-day Medicare required assessment.

A beneficiary assigned to any of the lower 18 groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 35 groups during the immediate post-hospital period require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups.

In this final rule, we continue the designation of the upper 35 groups for purposes of this administrative presumption, consisting of the following RUG–53 classifications: All groups within the Rehabilitation plus Extensive Services category; all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

6. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the hypothetical example of SNF XYZ described in Table 10, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. SNF XYZ's total PPS payment would equal $29,758. The Labor and Non-labor columns are derived from Table 6.

TABLE 10.—RUG–53 SNF XYZ: LOCATED IN CEDAR RAPIDS, IA (URBAN CBSA 16300) WAGE INDEX: 0.8852

RUG Group	Labor	Wage index	Adj. Labor	Non-Labor	Adj. Rate	Percent Adj	Medicare Days	Payment
RVX	$320.13	0.8852	$283.38	$136.21	$419.59	$419.59	14	$5,874.00
RLX	220.55	0.8852	195.23	93.84	289.07	289.07	30	8,672.00
RHA	222.00	0.8852	196.51	94.46	290.97	290.97	16	4,656.00
CC2	188.18	0.8852	166.58	80.07	246.65	562.36*	10	5,624.00
IA2	125.44	0.8852	111.04	53.37	164.41	164.41	30	4,932.00
							100	29,758.00

*Reflects a 128 percent adjustment from section 511 of the MMA.

C. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires the establishment of a SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. We are incorporating into this final rule updated projections based on the latest available projections at the time of publication. Accordingly, we have developed a 2004-based SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. A detailed discussion of our proposal to revise and rebase the SNF market basket appears in section IV. of the FY 2008 proposed rule (72 FR 25540–25554, May 4, 2007), and our response to the comments that we received on this proposal appears in section III.D of this final rule.

Comment: Several commenters asked us to develop an adjustment to the SNF PPS that would prospectively adjust for forthcoming major program and policy changes, such as the increase in the Federal minimum wage, that affect Medicare reimbursement to affected providers. They state that the market basket update factor for the SNF PPS will not reflect the increase in costs associated with the Federally-mandated minimum wage increase.

Response: We do not agree with the commenter's suggestion to make additional adjustments to the market basket update factor to account for the increase in the minimum wage. The update factor is based on the Global Insight, Inc. (GII) second quarter 2007 (2007q2) forecast with historical data through the first quarter of 2007 (2007q1) for this final rule. GII is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of CMS's market baskets. Accordingly, the SNF market basket forecast already reflects inflationary pressures, including those associated with increases in the minimum wage.

Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, as described in the previous section, from the average of the prior fiscal year to the average of the current fiscal year. For the Federal rates established in this final rule, we use the percentage increase in the SNF market basket index to compute the update factor for FY 2008. We use the Global Insight, Inc. (GII, formerly DRI–WEFA), 1st quarter 2007 (2007q2) forecasted percentage increase in the FY 2004-based SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factor. Finally, as discussed previously in section I.A. of this final rule, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the initial three-phase transition period from facility-specific to full Federal rates that started with cost reporting periods beginning in July 1998 has expired.

2. Market Basket Forecast Error Adjustment

As discussed in the June 10, 2003, supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003, final rule (68 FR 46067), the regulations at 42 CFR 413.337(d)(2) currently provide for an adjustment to account for market basket forecast error. The initial adjustment applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available fiscal year for which there is final data, and apply whenever the difference between the forecasted and actual change in the market basket exceeds a 0.25 percentage point threshold.

As discussed in section I.F.2. of the FY 2008 proposed rule (72 FR 25530), in order to help distinguish between the significant forecast errors that gave rise to this policy initially and the far more typical minor variances that have consistently occurred in each of the succeeding years (which we view as an inherent aspect of this type of statistical measurement), we proposed to raise the 0.25 percentage point threshold for forecast error adjustments under the SNF PPS to 0.5 percentage point, effective with FY 2008. We invited comments on various aspects of this issue, including the proposed effective date. As also discussed in that section, the proposed payment rates for FY 2008 did not include a forecast error adjustment, as the difference between the estimated and actual amounts of increase in the market basket index for FY 2006 (the most recently available fiscal year for which there is final data) does not exceed the proposed 0.5 percentage point threshold.

Comment: Several commenters expressed concern about the proposal to raise the forecast error threshold percentage from 0.25 percentage point to 0.5 percentage point. Some commenters suggested maintaining the 0.25 percentage point threshold. Some commenters stated that we should delay the implementation of a higher threshold. Other commenters maintained that every forecast error, however small, should be corrected, and that the effect of using any threshold would build over time, resulting in increasing inaccuracies in the rates. One commenter added that the existence of any minimum threshold for triggering the adjustment forces SNFs to face inflation with inadequate payment levels. Another commenter did not support making adjustments on an automatic basis—particularly when coupled with automatic market basket increases—but agreed that such adjustments, when made, should focus on correcting major errors.

Response: For FY 2004, CMS applied a one-time, cumulative forecast error correction of 3.26 percent (68 FR 46036). Since that time, the forecast errors have been relatively small and clustered near zero. We believe the forecast error correction should be applied only when the forecast error in any given year reflects a percentage such that the SNF PPS base payment rate does not adequately reflect the historical price changes faced by SNFs. We believe that a threshold of 0.5 percent represents an appropriate amount to draw a distinction between the kind of exceptional, unanticipated major increases in wages and benefits that initially gave rise to this policy, and the more typical minor variances that are inherent in statistical measurements. The 0.5 percentage point threshold for triggering a forecast error adjustment represents an amount that is sufficiently high to screen out these expected minor variances in a projected statistical methodology, while at the same time appropriately serving to trigger an adjustment in those instances where it is clear that the historical price changes are not being adequately reflected, as was the case with the initial, cumulative 3.26 percent adjustment. We believe the existing 0.25 percentage point threshold is too low for this purpose, as values that only slightly exceed it may still inappropriately capture the minor variations that are inherently associated with measuring statistics. Moreover, our experience suggests that the forecast errors are relatively small, and generally clustered around zero.

MedPAC analysis suggests that freestanding SNFs (which represent more than 80 percent of all SNFs) have received Medicare payments that exceed costs by 10.8 percent or more since 2001, and margins are projected to be 11 percent in 2007. In the March 2007 MedPAC report, MedPAC stated that SNF payments appear more than adequate.

We believe that raising the threshold from 0.25 percentage point to 0.5 percentage point effective for the FY 2008 SNF PPS and subsequent years furthers our overarching Medicare integrity objective of paying the appropriate amount at the right time. By delaying the implementation, we would continue to pay for minor variations which would further delay accurate payment.

Moreover, we continue to believe that the forecast error adjustment mechanism should appropriately be reserved for the type of major, unexpected change that initially gave rise to this policy, rather than the minor variances that are a routine and inherent aspect of this type of statistical measurement. We note that the objections to the proposed higher threshold primarily concerned its projected effect specifically on payment in the coming year rather than the appropriate role of a forecast error adjustment in general. However, we believe that delays in implementing changes are usually justified by establishing that immediate implementation would result in severe short-term hardship—for example, due to inadequate lead time to prepare for an administratively complex change. We note that we delayed the effective date of case-mix refinements from October 1, 2005, until January 1, 2006 for precisely that reason (see the FY 2006 final rule at 70 FR 45034, August 4, 2005); however, no such conditions apply with regard to the revised forecast error adjustment threshold. Further, we believe that the industry's continued strong profit margins (in the neighborhood of 10 percent) should help to dampen any potential short-term financial effects of immediate implementation. Therefore, we will use the 0.5 percentage point threshold to determine whether a forecast error adjustment is appropriate, effective for FY 2008 and subsequent years. We note, as we did in our original proposal of the forecast error adjustment methodology (68 FR 34769), that this threshold is applied uniformly: Not only in those instances where the forecasted percent change is lower than the actual percent change (as has been the case up to this point under the SNF PPS), but also in those instances where the forecasted percent change is higher than the actual percent change. We [further] note that the latter circumstance would result in SNFs receiving lower than expected payments.

3. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(IV) of the Act requires that the update factor used to establish the FY 2008 Federal rates be at a level equal to the full market basket percentage change. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2006 through September 30, 2007 to the average market basket level for the period of October 1, 2007 through September 30, 2008. Using this process, the market basket update factor for FY 2008 SNF Federal rates is 3.3 percent. We use this update factor to compute the Federal portion of the SNF PPS rate shown in Tables 2 and 3.

D. Revising and Rebasing the Skilled Nursing Facility Market Basket Index

As discussed in greater detail in section IV. of the FY 2008 proposed rule (72 FR 25541–25555), we proposed to make a number of changes in connection with the SNF market basket. We proposed to update the base year from FY 1997 to FY 2004, and to update the market basket inputs as well. In addition, we proposed using Medicare-allowable total cost data to derive the market basket cost weights. This represented a change from the existing policy of using total facility cost data. We also proposed to create two new cost categories: Professional liability insurance and postage.

Comment: One commenter supported the rebasing and revising of the SNF market basket, but suggested that it should occur more frequently.

Response: Typically, we rebase and revise the market basket about every five years, as we have found that the cost weights do not change substantially between one year and the next. However, we will continue to monitor the appropriateness of the SNF market basket and rebase more frequently if necessary.

Comment: Several commenters suggested that we treat the market basket methodology in this year's final rule as an interim methodology. They asserted that a full 60 days to analyze the data and prepare comments was not available due to the CMS data set problems. Similarly, they argued that CMS would have only a short time to analyze and react to the comments. They added that viewing the proposed market basket methodology as an interim methodology would give CMS and other stakeholders the opportunity over the next year to further refine and improve the market basket component methodologies and the wage price proxies for the SNF setting without locking in the methodology for several years. Further, they proposed that the nursing home industry and CMS should agree to revisit the cost reports to improve their utility for a future revision of the market basket.

Response: We do not agree with the commenters who asserted that a full 60 days was not available to analyze the proposed market basket methodology and that, therefore, we should publish an interim final rule rather than a final rule. In fact, the FY 2008 proposed rule included a detailed discussion of our proposal, and the ''CMS data set problems'' that these commenters cite pertain solely to the SNF Medicare cost report (MCR) public use files that we posted on the CMS Web site. These public use files, in turn, are not an integral part of the proposal itself, but merely represent an additional package of customized technical information that we provide in an effort to accommodate the industry. We agree that we should continually review the market basket methodologies, including alternative methodologies proposed by the various stakeholders. However, we believe that it is necessary to rebase the market basket to reflect the changes in the average SNF's cost structure from 1997 to 2004, as well as to revise the market basket to reflect more appropriate, industry-specific price proxies (such as the blended compensation and chemical price proxies). We believe our current Medicare-allowable methodology, now adjusted to include an estimate of Medicaid drug expenses (as explained in more detail below), represents the best available technical methodology at this time. However, we will continue to work with the industry stakeholders and consider their suggestions for improvements to further refine and revise our market basket methodology, as appropriate. We also welcome suggestions from the SNF community on how the SNF Medicare cost report forms can be improved to better capture data needed for the market basket rebasing and revising process.

Comment: Several commenters stated that if CMS's ''total allowable cost'' methodology is utilized, either nursing labor costs for the entire facility should be included in the computation for the nursing labor weight, or labor costs for the support service departments should only include the portion allocated to the SNF unit and ancillary cost centers (after step-down).

Response: The labor costs for the support service departments (as reported in the general service cost centers, otherwise referred to as ''overhead cost centers'') did reflect only the portion allocated to the SNF unit and ancillary cost centers (i.e., Medicare-allowable cost centers). Specifically, we calculated overhead salaries attributable to the non-Medicare allowable departments by multiplying the ratio of total overhead salaries to total facility salaries by total non-Medicare allowable salaries. The Medicare-allowable wages and salary cost weight prior to excluding these non-Medicare allowable overhead salaries was one percentage point higher.

Comment: Several commenters requested that rather than using the proposed CMS total allowable Medicare cost methodology for the calculation of the pharmacy weight of the market basket, we should review, replicate, analyze, and adopt the commenter's alternative Medicare-specific reimbursable pharmacy cost methodology. They noted that the proposed pharmaceutical methodology assumes that total pharmaceutical costs for the facility are captured by the cost reports, and claimed this is not accurate, because the vast majority of nursing facility patients consists of dual-eligibles whose FY 2004 pharmaceutical costs were directly reimbursed by Medicaid. Nursing facilities did not submit Medicaid claims for these pharmaceuticals because such claims were submitted by the dispensing local pharmacies instead.

Response: We acknowledge the commenters' point that Medicaid drug expenses are not represented in the Medicare-allowable drug cost weight. Further, we note that with the exception of drug expenses, all of the other cost category weights reflect all payers, including Medicaid. This is because the MCR does not specifically break out Medicare expenses by cost category (i.e., salaries, benefits, contract labor), but rather, reports costs for all patients, regardless of payer. In view of this, we have adjusted drug expenses and total expenses to include an estimate of total Medicaid drug costs. (For purposes of recalculating the market basket weights, because we added Medicaid drug expenses—which are not reported in the MCR—into the drug costs, we then added those same Medicaid drug expenses into the market basket total costs.) We believe this is technically appropriate and achieves greater consistency, as all of the other cost weights already reflect Medicaid-related expenses. As a result of adjusting the market basket to include an estimate for Medicaid drug expenses, we have revised all of the cost weights in the proposed 2004-based SNF market basket.

Our estimate of Medicaid drug expenses is based on the average Medicaid drug expense per day times the number of Medicare-allowable Medicaid days (as reported on the MCR). We examined two primary data sources to derive the average Medicaid drug expense per beneficiary per day: The Medicare Analytic Extract (MAX) data and the Medicare Current Beneficiary Survey (MCBS) data. The MAX data is a set of person-level data files on Medicaid eligibility, service utilization, and payments extracted from the Medicaid Statistical Information System (MSIS). The MCBS is a survey of a representative sample of the Medicare population that CMS conducts through a contract with Westat, Inc.

To calculate the institutionalized Medicaid drug costs per beneficiary per day from the MAX data, we used a nationally-representative sample of records of Medicaid drug costs for nursing home residents for 2003 during their institutionalizations. We summed the records and then divided by the number of resident days to produce a cost per day estimate. We then extrapolated this result by the PPI for prescription drugs to obtain a 2004 institutionalized Medicaid drug cost per beneficiary per day estimate of $13.65.

We also calculated a community-based Medicaid drug cost per beneficiary per day estimate from the

MCBS data. First, we took a community-based Medicaid drug cost per capita estimate from 2002 (adjusted for under-reporting as described in the Health Care Financing Review article ''Reporting of Drug Expenditures in the MCBS,'' Volume 25, page 23) and converted it to a cost per day measure. We then adjusted the cost per day figure to add Medicaid drug rebates back into the estimate. Finally, we extrapolated this result by the PPI for prescription drugs to produce a 2004 community-based Medicaid drug cost per beneficiary per day estimate of $9.41. As the MCBS does not capture drug expenditures for beneficiaries while they are institutionalized, we used the drug cost per beneficiary per day estimate generated from the MCBS ($9.41) as a consistency check for the estimate that we derived from the MAX data.

The adjusted pharmaceutical cost weight, representing drug expenditures for all patients (Medicare, Medicaid, and private payer), is 7.894 percent. This is more than twice as large as the proposed pharmaceutical cost weight of 3.209 percent. The inclusion of Medicaid drugs into the 2004 market basket total costs has an impact on all of the cost weights and, therefore, the 2004-based cost weights presented in Table 12 reflect all of the revised cost weights. We did not make any methodological changes to any of the individual cost category weights, except those made to the drug cost weight described above.

As additional drug data becomes available (such as Medicare Part D drug data), we will analyze how this data may affect our estimates of Medicare and Medicaid drug costs for institutionalized dually-eligible Medicare and Medicaid beneficiaries and how these estimates may affect the weights for the SNF market basket.

Comment: Several commenters requested that we adopt a Medicare-specific market basket methodology. This methodology relies on the ratio of Medicare to total days and cost-to-charge ratios to derive the Medicare-specific cost weights.

Response: Ideally, we would prefer to construct a market basket that is specific to the treatment of Medicare beneficiaries. We are uncertain whether the use of cost-to-charge ratios to develop Medicare-specific cost category weights is a technically-viable option at this time. We will continue to research and examine the feasibility and appropriateness of using cost-to-charge ratios to develop a Medicare-specific market basket. We believe our proposed Medicare-allowable methodology reflects the cost structures of SNFs serving Medicare beneficiaries.

Comment: Several commenters recommended that we reexamine and reconsider the alternative CMS cost-to-charge ratio-based methodology for the calculation of the pharmacy component of the market basket. We had cited the inconsistencies between the cost-to-charge ratios of freestanding and hospital-based SNFs as the reason for not adopting this alternative method. The commenters contended that the primary reason for this difference is related to the allocation of overhead.

Response: As stated in the proposed rule, we explored alternative methods for calculating the SNF market basket drug cost weight. Specifically, we researched the viability of calculating a Medicare-specific drug cost weight based on Medicare drug costs as a percent of Medicare total costs. In the proposed rule, we inadvertently misstated the explanation of the methodology used to calculate Medicare drugs. The non-salary, non-overhead costs from the Drugs Charged to Patients cost center was not multiplied by the cost-to-charge ratio as stated in the proposed rule. Rather, these latter costs were multiplied by the ratio of Medicare charges to total charges. Following publication of the proposed regulation, we published the detailed formula on the CMS Web site, at *http://www.cms.hhs.gov/SNFPPS/Downloads/IndustryData.zip.* We continue to believe our proposed Medicare-allowable methodology adjusted to include an estimate of Medicaid drugs is the best available technical methodology to develop the pharmaceutical cost weight. As stated above, we are reluctant to rely on cost-to-charge ratios to develop cost weights. This is especially true for the pharmaceutical cost weight, given the difference between the freestanding and hospital-based facilities' overhead cost-to-charge ratios for the Drugs Charged to Patient Cost center. It is possible that the difference between the hospital-based and freestanding SNF cost-to-charge ratios is the result of overhead allocation and, therefore, we plan to continue to examine this area.

Comment: Several commenters suggested that we continue efforts to identify and develop more appropriate and accurate price indexes for tracking price changes in the SNF setting, particularly as they relate to SNF wages and salaries, benefits, professional liability insurance, and capital.

Response: We agree with the commenters' suggestion and plan to continually monitor the appropriateness of the price proxies used in all of the CMS market baskets, including the one for SNFs.

Comment: One commenter recommended that we revise our approach to the capital weight.

Response: Although the commenter was not specific about which capital cost-weight methodology we should revise, we assume based on other comments from the industry that the commenter was referring to the interest cost weight methodology and the use of Worksheet A, line 53 of the SNF Medicare cost report (MCR). The MCR instructions do not specify which interest expenses are reported in that cost center. Although some of these interest expenses could represent non-capital-related expenses, we believe that the majority of the interest expenses reported in this line are capital-related. We are unable to find any alternative data sources for capital-related interest expenses.

We did research the feasibility of developing a capital-related interest cost weight based on the depreciation cost weight (which comes directly from the MCR). To develop the alternative interest cost weight, we first determined separate interest schedules (that is, the interest expenses for each year over the useful life of an asset) for fixed and movable equipment. We constructed these interest schedules (which included both not-for-profit and for-profit debt) by multiplying the weighted averages of the average yield for Moody's AAA Corporate Bonds and the average yield for Municipal Bonds from the Bond Buyer Index by a fixed asset amount. We then calculated separate accumulated depreciation schedules for fixed and movable equipment. The accumulated depreciation schedules reflected the different useful lives of fixed versus movable equipment (22 and 9 years) and a double-declining balance method, a generally accepted depreciation practice. For each year, for both fixed equipment and moveable equipment, we calculated an interest-to-depreciation expense ratio. We then averaged these ratios over the useful life period. Next, we weighted the average interest-to-depreciation ratios for fixed and movable equipment by the fixed and movable equipment split (derived from the MCR), to create a final weighted ratio. We then multiplied this ratio by the depreciation cost weight to produce an interest cost weight. The result was a capital-related interest cost weight of 2.88, less than 0.3 percentage points different from our proposed methodology of 2.59. We note that the capital-related interest cost weight presented in Table 13 of the FY 2008 SNF proposed rule (72 FR 25544)

reflected interest expenses with allocated leasing expenses.

We also determined an average interest-to-depreciation expense ratio using depreciation expenses based on a straight-line depreciation method, also a generally accepted depreciation practice. This resulted in an interest cost weight of 3.51, which is almost one percentage point higher than our proposed interest cost weight of 2.59.

Given that our current methodology uses the MCR, our lack of other data sources, and the variability of our alternative methodology results, we believe our current methodology is the most technically appropriate methodology for calculating the capital-related interest cost weight. Therefore, we are adopting our proposed methodology to derive the capital-related interest cost weight.

As stated in the proposed rule, we researched the feasibility and appropriateness of using the ratio of total ancillary costs (that is, therapy and non-therapy ancillary costs) to routine costs to develop the movable equipment vintage weights (72 FR 25546). We found that incorporating therapy costs was somewhat problematic because of the dramatic decrease in therapy expenses between 1998 and 1999. Therapy ancillary costs decreased approximately 40 percent from 1998 to 1999—a likely impact of implementation of the SNF PPS. However, we still believe that the vintage weights should reflect therapy equipment purchases and, therefore, we are going to adopt the use of this ratio of total ancillary costs to total routine costs as the proxy for changes in intensity of SNF services that would cause SNFs to purchase movable equipment. We believe the drop in therapy expenses from 1998 to 1999 does not necessarily indicate a drop in movable equipment purchases, but rather, reflects other behavioral changes as a result of the then-new Medicare policies enacted in the BBA. As a result, we are going to begin incorporating the data on a best percent change-basis beginning with 2000 data. (The best percent change-basis method involves several steps. First, we apply the percent change of the ratio of total ancillary to routine costs for 2000 to the ratio of non-therapy ancillary to routine costs for 1999. Then, we apply the 2001 percent change of the ratio of total ancillary costs to routine costs to the 2000 ratio produced in Step 1. We then repeat this latter step for the 2002 through 2004 time period.) Again, we believe it is necessary to incorporate therapy costs into the vintage weight methodology in order to reflect therapy equipment purchases. The revision to the movable equipment vintage weights in the nine-year useful life period due to the incorporation of therapy costs does not exceed one-hundredth of a percentage point. Below is a table presenting the vintage weights for 2004-based SNF PPS capital-related price proxies, including the revised moveable-equipment vintage weights.

TABLE 11.—VINTAGE WEIGHTS FOR 2004-BASED SNF PPS CAPITAL-RELATED PRICE PROXIES

Year	Building and fixed equipment	Movable equipment	Interest
1	0.078	0.136	0.039
2	0.073	0.155	0.039
3	0.071	0.134	0.04
4	0.066	0.080	0.04
5	0.06	0.077	0.042
6	0.05	0.092	0.043
7	0.046	0.102	0.045
8	0.042	0.105	0.047
9	0.037	0.120	0.049
10	0.034	.....	0.052
11	0.035	.....	0.055
12	0.037	.....	0.057
13	0.037	.....	0.058
14	0.036	.....	0.057
15	0.035	.....	0.054
16	0.035	.....	0.054
17	0.035	.....	0.055
18	0.036	.....	0.056
19	0.037	.....	0.057
20	0.039	.....	0.059
21	0.04	.....	.....
22	0.042	.....	.....
Total	*1.000	*1.000	*1.000

Sources: 2004 SNF Medicare Cost Reports; CMS.

*Note: Totals may not sum to 1.000 due to rounding.

Comment: One commenter suggested that we reconsider our policy of using only data from freestanding SNFs to calculate the SNF market basket. The commenter recommended that we apply a percentage, proportionate to hospital-based SNFs' percentage of total cost, of the actual costs experienced by hospital-based SNFs.

Response: While the commenter was not more specific in what was being sought, we believe the commenter is suggesting that CMS develop separate cost weights for hospital-based and freestanding SNFs, and then combine them together (based upon hospital-based SNFs' and freestanding SNFs' share of total SNF costs) to create a unified set of SNF cost weights.

As stated in the proposed rule (72 FR 25542, May 4, 2007), we maintain our policy of using data from freestanding SNFs because freestanding SNF data reflect the actual cost structure faced by the SNF itself. In contrast, expense data for a hospital-based SNF reflect the allocation of overhead over the entire institution. Due to this method of allocation, total expenses will be correct, but the individual components' expenses may be skewed. If data from hospital-based SNFs were included, the resultant cost structure might be unrepresentative of the costs that we believe a typical SNF experiences.

Table 12 presents the final 2004-based SNF Market Basket Index.

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Table 12
Price Proxies for the
FY 2004-based SNF Market Basket

Cost Category	Weight	Price Proxy
Compensation	62.7546	
Wages and Salaries	51.3368	Blended proxy of 50 percent ECI for Wages and Salaries for Private Nursing and Residential care facilities and 50 percent for Wages and Salaries for Civilian Hospital Workers
Employee benefits	11.4178	Blended proxy of 50 percent ECI for Benefits for Private Nursing and Residential care facilities and 50 percent for Benefits for Civilian Hospital Workers
Nonmedical professional fees	1.3219	ECI for Compensation for Private Professional, Technical and Specialty workers
Professional Liability Insurance	1.7166	CMS Hospital Professional Liability Index.
Utilities	1.5513	
Electricity	0.9194	PPI for Commercial Electric Power
Fuels, nonhighway	0.4526	PPI for Commercial Natural Gas
Water and sewerage	0.1792	CPI-U for Water and Sewerage
All Other	25.4482	
Other Products	19.0300	
Pharmaceuticals	7.8943	PPI for Prescription Drugs
Food, wholesale purchase	2.9064	PPI for Processed Foods
Food, retail purchase	3.1509	CPI-U for Food Away From Home
Chemicals	0.5893	Blended PPI for Chemicals
Rubber and plastics	1.5131	PPI for Rubber and Plastic Products
Paper products	1.3942	PPI for Converted Paper and Paperboard
Miscellaneous products	1.5817	PPI for Finished Goods less Food and Energy
Other Services	6.4182	
Telephone Services	0.4344	CPI-U for Telephone Services
Postage	0.4543	CPI - Postage
Labor-intensive Services	3.5214	ECI for Compensation for Private Service Occupations
Non labor-intensive services	2.0081	CPI-U for All Items
Capital-related Expenses	7.2074	
Total Depreciation	2.8578	
Building & Fixed Equipment	2.4371	Boeckh Institutional Construction Index (vintage-weighted over 22 years)
Movable Equipment	0.4207	PPI for Machinery & Equipment (vintage-weighted over 9 years)
Total Interest	3.0371	
For-Profit SNFs	1.1972	Average Yield Moody's AAA Bonds (vintage-weighted over 20 years)
Government & Nonprofit SNFs	1.8399	Average Yield Municipal Bonds (Bond Buyer Index-20 bonds) (vintage-weighted over 20 years)
Other Capital-related Expenses	1.3124	CPI-U for Residential Rent
Total	100.000*	

*NOTE: Total may not sum to 100.000 due to rounding.

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Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 13 summarizes the updated labor-related share for FY 2008, which is based on the final rebased and revised SNF market basket.

Table 13
Labor-related Relative Importance, FY 2007 and FY 2008

	Relative importance, labor-related, FY 2007 (1997-based index) 06:2 forecast	Relative importance, labor-related, FY 2008 (2004-based index) 07:2 forecast
Wages and salaries	54.231	51.148
Employee benefits	11.903	11.704
Nonmedical professional fees	2.721	1.331
Labor-intensive services	4.035	3.451
Capital-related (.391)	2.949	2.518
Total	75.839	70.152

Source: Global Insight, Inc., formerly DRI-WEFA.

Note: In Table 17 of the proposed rule (72 FR 25549), the cost weights for the for-profit and not-for-profit interest were inadvertently mislabeled. The for-profit interest cost weight was displayed as the not-for-profit cost weight. We have corrected this in the final rule, and the 2004-based SNF market basket update factor reflects this revision.

E. Consolidated Billing

As established by section 4432(b) of the BBA, the consolidated billing requirement places with the SNF the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. Section 103 of the BBRA amended this provision by further excluding a number of high-cost, low probability services (identified by Healthcare Common Procedure Coding System (HCPCS) codes) within several broader categories that otherwise remained subject to the provision. Section 313 of the BIPA further amended this provision by repealing its Part B aspect, that is, its applicability to services furnished to a resident during a SNF stay that Medicare does not cover. (However, physical and occupational therapy, and speech-language pathology services remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.) In addition, section 313 of the BIPA specified that consolidated billing applies only to services furnished to those individuals residing in an institution (or portion of an institution) that is actually certified by Medicare as a SNF. Further, as noted in section I.E. of this final rule, section 410 of the MMA revised the SNF consolidated billing requirement as it relates to certain services furnished on or after January 1, 2005, by rural health clinics (RHCs) and Federally qualified health centers (FQHCs).

To date, the Congress has enacted no further legislation affecting the consolidated billing provision. However, as we noted in the April 10, 2000 proposed rule (65 FR 19232), section 1888(e)(2)(A)(iii) of the Act, as added by section 103 of the BBRA, not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but " * * * also gives the Secretary the authority to designate additional, individual services for exclusion within each of the specified service categories." In the FY 2001 proposed rule, we also noted that the BBRA Conference Report (H.R. Conf. Rep. No. 106–479 at 854) characterizes the individual services that this legislation targets for exclusion as "* * * high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment [SNFs] receive under the prospective payment system * * *." According to the conferees, section 103(a) "is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs * * *." By contrast, we noted that the Congress declined to designate for exclusion any of the remaining services within those four categories (thus leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the July 31, 2000 final rule (65 FR 46790), any additional service codes that we might designate for exclusion under our discretionary authority must meet the same criteria that the Congress used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA: They must fall within one of the four service categories specified in the BBRA, and they also must meet the same standards of high cost and low probability in the SNF setting. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion "* * * as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice)" (65 FR 46791). In view of the amount of time that has elapsed since we last invited comments on this issue, we invited public comments in the FY 2008 SNF PPS proposed rule on codes in any of these four service categories which represent recent medical advances that might meet the BBRA criteria for exclusion from SNF consolidated billing (72 FR 25556).

Comment: In response to our invitation in the proposed rule, some

commenters submitted lists of additional chemotherapy codes that they recommended for exclusion from consolidated billing.

Response: We note that the law (at section 1888(e)(2)(A)(iii)(II) of the Act) describes the chemotherapy code ranges that the BBRA identified for exclusion in terms of the version of the HCPCS codes that was in existence ''as of July 1, 1999.'' In the SNF PPS final rule for FY 2006 (70 FR 45048, August 4, 2005), we reiterated our belief that the authority granted by the BBRA to identify additional codes for exclusion within this category was ''* * * essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance *that may occur over time* (for example, the development of new medical technologies or other advances in the state of medical practice)'' (emphasis added). Accordingly, we view this discretionary authority as applying *only* to codes that were created subsequent to that point, and not to those codes that were in existence as of July 1, 1999. A review of the particular chemotherapy codes that commenters submitted in response to the proposed rule's invitation revealed that one of the codes, J9180 (Epirubicin hydrochloride (HCL), 50 mg), has been discontinued as of December 31, 2003 (we note that J9178 (Epirubicin HCL, 2 mg), a currently-existing code for the same medication in a different quantity, is in fact excluded). Another code that commenters submitted, J9219 (Leuprolide acetate implant, 65 mg), is a hormonal agent which is clinically analogous to other existing codes that have not been designated for exclusion; moreover, as this drug is used in treating the commonly-occurring condition of prostate cancer, we believe that it is unlikely to meet the criterion of ''low probability'' specified in the BBRA. Moreover, the rest of the codes that commenters submitted were themselves already in existence as of July 1, 1999, but did not fall within the specific code ranges statutorily designated for exclusion in the BBRA. As the statute does not specifically exclude these already-existing codes, we are not adding them to the exclusion list.

Comment: Although the FY 2008 SNF PPS proposed rule specifically invited comments on possible exclusions *within* the particular service categories identified in the BBRA legislation, a number of commenters took this opportunity to reiterate concerns about other aspects of consolidated billing. For example, some commenters reiterated past suggestions that we unbundle additional service categories, such as specialized wound care procedures (including hyperbaric oxygen therapy) and ambulance services.

Response: As we have consistently stated (see, for example, the SNF PPS final rule for FY 2006, at 70 FR 45049 (August 4, 2005)), the BBRA authorizes us to identify additional services for exclusion *only within* those particular service categories—chemotherapy and its administration; radioisotope services; and, customized prosthetic devices—that it has designated for this purpose, and does not give us the authority to create additional categories of excluded services beyond those specified in the law. Accordingly, as the particular services that these commenters recommended for exclusion do not fall within one of the specific service categories designated for this purpose in the statute itself, these services remain subject to consolidated billing.

Comment: Other commenters took this opportunity to revisit the existing set of administrative exclusions for certain high-intensity outpatient hospital services under the regulations in 42 CFR 411.15(p)(3)(iii), and once again expressed the view that these exclusions should not be limited to only those services that actually occur in the hospital setting, but rather, should also encompass services performed in other, non-hospital settings as well. As examples, they cited services such as magnetic resonance imaging (MRIs) and computerized axial tomography (CT) scans furnished in freestanding imaging centers, and radiation therapy furnished in physicians' clinics or ambulatory care centers, all of which may be less expensive and more accessible in certain particular localities (such as rural areas) than those furnished by hospitals. A few commenters additionally described certain instances in which MRIs and CT scans failed to qualify for exclusion even when they actually did occur in the hospital setting, because the hospital chose to have them performed under contract with an independent supplier that submitted the Medicare bill.

Response: We believe the comments that reflect previous suggestions for expanding this administrative exclusion to encompass services furnished in non-hospital settings indicate a continued misunderstanding of the underlying purpose of this provision. As we have consistently noted in response to comments on this issue in previous years (most recently, in the SNF PPS final rule for FY 2006 at 70 FR 45049 (August 4, 2005)), and as also explained in Medicare Learning Network (MLN) Matters article SE0432 (available online at *http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0432.pdf*), the rationale for establishing this exclusion was to address those types of services that are so far beyond the normal scope of SNF care *that they require the intensity of the hospital setting* in order to be furnished safely and effectively. Moreover, we note that in the legislative history accompanying the MMA, the Conferees characterized these exclusions as specifically limited to ''* * * certain outpatient services *from a Medicare-participating hospital or critical access hospital* * * *'' (emphasis added). (See the House Ways and Means Committee Report (H. Rep. No. 108–178, Part 2 at 209), and the Conference Report (H. Conf. Rep. No. 108–391 at 641).) Therefore, these services are excluded from SNF consolidated billing *only* when furnished in the outpatient hospital or CAH setting, and not when furnished in other, freestanding (non-hospital or non-CAH) settings.

Further, this underlying concept of service intensity also affects the manner in which a hospital can involve another entity in the actual performance of an excluded outpatient hospital service. Sections 1832(a)(2)(B) and 1861(s)(2)(C) of the Act authorize a hospital to furnish outpatient diagnostic procedures under arrangements with another entity; moreover, MRIs or CT scans that are furnished in this manner are excluded from SNF consolidated billing, and would be separately billable *by the hospital* under Part B. However, in order for the hospital's ''arrangement'' with the other entity to be a valid one, the hospital cannot act merely as a billing conduit, but must actually exercise professional responsibility and control over the arranged-for service, as specified in the guidelines on arrangements that appear in the CMS Internet-Only Manual, Pub. 100–1, Chapter 5, section 10.3, available online at *http://www.cms.hhs.gov/Manuals/IOM/list.asp*. Therefore, in a situation where the other, non-hospital entity assumes the Medicare billing role, a valid arrangement between the hospital and that entity would no longer exist, so that the hospital effectively relinquishes its professional responsibility and control over the service to the other entity. In this situation, because the service is no longer being furnished by the hospital itself—either directly, or under a valid arrangement with another entity—it would not qualify for the administrative exclusion from consolidated billing as a high-intensity outpatient *hospital* service, and the

billing responsibility for the service would remain with the SNF.

Comment: Some other commenters reiterated previous suggestions on expanding the existing chemotherapy exclusion to encompass related drugs that are commonly administered in conjunction with chemotherapy in order to treat the side effects of the chemotherapy drugs. The commenters cited examples such as anti-emetics (anti-nausea drugs) and erythropoietin (EPO).

Response: As we have noted previously in this final rule and in response to comments on this issue in the past (most recently, in the SNF PPS final rule for FY 2006 at 70 FR 45049 (August 4, 2005)), the BBRA authorizes us to identify additional services for exclusion *only within* those particular service categories—chemotherapy and its administration; radioisotope services; and, customized prosthetic devices—that it has designated for this purpose, and does not give us the authority to exclude other services which, though they may be related, fall outside of the specified service categories themselves. Thus, while anti-emetics, for example, are commonly administered in conjunction with chemotherapy, they are not themselves inherently chemotherapeutic in nature and, consequently, do not fall within the excluded chemotherapy category designated in the BBRA. With regard to EPO, we additionally note that among the service categories that section 1888(e)(2)(A)(ii) of the Act already specifies as being excluded from SNF consolidated billing are items and services described in section 1861(s)(2)(O) of the Act—that is, those items and services that meet the requirements for coverage under the separate Part B EPO benefit. This means that the scope of coverage under the Part B EPO benefit effectively serves as well to determine the scope of the EPO exclusion under the consolidated billing provision. However, section 1861(s)(2)(O) of the Act, in turn, specifically limits coverage under this benefit to EPO that is furnished to dialysis patients, and does not provide for coverage in any other, non-dialysis situations such as chemotherapy.

Comment: Another commenter indicated that we should make it ''financially feasible'' for patients to receive dialysis that is performed at bedside in the SNF, either by a dialysis facility or by the SNF itself—presumably, by expanding the consolidated billing provision's existing dialysis exclusion to encompass such services.

Response: As with the EPO services discussed above, the Part B dialysis services described in section 1861(s)(2)(F) of the Act are included among the service categories that section 1888(e)(2)(A)(ii) of the Act specifies as being excluded from SNF consolidated billing. Once again, this means that the scope of coverage under the Part B dialysis benefit effectively serves as well to determine the scope of the dialysis exclusion under the consolidated billing provision. Thus, the commenter's suggestion regarding the further unbundling of dialysis services actually represents a request to expand existing coverage under the Part B dialysis benefit, an issue that is beyond the scope of this final rule.

Comment: An additional commenter recommended that we exclude Reclast, a new osteoporosis drug that is administered via a once-yearly infusion. The commenter noted that several of the criteria (such as high cost, infrequent use, and inelastic demand) that historically have served to identify certain exceptionally intensive outpatient hospital services for exclusion would apply to Reclast as well, but also indicated that while the Food and Drug Administration (FDA) approved Reclast for the treatment of Paget's disease in April 2007, it has not yet announced its determination regarding the use of this drug in treating osteoporosis.

Response: We note that even if the FDA were to grant Reclast approval for this additional application, excluding such osteoporosis drugs from consolidated billing cannot be accomplished administratively under our existing authority. As we have noted previously, the BBRA's existing authority for excluding certain ''high-cost, low probability'' services from SNF consolidated billing applies *solely* to the types of services specified in the legislation itself (see, for example, the discussion in the SNF PPS final rule for FY 2006 (70 FR 45048, August 4, 2005)). With regard to drugs, this authority would encompass only the categories of chemotherapy and radioisotope services. As osteoporosis drugs such as Reclast do not fall within either of those two categories, we cannot administratively exclude them under this authority as it is currently constituted. Moreover, we again note that the outpatient hospital exclusion that the commenter cited applies exclusively to those types of services that are so far beyond the normal scope of SNF care plans as to require the intensity of the hospital setting in order to be furnished safely and effectively; by contrast, it would be medically feasible to administer drugs such as Reclast in the SNF itself.

Further, in contrast to the SNF PPS, we note that in the context of Medicare's home health benefit, the statute specifically addresses the treatment of osteoporosis drugs under a PPS. For purposes of the home health PPS, section 1861(kk) of the Act provides Part B coverage for injectable osteoporosis drugs, and section 4603(c)(2) of the BBA specifically amended section 1833(a)(2) of the Act to make such drugs separately payable outside the home health PPS's bundled payment for an episode of care. Accordingly, we believe that in terms of the SNF PPS, excluding drugs such as Reclast from the bundled per diem payment would require a similar statutory framework—first, to establish Part B coverage specifically for those osteoporosis drugs that are administered through infusion rather than injection, and additionally, to exclude such drugs from the SNF PPS's bundled per diem payment.

F. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In accordance with section 1888(e)(7) of the Act as amended by section 203 of the BIPA, Part A pays CAHs on a reasonable cost basis for SNF services furnished under a swing-bed agreement, as indicated in sections I.A. and I.D. of this final rule. However, effective with cost reporting periods beginning on or after July 1, 2002, the swing-bed services of non-CAH rural hospitals are paid under the SNF PPS. As explained in the final rule for FY 2002 (66 FR 39562, July 31, 2001), we selected this effective date consistent with the statutory provision to integrate non-CAH swing-bed rural hospitals into the SNF PPS by the end of the SNF transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have come under the SNF PPS as of June 30, 2003. Therefore, all rates and wage indexes outlined in this final rule for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. A complete discussion of assessment schedules, the MDS and the transmission software (Raven-SB for Swing Beds) appears in the final rule for FY 2002 (66 FR 39562, July 31, 2001). The latest changes in the MDS for non-CAH swing-bed rural hospitals appear on our SNF PPS Web site, *http://www.cms.hhs.gov/snfpps.* We received no comments on this aspect of the proposed rule.

IV. Provisions of the Final Rule

In this final rule, we are adopting the provisions as set forth in the May 4, 2007 proposed rule, with one change. We are changing our approach to the calculation of the market basket's pharmaceutical cost weight by including an adjustment for Medicaid drug expenditures, as discussed in section III.D of this final rule.

In addition, as noted previously in section I.A of this final rule, we are taking this opportunity to make a technical correction in the regulations text. The correction involves § 409.30(a)(2), which originally stipulated that in order for a hospital stay to qualify a beneficiary for coverage of posthospital SNF care, discharge from the hospital stay must occur in or after the month that the beneficiary becomes eligible for ''hospital insurance benefits''—the statutory term for Medicare Part A. However, on May 26, 1993 (58 FR 30666), we made a global revision of the word ''hospital'' in this provision and elsewhere in the regulations by adding a reference to rural primary care hospitals (RPCHs), and in the process, we inadvertently revised the term ''hospital insurance benefits'' in this section so that it incorrectly read ''hospital or RPCH insurance benefits.'' When RPCHs subsequently became known as critical access hospitals (CAHs), we once again made a global revision in order to revise ''RPCH'' to read ''CAH'' wherever it appeared (62 FR 46037, August 29, 1997), so that this term now incorrectly reads ''hospital or CAH insurance benefits.'' In this final rule, we are revising the regulations text at § 409.30(a)(2) in order to restore the original, correct wording of this term, which is ''hospital insurance benefits.''

V. Waiver of Proposed Rulemaking

Regarding the technical correction to Part 409 of the regulations that we discuss in the preceding section, we note that we would ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before a revision in the regulations text would take effect; however, we can waive this procedure if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued. We find it unnecessary to undertake notice and comment rulemaking in connection with this particular revision, as it merely provides a technical correction to the regulations, without making any substantive changes. Therefore, for good cause, we waive notice and comment procedures for the revision that we are making to the regulations text in Part 409.

VI. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501).

VII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA, Pub. L. 96–354, September 16, 1980), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which only reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This final rule is major, as defined in Title 5, United States Code, section 804(2), because we estimate the impact of the standard update will be to increase payments to SNFs by approximately $690 million.

The update set forth in this final rule would apply to payments in FY 2008. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most SNFs and most other providers and suppliers are small entities, either by their nonprofit status or by having revenues of $11.5 million or less in any one year. For purposes of the RFA, approximately 53 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards, with total revenues of $11.5 million or less in any one year (for further information, see 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity. In addition, approximately 29 percent of SNFs are nonprofit organizations.

This final rule updates the SNF PPS rates published in the update notice for FY 2007 (71 FR 43158, July 31, 2006) and the associated correction notice (71 FR 57519, September 29, 2006), thereby increasing aggregate payments by an estimated $690 million. As indicated in Table 14 of this final rule, the effect on facilities will be an aggregate positive impact of 3.3 percent. We note that some individual providers may experience larger increases in payments than others due to the distributional impact of the FY 2008 wage indexes and the degree of Medicare utilization. While this final rule is considered major, its overall impact is extremely small; that is, less than 3 percent of total SNF revenues from all payor sources.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the increase in SNF payment rates set forth in this final rule also applies to rural non-CAH hospital swing-bed services, we believe that this final rule would have a positive fiscal impact on non-CAH swing-bed rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This final rule would not have a substantial effect on State, local, or tribal governments, or on private sector costs.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues regulations that impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

As stated above, this final rule would have no substantial effect on State and local governments.

B. Anticipated Effects

This final rule sets forth updates of the SNF PPS rates contained in the update notice for FY 2007 (71 FR 43158, July 31, 2006) and the associated correction notice (71 FR 57519, September 29, 2006). Based on the above, we estimate the FY 2008 impact will be a net increase of $690 million in payments to SNF providers. The impact analysis of this final rule represents the projected effects of the changes in the SNF PPS from FY 2007 to FY 2008. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events include new legislation requiring funding changes to the Medicare program, or legislative changes that specifically affect SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, the MMA, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

In accordance with section 1888(e)(4)(E) of the Act, we update the payment rates for FY 2008 by a factor equal to the full market basket index percentage increase to determine the payment rates for FY 2008. The special AIDS add-on established by section 511 of the MMA remains in effect until ''* * * such date as the Secretary certifies that there is an appropriate adjustment in the case mix * * *.'' We have not provided a separate impact analysis for the MMA provision. As noted previously in section I.E of this final rule, FY 2006 data indicate that there are less than 2,600 SNF residents overall with a principal or secondary diagnosis of 042 (HIV Infection). The impact to Medicare is included in the ''total'' column of Table 14. In updating the rates for FY 2008, we made a number of standard annual revisions and clarifications mentioned elsewhere in this final rule (for example, the update to the wage and market basket indexes used for adjusting the Federal rates). These revisions increase payments to SNFs by approximately $690 million.

The impacts are shown in Table 14. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, and census region.

The first row of figures in the first column describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The urban and rural designations are based on the location of the facility under the CBSA designation. The next twenty-six rows show the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database.

The third column of the table shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fourth column shows the effect of all of the changes on the FY 2008 payments. The market basket increase of 3.3 percentage points is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 3.3 percent in total, assuming facilities do not change their care delivery and billing practices in response. As can be seen from this table, the combined effects of all of the changes vary by specific types of providers and by location. For example, though facilities in the rural Outlying region receive no change in payment, some providers (such as those in the urban Outlying region) show a significant increase of 9.6 percent. Payment increases for facilities in the urban Outlying area of the country are the highest for any provider category. However, we note that as there are only a small number of providers in both the rural and urban Outlying areas, changes to just a few providers can have a large impact on the region as a whole.

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Table 14
Projected Impact to the SNF PPS for FY 2008

	Number of facilities	Update wage data	Total FY 2008 change
Total	**15,325**	0.0%	3.3%
Urban	10,476	-0.2%	3.1%
Rural	4,849	1.0%	4.3%
Hospital based urban	1,450	0.0%	3.3%
Freestanding urban	9,026	-0.2%	3.1%
Hospital based rural	1,130	1.2%	4.5%
Freestanding rural	3,719	1.0%	4.3%
Urban by region			
New England	865	-0.3%	3.0%
Middle Atlantic	1,482	-0.9%	2.4%
South Atlantic	1,735	0.0%	3.3%
East North Central	2,004	-0.2%	3.1%
East South Central	524	0.0%	3.3%
West North Central	823	0.4%	3.7%
West South Central	1,146	0.2%	3.5%
Mountain	470	0.1%	3.4%
Pacific	1,419	-0.2%	3.1%
Outlying[1]	8	6.1%	9.6%
Rural by region			
New England	130	-0.2%	3.5%
Middle Atlantic	260	1.5%	4.8%
South Atlantic	608	0.9%	4.2%
East North Central	927	0.9%	4.2%
East South Central	556	1.1%	4.4%
West North Central	1,134	0.9%	4.2%
West South Central	818	1.3%	4.6%
Mountain	262	1.3%	4.6%
Pacific	152	1.3%	4.6%
Outlying[1]	2	-3.2%	0.0%
Ownership			
Government	675	0.1%	3.4%
Proprietary	11,178	0.0%	3.3%
Voluntary	3,472	-0.1%	3.2%

[1] The Outlying region includes the following, noncontiguous jurisdictions referenced as States in §§1861(x) and 210(h) of the Social Security Act: Puerto Rico, the Virgin Islands, American Samoa, and Guam.

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C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 15 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the change in Medicare payments under the SNF PPS as a result of the policies in this final rule based on the data for 15,271 SNFs in our database. All expenditures are classified as transfers to Medicare providers (that is, SNFs).

TABLE 15.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2007 SNF PPS RATE YEAR TO THE 2008 SNF PPS RATE YEAR (IN MILLIONS)

Category	Transfers
Annualized Monetized Transfers	$690
From Whom To Whom?	Federal Government to SNF Medicare Providers.

D. Alternatives Considered

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates. Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new fiscal year through the **Federal Register**, and to do so before the August 1 that precedes the start of the new fiscal year. Accordingly, we are not pursuing alternatives with respect to the payment methodology as discussed above.

Because we have determined that this final rule will have a significant impact on SNFs, we will discuss the alternatives we considered. We reviewed the options considered in the proposed rule and took into consideration comments received during the public comment period as discussed in the preamble.

The final rule raises the threshold for triggering a forecast error adjustment under the SNF PPS from the current 0.25 percentage point to 0.5 percentage point, effective for FY 2008 and subsequent years. However, as discussed in sections I.F.2 and III.B of the FY 2008 proposed rule, we also considered a higher threshold for the forecast error adjustment (up to 1.0 percentage point), as well as delaying implementation of this change until FY 2009. Recalibrating the specified threshold for a forecast error adjustment from 0.25 percentage point to 0.5 percentage point should help to distinguish between the major forecast errors that gave rise to this policy initially and the far more typical minor variances that occur in a projected statistical measurement. We believe that raising the threshold from 0.25 percentage point to 0.5 percentage point for FY 2008 and subsequent years furthers our overarching Medicare integrity objective of paying the appropriate amount at the right time.

This final rule also revises and rebases the SNF Market Basket. As an alternative, we could have considered delaying rebasing and/or revising the market basket. However, we believe that it is necessary to rebase the market basket to reflect the changes in the average SNF's cost structure from 1997 to 2004, as well as to revise the market basket to reflect more appropriate, industry-specific price proxies (such as the blended compensation and chemical price proxies). We believe our current Medicare-allowable methodology, adjusted to include an estimate of Medicaid drug expenses, represents the best available technical methodology at this time.

E. Conclusion

Overall, estimated payments for SNFs in FY 2008 are projected to increase by 3.3 percent compared with those in FY 2007. We estimate that SNFs in urban areas would experience a 3.1 percent increase in estimated payments compared with FY 2007. We estimate that SNFs in rural areas would experience a 4.3 percent increase in estimated payments compared with FY 2007. Facilities in the rural Outlying region are the only providers that do not experience a payment increase, payments for these facilities remain the same. This is due to the changes in the wage index compared to FY 2007. Facilities in the urban Outlying region show the largest payment increase, 9.6 percent. We did not receive public comments on the impact analysis methodology.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 409

Health facilities, Medicare.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart D—Requirements for Coverage of Posthospital SNF Care

§ 409.30 [Amended]

■ 2. In § 409.30(a)(2), the term ''hospital or CAH insurance benefits'' is revised to read ''hospital insurance benefits''.

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

Dated: July 18, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: July 24, 2007.

Michael O. Leavitt,

Secretary.

Note: The following addendum will not appear in the Code of Federal Regulations.

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Addendum - FY 2008 CBSA Wage Index Tables

In this addendum, we provide the wage index tables referred to in the preamble to this final rule. Tables 8 and 9 display the CBSA-based wage index values for urban and rural providers.

Table 8 FY 2008 Wage Index For Urban Areas Based On CBSA Labor Market Areas

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.7957
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.3448
10420	Akron, OH Portage County, OH Summit County, OH	0.8794
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8514

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8588
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9554
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.7979
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9865
11020	Altoona, PA Blair County, PA	0.8618
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.9116
11180	Ames, IA Story County, IA	1.0046
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.1913
11300	Anderson, IN Madison County, IN	0.8827

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
11340	Anderson, SC Anderson County, SC	0.9086
11460	Ann Arbor, MI Washtenaw County, MI	1.0539
11500	Anniston-Oxford, AL Calhoun County, AL	0.7926
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9598
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9185
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	1.0517

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9828
12100	Atlantic City, NJ Atlantic County, NJ	1.2198
12220	Auburn-Opelika, AL Lee County, AL	0.8090

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9645
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9544
12540	Bakersfield, CA Kern County, CA	1.1051
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	1.0134
12620	Bangor, ME Penobscot County, ME	0.9978
12700	Barnstable Town, MA Barnstable County, MA	1.2603

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8034
12980	Battle Creek, MI Calhoun County, MI	1.0179
13020	Bay City, MI Bay County, MI	0.8897
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8531
13380	Bellingham, WA Whatcom County, WA	1.1474
13460	Bend, OR Deschutes County, OR	1.0942
13644	Bethesda-Frederick-Gaithersburg, MD Frederick County, MD Montgomery County, MD	1.0511
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8666
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8949

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8898
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7225
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8192
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8915
14060	Bloomington-Normal, IL McLean County, IL	0.9325
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9465
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.1639

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
14500	Boulder, CO Boulder County, CO	1.0426
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8159
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0904
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2735
15180	Brownsville-Harlingen, TX Cameron County, TX	0.8914
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9475
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9568
15500	Burlington, NC Alamance County, NC	0.8747
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	0.9660
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1215
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0411
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8935

CBSA Code	Urban Area (Constituent Counties)	Wage Index
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9396
16180	Carson City, NV Carson City, NV	0.9353
16220	Casper, WY Natrona County, WY	0.9385
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8852
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	0.9392
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8289
16700	Charleston-North Charleston, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9124
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9520

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9277
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.8994
16940	Cheyenne, WY Laramie County, WY	0.9308
16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0735
17020	Chico, CA Butte County, CA	1.1290

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN Franklin County, IN Ohio County, IN Boone County, KY Bracken County, KY Campbell County, KY Gallatin County, KY Grant County, KY Kenton County, KY Pendleton County, KY Brown County, OH Butler County, OH Clermont County, OH Hamilton County, OH Warren County, OH	0.9784
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.8251
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.8052
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9339
17660	Coeur d'Alene, ID Kootenai County, ID	0.9532

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9358
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9719
17860	Columbia, MO Boone County, MO Howard County, MO	0.8658
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8800
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.8729
18020	Columbus, IN Bartholomew County, IN	0.9537

CBSA Code	Urban Area (Constituent Counties)	Wage Index
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	1.0085
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8588
18700	Corvallis, OR Benton County, OR	1.0959
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8294
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	0.9915
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8760
19180	Danville, IL Vermilion County, IL	0.8957

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8240
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8830
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9190
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7885
19500	Decatur, IL Macon County, IL	0.8074
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.9031
19740	Denver-Aurora, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO	1.0718

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9226
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	0.9999
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7270
20100	Dover, DE Kent County, DE	1.0099
20220	Dubuque, IA Dubuque County, IA	0.9058
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	0.9975
20500	Durham, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9816
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9475
20764	Edison, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1181

CBSA Code	Urban Area (Constituent Counties)	Wage Index
20940	El Centro, CA Imperial County, CA	0.8914
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8711
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9611
21300	Elmira, NY Chemung County, NY	0.8264
21340	El Paso, TX El Paso County, TX	0.8989
21500	Erie, PA Erie County, PA	0.8495
21660	Eugene-Springfield, OR Lane County, OR	1.0932
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8662
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1050
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.4375
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8042
22140	Farmington, NM San Juan County, NM	0.9587

CBSA Code	Urban Area (Constituent Counties)	Wage Index
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9368
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8742
22380	Flagstaff, AZ Coconino County, AZ	1.1687
22420	Flint, MI Genesee County, MI	1.1220
22500	Florence, SC Darlington County, SC Florence County, SC	0.8249
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7680
22540	Fond du Lac, WI Fond du Lac County, WI	0.9667
22660	Fort Collins-Loveland, CO Larimer County, CO	0.9897
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0229
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7933
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8743

CBSA Code	Urban Area (Constituent Counties)	Wage Index
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9284
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9693
23420	Fresno, CA Fresno County, CA	1.0993
23460	Gadsden, AL Etowah County, AL	0.8159
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9196
23580	Gainesville, GA Hall County, GA	0.9216
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9224
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8256
24140	Goldsboro, NC Wayne County, NC	0.9288
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7881
24300	Grand Junction, CO Mesa County, CO	0.9864

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9315
24500	Great Falls, MT Cascade County, MT	0.8675
24540	Greeley, CO Weld County, CO	0.9658
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9727
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9010
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9402
24860	Greenville, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9860
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3064
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8773

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9013
25260	Hanford-Corcoran, CA Kings County, CA	1.0499
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9280
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.8867
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Litchfield County, CT Middlesex County, CT Tolland County, CT	1.0937
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7366
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.9028
25980	Hinesville-Fort Stewart, GA[1] Liberty County, GA Long County, GA	0.9187
26100	Holland-Grand Haven, MI Ottawa County, MI	0.9006

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26180	Honolulu, HI Honolulu County, HI	1.1556
26300	Hot Springs, AR Garland County, AR	0.9109
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.7892
26420	Houston-Sugar Land-Baytown, TX Austin County, TX Brazoria County, TX Chambers County, TX Fort Bend County, TX Galveston County, TX Harris County, TX Liberty County, TX Montgomery County, TX San Jacinto County, TX Waller County, TX	0.9939
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9041
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9146
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9264

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26900	Indianapolis-Carmel, IN Boone County, IN Brown County, IN Hamilton County, IN Hancock County, IN Hendricks County, IN Johnson County, IN Marion County, IN Morgan County, IN Putnam County, IN Shelby County, IN	0.9844
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9568
27060	Ithaca, NY Tompkins County, NY	0.9630
27100	Jackson, MI Jackson County, MI	0.9329
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8011
27180	Jackson, TN Chester County, TN Madison County, TN	0.8676
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9021

CBSA Code	Urban Area (Constituent Counties)	Wage Index
27340	Jacksonville, NC Onslow County, NC	0.8079
27500	Janesville, WI Rock County, WI	0.9702
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8478
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.7677
27780	Johnstown, PA Cambria County, PA	0.7543
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7790
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8951
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0433
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0238

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	0.9504
28420	Kennewick-Richland-Pasco, WA Benton County, WA Franklin County, WA	1.0075
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8249
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.7658
28740	Kingston, NY Ulster County, NY	0.9556

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.8036
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9591
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9685
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.8869
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8247
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7777
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0315
29420	Lake Havasu City - Kingman, AZ Mohave County, AZ	0.9333
29460	Lakeland, FL Polk County, FL	0.8661
29540	Lancaster, PA Lancaster County, PA	0.9252

CBSA Code	Urban Area (Constituent Counties)	Wage Index
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	1.0119
29700	Laredo, TX Webb County, TX	0.8093
29740	Las Cruces, NM Dona Ana County, NM	0.8676
29820	Las Vegas-Paradise, NV Clark County, NV	1.1799
29940	Lawrence, KS Douglas County, KS	0.8227
30020	Lawton, OK Comanche County, OK	0.8025
30140	Lebanon, PA Lebanon County, PA	0.8192
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9454
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9193
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9191
30620	Lima, OH Allen County, OH	0.9424
30700	Lincoln, NE Lancaster County, NE Seward County, NE	1.0051

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
30780	Little Rock-North Little Rock, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8863
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.9183
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8717
31020	Longview, WA Cowlitz County, WA	1.0827
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.1771
31140	Louisville, KY-IN Clark County, IN Floyd County, IN Harrison County, IN Washington County, IN Bullitt County, KY Henry County, KY Jefferson County, KY Meade County, KY Nelson County, KY Oldham County, KY Shelby County, KY Spencer County, KY Trimble County, KY	0.9065

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8680
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8732
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9541
31460	Madera, CA Madera County, CA	0.8069
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.0935
31700	Manchester-Nashua, NH Hillsborough County, NH Merrimack County, NH	1.0063
31900	Mansfield, OH[1] Richland County, OH	0.9271
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.3711
32580	McAllen-Edinburg-Pharr, TX Hidalgo County, TX	0.9123

CBSA Code	Urban Area (Constituent Counties)	Wage Index
32780	Medford, OR Jackson County, OR	1.0318
32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	0.9250
32900	Merced, CA Merced County, CA	1.2120
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	1.0002
33140	Michigan City-La Porte, IN LaPorte County, IN	0.8914
33260	Midland, TX Midland County, TX	1.0017
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0214

CBSA Code	Urban Area (Constituent Counties)	Wage Index
33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN Carver County, MN Chisago County, MN Dakota County, MN Hennepin County, MN Isanti County, MN Ramsey County, MN Scott County, MN Sherburne County, MN Washington County, MN Wright County, MN Pierce County, WI St. Croix County, WI	1.1093
33540	Missoula, MT Missoula County, MT	0.8953
33660	Mobile, AL Mobile County, AL	0.8033
33700	Modesto, CA Stanislaus County, CA	1.1962
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7832
33780	Monroe, MI Monroe County, MI	0.9414
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8088
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8321

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7388
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0529
34620	Muncie, IN Delaware County, IN	0.8214
34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9836
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry County, SC	0.8634
34900	Napa, CA Napa County, CA	1.4476
34940	Naples-Marco Island, FL Collier County, FL	0.9487
34980	Nashville-Davidson--Murfreesboro, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN	0.9689
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2640

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1862
35300	New Haven-Milford, CT New Haven County, CT	1.1871
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.8897
35644	New York-Wayne-White Plains, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.3115
35660	Niles-Benton Harbor, MI Berrien County, MI	0.9141
35980	Norwich-New London, CT New London County, CT	1.1432

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.5685
36100	Ocala, FL Marion County, FL	0.8627
36140	Ocean City, NJ Cape May County, NJ	1.0988
36220	Odessa, TX Ector County, TX	1.0042
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9000
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK	0.8815
36500	Olympia, WA Thurston County, WA	1.1512
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9561

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36740	Orlando, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9226
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9551
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY	0.8652
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.1852
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9325
37380	Palm Coast, FL Flagler County, FL	0.8945
37460	Panama City-Lynn Haven, FL Bay County, FL	0.8313
37620	Parkersburg-Marietta, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.8105
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8647
37764	Peabody, MA Essex County, MA	1.0650
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8281

CBSA Code	Urban Area (Constituent Counties)	Wage Index
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9299
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0925
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0264
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.7839
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8525
38340	Pittsfield, MA Berkshire County, MA	1.0091
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9465

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4450
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	1.0042
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1498
38940	Port St. Lucie-Fort Pierce, FL Martin County, FL St. Lucie County, FL	1.0016
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.0982
39140	Prescott, AZ Yavapai County, AZ	1.0020
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.0685

CBSA Code	Urban Area (Constituent Counties)	Wage Index
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9557
39380	Pueblo, CO Pueblo County, CO	0.8851
39460	Punta Gorda, FL Charlotte County, FL	0.9254
39540	Racine, WI Racine County, WI	0.9498
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9839
39660	Rapid City, SD Meade County, SD Pennington County, SD	0.8811
39740	Reading, PA Berks County, PA	0.9356
39820	Redding, CA Shasta County, CA	1.3541
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0959

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	0.9425
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1100
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8691

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.0755
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8858
40420	Rockford, IL Boone County, IL Winnebago County, IL	0.9814
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH	1.0111
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.9001
40660	Rome, GA Floyd County, GA	0.9042
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.3505
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.8812
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.0549
41100	St. George, UT Washington County, UT	0.9358

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	0.8762
41180	St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO St. Louis City, MO	0.9024
41420	Salem, OR Marion County, OR Polk County, OR	1.0572
41500	Salinas, CA Monterey County, CA	1.4775
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.8994

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9399
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8579
41700	San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.8834
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1492
41780	Sandusky, OH Erie County, OH	0.8822
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5195
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4729
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.5735

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas Municipio, PR Aibonito Municipio, PR Arecibo Municipio, PR Barceloneta Municipio, PR Barranquitas Municipio, PR Bayamón Municipio, PR Caguas Municipio, PR Camuy Municipio, PR Canóvanas Municipio, PR Carolina Municipio, PR Cataño Municipio, PR Cayey Municipio, PR Ciales Municipio, PR Cidra Municipio, PR Comerío Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Gurabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Río Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	0.4528

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.2488
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1766
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.1714
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6122
42140	Santa Fe, NM Santa Fe County, NM	1.0734
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.4696
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL Sarasota County, FL	0.9933
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9131
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8457
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1572
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9412
43100	Sheboygan, WI Sheboygan County, WI	0.8975
43300	Sherman-Denison, TX Grayson County, TX	0.8320

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8476
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9251
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9563
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9617
43900	Spartanburg, SC Spartanburg County, SC	0.9422
44060	Spokane, WA Spokane County, WA	1.0455
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.8944
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0366

CBSA Code	Urban Area (Constituent Counties)	Wage Index
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8695
44220	Springfield, OH Clark County, OH	0.8694
44300	State College, PA Centre County, PA	0.8768
44700	Stockton, CA San Joaquin County, CA	1.1855
44940	Sumter, SC Sumter County, SC	0.8599
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9910
45104	Tacoma, WA Pierce County, WA	1.1055
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.9025
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9020

CBSA Code	Urban Area (Constituent Counties)	Wage Index
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.8805
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.7770
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9431
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8538
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0699
46060	Tucson, AZ Pima County, AZ	0.9245
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8340

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8303
46340	Tyler, TX Smith County, TX	0.9114
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8486
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8098
46700	Vallejo-Fairfield, CA Solano County, CA	1.4666
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8302
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0133

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CBSA Code	Urban Area (Constituent Counties)	Wage Index
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.8818
47300	Visalia-Porterville, CA Tulare County, CA	1.0091
47380	Waco, TX McLennan County, TX	0.8518
47580	Warner Robins, GA Houston County, GA	0.9128
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	1.0001

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.0855
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8519
48140	Wausau, WI Marathon County, WI	0.9679
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.7924

CBSA Code	Urban Area (Constituent Counties)	Wage Index
48300	Wenatchee, WA Chelan County, WA Douglas County, WA	1.1469
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9728
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.6961
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.9062
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.7920
48700	Williamsport, PA Lycoming County, PA	0.8043
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0824
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9410
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	0.9913

CBSA Code	Urban Area (Constituent Counties)	Wage Index
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.9118
49340	Worcester, MA Worcester County, MA	1.1287
49420	Yakima, WA Yakima County, WA	1.0267
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.3284
49620	York-Hanover, PA York County, PA	0.9359
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.9002
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.0756
49740	Yuma, AZ Yuma County, AZ	0.9488

[1] At this time, there are no hospitals located in this urban area on which to base a wage index.

Table 9 FY 2008 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

CBSA Code	Nonurban Area	Wage Index
1	Alabama	0.7533
2	Alaska	1.2109
3	Arizona	0.8479
4	Arkansas	0.7371
5	California	1.2023
6	Colorado	0.9704
7	Connecticut	1.1283
8	Delaware	0.9727
10	Florida	0.8465
11	Georgia	0.7659
12	Hawaii	1.0612
13	Idaho	0.7920
14	Illinois	0.8335
15	Indiana	0.8576
16	Iowa	0.8566
17	Kansas	0.7981
18	Kentucky	0.7793
19	Louisiana	0.7373
20	Maine	0.8476
21	Maryland	0.9034
22	Massachusetts[1]	1.1644
23	Michigan	0.8953
24	Minnesota	0.9079
25	Mississippi	0.7700
26	Missouri	0.7930
27	Montana	0.8379
28	Nebraska	0.8849
29	Nevada	0.9272
30	New Hampshire	1.0863
31	New Jersey[1]	------

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CBSA Code	Nonurban Area	Wage Index
32	New Mexico	0.8940
33	New York	0.8268
34	North Carolina	0.8603
35	North Dakota	0.7182
36	Ohio	0.8714
37	Oklahoma	0.7492
38	Oregon	0.9906
39	Pennsylvania	0.8385
40	Puerto Rico[1]	0.4047
41	Rhode Island[1]	------
42	South Carolina	0.8656
43	South Dakota	0.8549
44	Tennessee	0.7723
45	Texas	0.7968
46	Utah	0.8116
47	Vermont	0.9919
48	Virgin Islands	0.6830
49	Virginia	0.7896
50	Washington	1.0259
51	West Virginia	0.7454
52	Wisconsin	0.9667
53	Wyoming	0.9287
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2008. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2007.

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Friday,
August 3, 2007

Part V

Securities and Exchange Commission

17 CFR Part 240
Shareholder Proposals; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 240

[Release No. 34–56160; IC–27913; File No. S7–16–07]

RIN 3235–AJ92

Shareholder Proposals

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the rules under the Securities Exchange Act of 1934 concerning shareholder proposals and electronic shareholder communications, as well as to the disclosure requirements of Schedule 14A and Schedule 13G. Proposed amendments to Exchange Act Rule 14a-8 would enable shareholders to include in company proxy materials their proposals for bylaw amendments regarding the procedures for nominating candidates to the board of directors. Schedule 14A and Schedule 13G would be amended to provide shareholders with additional information about the proponents of these proposals, as well as any shareholders that nominate a candidate under such an adopted procedure. Included in these nominating shareholder disclosures would be the disclosure requirements that currently apply to traditional proxy contests. Finally, the proposed amendments would revise the proxy rules to clarify that participation in an electronic shareholder forum that may constitute a solicitation would be generally exempt from the proxy rules. This release accompanies a second release, Shareholder Proposals Relating to the Election of Directors, in which we publish an interpretation and propose a rule change to affirm the staff of the Division of Corporation Finance's historical application of Rule 14a-8(i)(8).

DATES: Comments should be received by October 2, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–16–07 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–16–07. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lillian Brown, Steven Hearne, or Tamara Brightwell, at (202) 551–3700, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 14a–2,[1] Rule 14a–6,[2] Rule 14a–8,[3] Schedule 14A,[4] and Schedule 13G[5] under the Securities Exchange Act of 1934,[6] and proposing new Rule 14a–17 and Rule 14a–18 under the Exchange Act.

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I. Overview

A. Federal Regulation of the Proxy Process

Regulation of the proxy process is a core function of the Commission and is one of the original responsibilities that Congress assigned to the agency in 1934. Section 14(a) of the Exchange Act[7] stemmed from a Congressional belief that ''fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange.''[8] The Congressional committees recommending passage of Section 14(a) proposed that ''the solicitation and issuance of proxies be left to regulation by the Commission.''[9] Congress intended that Section 14(a) give the Commission the ''power to control the conditions under which proxies may be solicited''[10] and that this power be exercised ''as necessary or appropriate in the public interest or for the protection of investors.''[11] Because the Commission's authority under Section 14(a) encompasses both

[1] 17 CFR 240.a–2.
[2] 17 CFR 240.14a–6.
[3] 17 CFR 240.14a–8.
[4] 17 CFR 240.14a–100.
[5] 17 CFR 240.13d–102.
[6] 15 U.S.C. 78a *et seq.*
[7] 15 U.S.C. 78n(a).
[8] *Mills* v. *Electric Auto-Lite Co.,* 396 U.S. 375, 381 (1970), *quoting* H.R. Rep. No. 1383, 73d Cong., 2d Sess., at 13 (1934). *See also J. I. Case Co.* v. *Borak,* 377 U.S. 426, 431 (1964).
[9] S. Rep. No. 792, 73d Cong., 2d Sess., at 12 (1934).
[10] H.R. Rep. No. 1383, 73d Cong., 2d Sess., at 14 (1934). The same report demonstrated a congressional intent to prevent frustration of the ''free exercise of the voting rights of stockholders.'' *Id.*
[11] 15 U.S.C. 78n(a).

disclosure and proxy mechanics,[12] the proxy rules have long governed not only the information required to be disclosed to ensure that shareholders receive full disclosure of all information that is material to the exercise of their voting rights under state law and the corporation's charter, but also the procedure for soliciting proxies.[13]

In assigning this responsibility to the Commission, Congress demonstrated its ''intent to bolster the intelligent exercise of shareholder rights granted by state corporate law.'' [14] To identify the rights that the proxy process should protect, the Commission has taken as its touchstone the rights of security holders guaranteed to them under state corporate law. As Chairman Ganson Purcell explained to a committee of the House of Representatives in 1943:

> The rights that we are endeavoring to assure to the stockholders are those rights that he has traditionally had under State law to appear at the meeting; to make a proposal; to speak on that proposal at appropriate length; and to have his proposal voted on.[15]

Thus, the federal proxy authority is not intended to supplant state law, but rather to reinforce state law rights with a sturdy federal disclosure and proxy solicitation regime. To that end, the Commission has sought to use its authority in a manner that does not conflict with the primary role of the states in establishing corporate governance rights. For example, Rule 14a–8, the shareholder proposal rule, explicitly provides that a shareholder proposal is not required to be included in a company's proxy materials if it ''is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization.'' [16]

One of the key rights that shareholders have under state law is the right to appear in person at an annual or special meeting and, subject to compliance with applicable state law requirements and the requirements contained in the company's charter and bylaws, such as an advance notice bylaw, present their own proposals for a vote by shareholders at that meeting.[17] These proposals can relate to a wide variety of matters, including the nomination of the shareholders' own candidates for the election of directors.[18] Most shareholders, however, vote through the grant of a proxy before the meeting instead of attending the meeting to vote in person. Therefore, an important function of the proxy rules is to provide a mechanism for shareholders to present their proposals to other shareholders, and to permit shareholders to instruct their proxy how to vote on these proposals. Our regulations have been designed to facilitate the corporate proxy process so that it functions, as nearly as possible, as a replacement for an actual, in-person gathering of security holders, thus enabling security holders ''to control the corporation as effectively as they might have by attending a shareholder meeting.'' [19]

The Commission's proxy rules provide a means for shareholders to propose matters to other shareholders for a vote at an annual or special meeting. For example, under Rule 14a–8 a company must include in its proxy materials some proposals that shareholders could present at the annual or special meeting under state law. Other proposals can be included in proxy materials prepared by the shareholders themselves. In this regard, the proxy rules permit any shareholder to solicit votes for the election of a nominee to the board through a proxy solicitation by that shareholder. The proxy rules do not, however, require a company to include a shareholder's nominee for director in its proxy materials. Conversely, the proxy rules require the company to include in its proxy materials non-binding resolutions of eligible shareholders on subjects unrelated to the company's ordinary business unless the proposals fall within one of the substantive bases for exclusion in Rule 14a–8. The proposed amendments to the proxy rules discussed below address these matters.

B. The Shareholder Proposal Process

Rule 14a–8 creates a procedure under which shareholders, subject to certain requirements, may present in the company's proxy materials a broad range of binding and non-binding proposals, including non-binding proposals regarding matters that traditionally are within the province of the board and management. The rule permits a shareholder owning a relatively small amount of the company's shares [20] to submit his or her proposal to the company, and the rule requires the company to include the proposal alongside management's proposals in the company's proxy materials. For example, a proposal concerning a matter that under state law would not be a proper subject for shareholder action alone if it were cast as a binding proposal, may nonetheless be included in the company's proxy materials under Rule 14a–8 if it is cast as a recommendation or request that the board take specified action.[21] In all cases, the proposal may be excluded by the company if it fails to satisfy the rule's procedural requirements or falls within one of the rule's thirteen substantive categories of proposals that may be excluded.

Because the proxy process is meant to serve, as nearly as possible, as a

[12] *See Business Roundtable* v. *SEC,* 905 F.2d 406, 411 (D.C. Cir. 1990) (''We do not mean to be taken as saying that disclosure is necessarily the sole subject of § 14''); *Roosevelt* v. *E.I. du Pont de Nemours & Co.,* 958 F.2d 416, 421–22 (D.C. Cir. 1992) (Congress ''did not narrowly train section 14(a) on the interest of stockholders in receiving information necessary to the intelligent exercise of their'' state law rights); *SEC* v. *Transamerica Corp.,* 163 F.2d 511, 518 (3d Cir. 1947) (upholding the Commission's authority to promulgate Exchange Act Rule 14a–8), *cert. denied,* 332 U.S. 847 (1948). *See also* John C. Coffee Jr., *Federalism and the SEC's Proxy Proposals,* New York Law Journal 5 (March 18, 2004) (Section 14(a) ''does not focus exclusively on disclosure; rather, it contemplates SEC rules regulating procedure in order to grant shareholders a 'fair' right of corporate suffrage''); Louis Loss & Joel Seligman, *Securities Regulation* 1936–37 (3d ed. 1990) (The Commission's ''power under § 14(a) is not necessarily limited to ensuring full disclosure. The statutory language is considerably more general than it is under the specific disclosure philosophy of the Securities Act of 1933'').

[13] *E.g.,* Exchange Act Rule 14a–4 (17 CFR 240.14a–4), Exchange Act Rule 14a–7 (17 CFR 240.14a–7) and Exchange Act Rule 14a–8 (17 CFR 240.14a–8). Each specifies procedural requirements that companies must observe in soliciting proxies. Exchange Act Rule 14a–4(b)(2) requires that the form of proxy furnish the security holder with the means to withhold approval for the election of a director. Exchange Act Rule 14a–7 provides a procedure under which a security holder may be able to obtain a list of security holders. Exchange Act Rule 14a–8 provides a procedure under which a qualifying security holder can obligate the company to include certain types of proposals, along with statements in support of those proposals, in the company's proxy statement.

[14] *Roosevelt,* 958 F.2d at 421.

[15] Securit[ies] and Exchange Commission Proxy Rules: Hearings on H.R. 1493, H.R. 1821, and H.R. 2019 Before the House Comm. on Interstate and Foreign Commerce, 78th Cong., 1st Sess., at 172 (1943) (testimony of SEC Chairman Ganson Purcell).

[16] 17 CFR 240.14a–8(i)(1).

[17] For example, Section 211(b) of the Delaware General Corporation Law permits any ''proper business,'' in addition to the election of directors, to be conducted at an annual meeting of shareholders. In order to provide for an orderly period of solicitation before a meeting, many corporations have included provisions in their charter or bylaws to require advance notice of any shareholder resolutions, including nominations for director, to be presented at a meeting. *See* R. Franklin Balotti & Jesse A. Finkelstein, *Delaware Law of Corporations & Business Organizations* § 7.9 (4th ed. 2006).

[18] *Id.*

[19] *Business Roundtable,* 905 F.2d at 410.

[20] Exchange Act Rule 14a–8(b)(1) (17 CFR 240.14a–8(b)(1)) provides that a holder of at least $2,000 in market value, or 1% of the company's securities entitled to be voted, may submit a shareholder proposal subject to other procedural requirements and substantive bases for exclusion under the rule.

[21] State corporation statutes generally provide that the business of the corporation shall be managed by, or under the direction of, the board of directors.

replacement for an actual, in-person meeting of shareholders, it should facilitate proposals concerning only those subjects that could properly be brought before a meeting under the corporation's charter or bylaws and under state law. Most state corporation codes specify certain items of business that are required to be presented to the shareholders for a vote, such as the election of directors, and others that may or may not be brought to a vote, either in the discretion of the chair or as specified by the corporation's charter or bylaws.

With respect to the chair's discretion, in general state law provides that the order of business at a meeting of shareholders and the rules for the conduct of the meeting are determined by the chair, who is usually appointed as provided in the bylaws, or in the absence of such provision, by the board of directors.[22] In order to reinforce the state law rights and responsibilities of shareholders, therefore, the proxy rules should be neutral with respect to the manner in which meetings of shareholders are conducted, and should not interfere with the chair's ability to conduct the meeting in accordance with the requirements of state law and the corporation's governing documents.

With respect to subjects and procedures for shareholder votes that are specified by the corporation's governing documents, most state corporation laws provide that a corporation's charter or bylaws can specify the types of binding or non-binding proposals that are permitted to be brought before the shareholders for a vote at an annual or special meeting. Rule 14a–8(i)(1) supports these determinations by providing that a proposal that is violative of the corporation's governing documents may be excluded from the corporation's proxy materials.

Rule 14a–8 specifies that companies must notify the Commission when they intend to exclude a shareholder's proposal from their proxy materials. This notice goes to the staff of the Division of Corporation Finance. In the notice, the company provides the staff with a discussion of the basis or bases upon which the company intends to exclude the proposal and requests that the staff not recommend enforcement action if the company excludes the proposal. A shareholder proponent may respond to the company's notice, but is not required to do so. Generally, the staff responds to each notice with a ''no-action'' letter to the company, a copy of which is provided to the shareholder, in which the staff either concurs or declines to concur with the company's view that there is a basis for excluding the proposal.[23]

Each proxy season, the Division of Corporation Finance responds to hundreds of these no-action requests.[24] Although the Commission itself is not directly involved in responding to no-action requests, where a matter involves ''substantial importance and where the issues are novel or highly complex,'' the Division may present an issue to the Commission for review—either at the Division's own instance or at the request of the company or the shareholder proponent.[25] Rule 14a–8 thus places the Commission's staff at the center of frequent disputes over whether a proposal must be included in the company's proxy materials.

C. Commission Review of the Proxy Process

In meeting the Commission's statutory obligation under Section 14(a) of the Exchange Act, this agency has monitored the development of the proxy process closely since 1934. Over the decades, we have made numerous improvements and refinements to the proxy rules based upon practical experience and the needs of investors.[26] This ongoing evaluation of the proxy process leads us to consider changes whenever it appears that the process can be improved to better promote the interests of investors, the efficient functioning of the capital markets, and the health of capital formation.

In 2003, the Commission directed the Division of Corporation Finance to review the proxy rules regarding procedures for the election of corporate directors and provide the Commission with recommendations regarding possible changes to the proxy rules. Following the Division's review of the proxy rules, the Commission proposed a comprehensive new set of rules, based on the Division's recommendations, which would have governed shareholder director nominations that are not control-related.[27] In connection with the rulemaking concerning shareholder director nominations, the Commission held a roundtable regarding the topic of shareholder director nominations generally, and more specifically, the shareholder director nominations release.[28] The Commission also proposed and adopted a new set of disclosure standards concerning director nominations and communications between shareholders and companies.[29]

More recently, the Commission held three roundtables in May 2007. This series of roundtables began with a re-examination of the fundamental principles of federalism that provide the context for our role under Section 14(a) of the Exchange Act. Specifically, the roundtables focused on the relationship between the federal proxy rules and state corporation law,[30] proxy voting mechanics,[31] and the evolution of both binding and non-binding shareholder proposals within the framework of the federal proxy rules.[32]

Roundtable participants argued that, in contrast to the current operation of the federal proxy rules, the federal role should be to facilitate shareholders' exercise of their fundamental state law and company ownership rights to elect the board of directors.[33] Some

[22] *See, e.g.,* Section 7.08, Model Business Corporation Act. The Comment to this Section states that it is expected that the chair will not misuse the power to determine the order of business and to establish rules for the conduct of the meeting so as to unfairly foreclose the right of shareholders—subject to state law and the corporation's charter and bylaws—to raise items which are properly a subject for shareholder discussion or action at some point in the meeting prior to adjournment.

[23] The staff's response is an informal expression of its views, and does not necessarily reflect the view of the Commission. Either the shareholder proponent or the company may obtain a decision on the excludability of a challenged proposal from a federal court.

[24] During the 2006–2007 proxy season, the Division of Corporation Finance responded to approximately 360 Exchange Act Rule 14a–8 no-action requests. To respond to these requests, each proxy season the Division assembles a task force of attorneys who work full-time on the project from approximately January through April of each year.

[25] 17 CFR 202.1(d).

[26] As long ago as 1940, observers noted that ''[t]he history of [C]ommission regulation pursuant to authority granted in Section 14 of the Securities Exchange Act has been one of careful expansion based upon experience and demonstrated needs.'' Sheldon E. Bernstein & Henry G. Fischer, *The Regulation of the Solicitation of Proxies: Some Reflections on Corporate Democracy,* 7 U. Chi. L. Rev. 226, 228 (1940).

[27] Exchange Act Release 34–48626 (Oct. 14, 2003).

[28] Security Holder Director Nominations Roundtable (March 10, 2004).

[29] Exchange Act Release 34–48825 (Nov. 24, 2003).

[30] Roundtable on the Federal Proxy Rules and State Corporation Law (May 7, 2007). Materials related to the roundtable, including an archived broadcast and a transcript of the roundtable, are available on-line at *http://www.sec.gov/spotlight/proxyprocess.htm.*

[31] Roundtable on Proxy Voting Mechanics (May 24, 2007). Materials related to the roundtable, including an archived broadcast and a transcript of the roundtable, are available on-line at *http://www.sec.gov/spotlight/proxyprocess.htm.*

[32] Roundtable on Proposals of Shareholders (May 25, 2007). Materials related to the roundtable, including an archived broadcast and a transcript of the roundtable, are available on-line at *http://www.sec.gov/spotlight/proxyprocess.htm.*

[33] *See, e.g.,* R. Franklin Balotti, Director, Richards, Layton & Finger, P.A, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law,

participants also observed that recent technological developments may provide promising possibilities for additional, complementary means for shareholders to interact and communicate with the management and the board of directors of the company that could be more effective and more efficient.[34] Participants generally agreed that enhanced disclosure should accompany any changes the Commission might propose so that shareholders can make fully informed voting decisions.[35]

In light of these issues and developments, the Commission is proposing that the current proxy rules and related disclosure requirements be revised and updated to more effectively serve the essential purpose of facilitating the exercise of shareholders' rights under state law.

II. Proposed Amendments to the Proxy Rules and Related Disclosure Requirements

We are proposing changes to Rule 14a–8 that would facilitate shareholders' exercise of their state law rights to propose bylaw amendments concerning shareholder nominations of directors. Additionally, we are proposing amendments to the proxy rules to make clear that director nominations made pursuant to any such bylaw provisions would be subject to the disclosure requirements currently applicable to proxy contests. These proposed amendments are intended to align the Commission's shareholder proposal rule more closely with the underlying state law rights of shareholders.

As discussed above, in addition to governing the procedure for soliciting proxies, a primary purpose of the federal proxy rules is to provide shareholders with full disclosure of all information for the exercise of their voting rights under state law and the corporation's charter. The amendments we propose today are designed to provide shareholders with additional disclosure to allow for better-informed voting decisions. This additional disclosure is of great importance to informed voting decisions both when shareholders are presented with proposed bylaw amendments and when shareholders are presented with nominees for director submitted under the company's bylaws. As such, we are proposing amendments to Schedule 13G and Schedule 14A that would enhance the disclosure of information about the proponents of bylaw amendments concerning the nomination of directors, about any shareholders that submit director nominees under any adopted bylaw, and about any director nominee that is submitted by a shareholder under such a bylaw.

A. Proposed Amendments Concerning Bylaw Proposals for Shareholder Nominations of Directors

1. Background Regarding the Election Exclusion in Rule 14a–8(i)(8)

Rule 14a–8(i)(8) sets forth one of several substantive bases upon which a company may exclude a shareholder proposal from its proxy materials. Specifically, it provides that a company need not include a proposal that ''relates to an election for membership on the company's board of directors or analogous governing body.'' The purpose of this provision is to prevent the circumvention of other proxy rules that are carefully crafted to ensure that investors receive adequate disclosure and an opportunity to make informed voting decisions in election contests. Last year, the U.S. Court of Appeals for the Second Circuit, in *American Federation of State, County and Municipal Employees, Employees Pension Plan* v. *American International Group, Inc.*,[36] held that AIG could not rely on Rule 14a–8(i)(8) to exclude a shareholder bylaw proposal under which the company would be required, under specified circumstances, to include shareholder nominees for director in the company's proxy materials at subsequent meetings.

The effect of the *AFSCME* decision was to permit both the bylaw proposal and, had the bylaw been adopted, subsequent election contests conducted under it, to be included in the company's proxy materials, but without compliance with the disclosure requirements of Rule 14a–12 solicitations. Because of the importance that we attach to the provision of meaningful disclosure to investors in election contests, we are revisiting the provisions of Rule 14a–8 in light of the *AFSCME* decision with a proposal that is designed to ensure that this objective is consistently achieved.

Since the *AFSCME* case was decided last year, the Commission has undertaken a thorough review of the proxy process. That review, including three recent roundtables on the topic, has led us to conclude that the federal proxy rules can be better aligned with shareholders' fundamental state law rights to nominate and elect directors. At the same time, the vindication of these state law rights must be accomplished in a way that accommodates the abiding federal interest in the full and fair disclosure to shareholders of information that is material to a contested election. This is the policy interest, grounded firmly in Section 14 of the Securities Exchange Act of 1934, that underlies the election exclusion of Rule 14a–8(i)(8).

To achieve the mutually reinforcing objectives of vindicating shareholders' state law rights to nominate directors, on the one hand, and ensuring full disclosure in election contests, on the other hand, we are proposing revisions to Rule 14a–8(i)(8) that would permit a shareholder who makes full disclosure in connection with a bylaw proposal for director nomination procedures, including a proposal such as that in the *AFSCME* case, to have that proposal included in the company's proxy materials.[37] The basis for the disclosure that we are proposing is the familiar Schedule 13G regime, under which certain passive investors that beneficially own more than 5% of a company's securities, report their ownership of a company's securities. We believe that using this well-understood system of disclosure should reduce compliance costs for companies and shareholders. In addition, because shareholders eligible to file under Schedule 13G must not have acquired or held their securities for the purpose of or with the effect of changing or influencing the control of the company, the opportunity to use Rule 14a–8 to inappropriately circumvent the disclosure and procedural regulations that are intended to apply in contested elections should be minimized.

Under the proposed amendments, if the proponents of a bylaw to establish a procedure for shareholder nominations of directors do not meet both the threshold for required filing on Schedule 13G, and the eligibility requirements to file on Schedule 13G, the proposal could then be excluded

May 7, 2007, at 14–17; Leo E. Strine, Jr., Vice Chancellor, Court of Chancery of the State of Delaware, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 18–23; Stanley Keller, Edwards Angell Palmer & Dodge LLP, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 142–143.

[34] *See*, *e.g.*, Stanley Keller, Edwards Angell Palmer & Dodge LLP, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 152–154.

[35] *See*, *e.g.*, Roberta Romano, Yale Law School, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 26–27; Stephen P. Lamb, Vice Chancellor, Court of Chancery of the State of Delaware, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 123–125.

[36] 462 F.3d 121 (2d Cir. 2006) (AFSCME).

[37] *See* proposed revision to Exchange Act Rule 14a–8(i)(8).

from the company's proxy materials under Rule 14a–8(i)(8). In this way, shareholders will be guaranteed the disclosure necessary to evaluate such proposals.

In light of the need for full disclosure where the possibility of control over a company is present, we believe that our decision to link the ability to include a bylaw proposal for director nominations in a company's proxy materials to the 5% threshold set by Section 13(d) of the Exchange Act addresses the basic policy concerns previously articulated by both Congress and the Commission. Moreover, because the proposed expansion of shareholders' ability to submit proposals under Rule 14a–8 would be limited to specific situations in which shareholders would be assured of appropriate disclosure and procedural protections, if the proposal did not meet the eligibility requirements of the amended rule, the Commission's staff would continue to interpret the rule to permit companies to exclude the proposal.

We believe that the amendments we are proposing today, including the amendments to the language of the election exclusion, will provide clarity and certainty in this area. We also believe they will facilitate shareholders' exercise of their state law rights to propose amendments to company bylaws concerning director nominations.

2. Proposed Amendment to Rule 14a–8(i)(8) Concerning Bylaw Amendments on Procedures for Shareholder Nominations of Directors

We are proposing an amendment to Rule 14a–8(i)(8) [38] that would enable shareholders to have their proposals for bylaw amendments regarding the procedures for nominating directors included in the company's proxy materials. Such a bylaw proposal would be required to be included in the company's proxy materials if:

- The shareholder (or group of shareholders) that submits the proposal is eligible to file a Schedule 13G and files a Schedule 13G that includes specified public disclosures regarding its background and its interactions with the company; [39]
- The proposal is submitted by a shareholder (or group of shareholders) that has continuously beneficially owned more than 5% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date the shareholder submits the proposal; [40] and
- The proposal otherwise satisfies the requirements of Rule 14a–8.[41]

As amended, Rule 14a–8 would allow proponents of bylaw proposals to offer shareholder nomination procedures as they see fit. The only substantive limitations on such procedures would be those imposed by state law or the company's charter and bylaws. For example, the procedure could specify a minimum level of share ownership for those making director nominations that would be included in the company's proxy materials; it could specify the number of director slots subject to the procedure; or it could prescribe a method for the allocation of any costs—so long as both the form and substance of any such requirements were consistent with applicable state law and the company's charter and existing bylaw provisions. Likewise, the voting threshold required in order to adopt the bylaw would be determined by the thresholds set forth by state law or in the company's charter and bylaws with respect to the adoption of bylaws or bylaw amendments.[42]

The disclosure requirements and anti-fraud provisions of the federal proxy rules would, of course, apply to any solicitation of proxies conducted pursuant to a bylaw provision proposed and approved by shareholders. A shareholder proposal to establish bylaw procedures for shareholder nominations of directors would also be subject to any substantive bases for exclusion currently provided for in Rule 14a-8 that do not relate to an election for membership on the company's board of directors.

Shareholder proposals to amend the company's bylaws to establish a procedure for shareholder nominations of directors by proponents that do not meet the eligibility requirements of the proposed amendment to Rule 14a-8(i)(8)—including the requirements that the shareholder proponents have been more than 5% owners for at least one year and have filed a Schedule 13G—would be subject to exclusion.

We believe that the amendments we are proposing today will not only provide consistency and certainty in this area of Rule 14a–8, but also will provide shareholders the ability to have a greater voice in their company's corporate governance, consistent with their rights under state law.

Request for Comment

- As proposed, a bylaw proposal may be submitted by a shareholder (or group of shareholders) that is eligible to and has filed a Schedule 13G that includes specified public disclosures regarding its background and its interactions with the company, that has continuously held more than 5% of the company's securities for at least one year, and that otherwise satisfies the procedural requirements of Rule 14a–8 (*e.g.*, holding the securities through the date of the annual meeting). Are these disclosure-related requirements for who may submit a proposal, including eligibility to file on Schedule 13G, appropriate? If not, what eligibility requirements and what disclosure regime would be appropriate?
  - For example, should the 5% ownership threshold be higher or lower, such as 1%, 3%, or 10%? Is the 5% level a significant barrier to shareholders making such proposals? Does the impediment imposed by this threshold depend on the size of the company? Should the ownership percentage depend on the size of the company? For example, should it be 1% for large accelerated filers, 3% for accelerated filers and 5% for all others? Should an ownership threshold be applicable at all?
  - If the eligibility requirement should be different from 5%, should we nonetheless require the filing of a Schedule 13G or otherwise require disclosure equivalent to a Schedule 13G?

[38] *See* proposed revision to paragraph (i)(8) of Exchange Act Rule 14a–8.

[39] The eligibility to file a Schedule 13G generally is available only for persons who have acquired and continue to hold the securities beneficially owned without "a purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect." *See* Rule 13d–1(e). Although proposing a bylaw amendment pursuant to proposed Rule 14a–8(i)(8) would not on its own eliminate the ability to file a Schedule 13G, a determination of whether a proposing shareholder is eligible to file a Schedule 13G will continue to be based on the specific facts and circumstances accompanying the activities of the proposing shareholder. *See* Release No. 34–39538 (Jan. 12, 1998) [63 FR 2854].

[40] The one-year holding requirement would apply individually to each member of a group that is aggregating its security holdings to make a proposal.

[41] To require a company to include the proposal in its proxy materials, the proposal would have to satisfy the procedural requirements of Exchange Act Rule 14a–8 and not fall within one of the other substantive bases for exclusion included in Exchange Act Rule 14a–8.

[42] In the event the charter or bylaws are silent as to the voting threshold required, a company and its shareholders should look to the governing state corporation law. The staff of the Commission would not become involved in determining what this threshold is or whether it had been achieved. Interpretation and enforcement of any bylaw provision setting forth a procedure for shareholder director nominees to be included in the company's proxy materials would be the province of the appropriate state court since it would be a question of state law, not federal law. The staff of the Commission would not become involved in determining the correct interpretation or application of an adopted bylaw provision. In addition, the staff of the Commission would not become involved in determining whether a bylaw provision was properly adopted.

○ The proposed one-year holding requirement is consistent with the existing holding period in Rule 14a–8(b)(1) to submit a shareholder proposal. Is it appropriate to limit use of the proposed rules to shareholder proponents that have held their securities for any length of time? If so, is the one-year period that we have proposed appropriate, or should the holding period be longer (*e.g.*, two years or three years) or shorter than proposed (*e.g.*, six months)? Why? With regard to the one-year holding requirement, is it appropriate to require that each member of a group of shareholders individually satisfy this holding requirement?

○ Shareholders of some companies, *e.g.*, open-end management investment companies, are not eligible to file Schedule 13G because the securities of those companies are not defined as ''equity securities'' for purposes of Rule 13d–1, which governs the filing of Schedule 13G by beneficial owners of equity securities. Should we permit security holders of such companies to file a Schedule 13G for the purpose of relying upon proposed Rule 14a–8(i)(8) if the holder otherwise would be eligible to file a Schedule 13G but for the exclusion of the company's securities from the definition of ''eligible security?'' If we were to do this, what, if any, amendments would be required to Schedule 13G? Should we instead use an eligibility requirement, other than eligibility to file Schedule 13G, in Rule 14a–8(i)(8) for shareholders of companies whose securities are not ''equity securities?''

• If a shareholder acquires shares with the intent to propose a bylaw amendment, could that be deemed to constitute an intent to influence control of the company and thus potentially bar them from filing on 13G? If so, should the Commission provide an exemption that would enable such a shareholder to file on Schedule 13G?

• Proposals to establish a procedure for shareholder nominees would be subject to the existing limit under Rule 14a–8 of 500 words in total for the proposal and supporting statement. Is this existing word limit sufficient for such a proposal? If not, what increased word limit would be appropriate?

• In seeking to form a group of shareholders to satisfy the 5% threshold, shareholders may seek to communicate with one another, thereby triggering application of the proxy rules. In order not to impose an undue burden on such shareholders, should such communications be exempt from the proxy rules? If so, what should the parameters of any such exemption be?

• Is there any tension between the requirement in Schedule 13G that the securities not be acquired or held for the purpose of changing or influencing control of the company and the desire of the holder of such shares to propose a bylaw amendment seeking to establish procedures for including shareholder-nominated candidates to the board? Does the answer to this question depend on the number of candidates sought to be included in the proposal? If there is tension, should we establish a safe harbor of some kind?

3. Proposed Disclosure Requirements Related to Shareholder Proponents and Nominating Shareholders

a. Overview of Requirements Applicable to Shareholder Proponents

Under the revisions to Rule 14a–8 that we are proposing today, a company would be required to include in its proxy materials bylaw proposals to establish procedures governing shareholder nominations for director so long as the bylaw is consistent with state law and the company's charter and bylaws. To trigger that requirement, an essential element is that the shareholder (or group of shareholders) proposing the bylaw provide disclosure about its own background, intentions, and course of dealings with the company to enable other shareholders to vote intelligently on the proposal. This disclosure requirement is being implemented through proposed amendments to existing Schedule 13G and a new reporting requirement under proposed Item 24 of Regulation 14A.

The already significant role that full disclosure plays in our proxy rules is rendered still more important when individual shareholders or groups of shareholders, who do not owe a fiduciary duty to the company or to other shareholders, use company assets and resources to propose changes in the company's governing documents. Our proposed amendments would require that certain information concerning proposals that could cause a fundamental change in the relationship between the company and its shareholders be placed before all shareholders entitled to vote. This information, in this context, includes background information on the shareholder proponent that other shareholders ordinarily would find to be important and relevant to a decision when asked to consider a proposed bylaw amendment setting forth procedures for director nominations. In addition, we believe that the use of such a proposal, or the possibility of such a proposal, to influence the company's management or board of directors to take or not to take other related or unrelated actions should be rendered transparent. It would be useful to the company's shareholders to know of any course of dealing between the shareholder proponent and the company when they are deciding how they will vote on the proposal. The additional Schedule 13G and Regulation 14A disclosure requirements that we are proposing address these concerns.

Therefore, we propose to require disclosure on Schedule 13G of significant background information regarding the shareholder proponent, as well as an extensive description of the course of dealing between the shareholder proponent and the company. In addition, we propose to require the company to disclose similar information with regard to the nature and extent of its relationships with the shareholder proponent. We believe that this additional disclosure will provide transparency to shareholders voting on such bylaw amendments.

Specifically, we are proposing that any shareholder (or group of shareholders) that forms any plans or proposals regarding an amendment to the company's bylaws [43] concerning shareholder director nominations, file or amend Schedule 13G to include the following information that would be required by new Item 8A, Item 8B, and Item 8C:

• The shareholder proponent's relationships with the company; and

• Additional relevant background information on the shareholder proponent. The shareholder proponent also would be required to amend its Schedule 13G to update this information as necessary.

To permit reliance on the existing disclosure scheme set forth in Regulation 13D, the proposed amendments to Rule 14a–8 will require shareholder bylaw proposals to be

[43] In this regard, the formation of any plans or proposals regarding an amendment to the company's bylaws would include the submission of a proposal to amend the company's bylaws, and discussions in which the shareholder indicated to management an intent to submit such a proposal or indicated an intent to refrain from submitting such a proposal conditioned on the taking or not taking of an action by the company. *See* proposed Note to Item 8A of Schedule 13G. In the proposed disclosure requirements, and in the following discussion of those proposed requirements, the term ''shareholder proponent'' refers to a person that has formed any plans or proposals regarding an amendment to the company's bylaws for a shareholder director nomination procedure; any affiliate, executive officer or agent acting on behalf of that person with respect to the plans or proposals; and anyone acting in concert with, or who has agreed to act in concert with, that person with respect to the plans or proposals. *See* proposed Item 8A(a) of Schedule 13G.

included in a company's proxy materials only if the shareholder proponent is subject to Regulation 13D and eligible to file on Schedule 13G.[44] Regulation 13D, which requires the disclosure of specified information in filings with the Commission on Schedule 13D, applies to persons that directly or indirectly beneficially own more than 5% of a class of voting equity securities registered pursuant to Section 12 of the Exchange Act.[45] Schedule 13G requires less disclosure than Schedule 13D and is available for use by persons who beneficially own more than 5% of a class of equity securities registered with the Commission pursuant to Section 12(g) of the Exchange Act and who meet the criteria for one of three types of Schedule 13G filers.[46] Generally, persons, including groups and others who file on Schedule 13G must certify that the securities have not been acquired with the purpose nor with the effect of changing or influencing control of the company.[47]

The proposed amendments to Rule 14a–8 and Schedule 13G, which would enable a shareholder that had provided specified disclosures to propose a bylaw amendment, would apply to a shareholder (or group of shareholders) that:

- Has continuously held more than 5% of the company's shares entitled to be voted on the proposal for at least one year as of the date of submitting the proposal;
- Was eligible to file a report of beneficial ownership on Schedule 13G; and
- Has filed a report of beneficial ownership on Schedule 13G, or an amendment thereto, that includes information about the shareholder or group's background and relationships with the company.

The requirement that a shareholder or group of shareholders hold more than 5% of the company's shares entitled to be voted on the proposal corresponds with the filing requirement on Schedule 13G for beneficial owners of more than 5% of a company's shares, and facilitates the provision of the additional disclosures concerning the shareholder proponent that the amendments to Rule 14a–8 would require. The proposed requirement that the shares be continuously held for at least one year as of the date of submitting the proposal has the additional benefit of ensuring that proposals are made by shareholders with a significant long-term stake in the company, and it is consistent with the current requirement in Rule 14a–8 that has worked well historically. The proposed requirement that the shareholder (or group of shareholders) be eligible to report on Schedule 13G would not only ensure that they are subject to the disclosure requirements of the Williams Act, but also that their shares were not acquired and are not held with the purpose or effect of changing or influencing control of the company.

b. Proposed New Item 8B of Schedule 13G

A shareholder proponent may have a variety of relationships with the company. Because these relationships will often be relevant to an informed decision by other shareholders as to whether to vote in favor of a proposed bylaw amendment, disclosure of information concerning the proposal should include information about such relationships. Accordingly, we are proposing to add a new Item 8B to Schedule 13G concerning the nature and extent of relationships between the shareholder proponent and the company.[48] As proposed, new Item 8B disclosure would include:

- Any direct or indirect interest of the shareholder proponent in any contract with the company or any affiliate of the company (including any employment agreement, collective bargaining agreement, or consulting agreement);
- Any pending or threatened litigation in which the shareholder proponent is a party or a material participant, involving the company, any of its officers or directors, or any affiliate of the company; and
- Any other material relationship between the shareholder proponent and the company or any affiliate of the company not otherwise disclosed.[49]

Additionally, Item 8B would require a shareholder proponent to describe the following items that occurred during the 12 months prior to the formation of any plans or proposals, or during the pendency of any proposal or nomination:

- Any material transaction of the shareholder proponent with the company or any affiliate of the company; and
- Any discussion regarding the proposal between the shareholder proponent and a proxy advisory firm.

As proposed, new Item 8B also would require disclosure of any holdings of more than 5% of the securities of any competitor of the company, including the number and percentage of securities owned, as of the date the shareholder proponent first formed a plan or proposal regarding an amendment to the company bylaws in accordance with Rule 14a–8(i)(8).[50] The shareholder proponent also would be required to disclose any material relationship with any competitor other than as a security holder, as of the date the shareholder proponent first formed a plan or proposal regarding an amendment to the company bylaws in accordance with Rule 14a–8(i)(8).

Finally, new Item 8B would require disclosure regarding any meetings or contacts, including direct or indirect communication by the shareholder proponent, with the management or directors of the company that occurred during the 12-month period prior to the formation of any plans or proposals, or during the pendency of any proposal. The proposed disclosure would provide:

- A description, in reasonable detail, of the content of such direct or indirect communication;
- A description of the action or actions sought to be taken or not taken;
- The date of the communication;
- The person or persons to whom the communication was made;
- Whether that communication included any reference to the possibility of such a proposal; and
- Any response by the company or its representatives to that communication

[44] *See* proposed revisions to paragraph (i)(8) of Rule 14a–8.

[45] *See* 17 CFR 240.13d–1.

[46] Regulation 13D permits filing on Schedule 13G for a specified list of qualified institutional investors who have acquired the securities in the ordinary course of their business and not with the purpose nor the effect of changing or influencing control of the company. *See* Exchange Act Rule 13d–1(b) (17 CFR 240.13d–1(b)). In addition, persons who are beneficial owners of more than 5% of a class of equity securities may file Schedule 13G, if they have not acquired the securities with the purpose nor with the effect of changing or influencing control of the company, and if they are not directly or indirectly the beneficial owner of 20% or more of the class of securities. *See* Exchange Act Rule 13d–1(c) (17 CFR 240.13d–1(c)). Finally, certain persons may file a Schedule 13G, in lieu of Schedule 13D, if they qualify under Exchange Act Section 13(d)(6) or Rule 13d–1(d) (17 CFR 240.13d–1(d)).

[47] Reports of beneficial ownership filed on Schedule 13G pursuant to Rule 13d–1(d) are not required to make this certification.

[48] In proposed Item 8A of Schedule 13G we define a shareholder proponent to include a person or group that has formed any plans or proposals with regard to the amendment, any affiliate, executive officer, or agent of such shareholder proponent, or anyone acting in concert with, or who has agreed to act in concert with such shareholder proponent with respect to the proposed bylaw amendment.

[49] A material relationship between the proponent and the company or an affiliate of the company may include, but is not limited to, a current or prior employment relationship, including consulting arrangements.

[50] For this purpose, a ''competitor'' of the company is proposed to include any enterprise with the same Standard Industrial Classification code.

prior to the date of filing the required disclosure.

To the extent that the shareholder proponent and management or the directors of the company have an ongoing dialogue, the shareholder proponent may describe the frequency of the meetings and the subjects covered at the meetings rather than providing the information separately for each meeting. However, if an event or discussion occurred at a specific meeting that is material to the shareholder proponent's decision to submit a proposal, that meeting would be required to be discussed in detail separately.

c. Proposed New Item 8C of Schedule 13G

When a shareholder (or group of shareholders) proposes a bylaw amendment regarding the procedures for nominating directors, background information regarding the proposing shareholder often will be relevant to an informed voting decision by the other shareholders. Accordingly, we are proposing to add a new Item 8C to Schedule 13G concerning the following information about the shareholder proponent:

• If the shareholder proponent is not a natural person:

—The identity of the natural person or persons associated with the entity responsible for the formation of any plans or proposals;

—The manner in which such person or persons were selected, including a discussion of whether or not the equity holders or other beneficiaries of the shareholder proponent entity played any role in the selection of such person or persons, and whether they played any role in connection with the formation of any plans or proposals;

—Any fiduciary duty to the equity holders or other beneficiaries of the entity that the person or persons associated with the entity responsible for the formation of any plans or proposals have in forming such plans or proposals;

—The qualifications and background of such person or persons relevant to the plans or proposals; and

—Any interests or relationships of such person or persons, and of that entity, that are not shared generally by the other shareholders of the company and that could have influenced the decision by such person or persons and the entity to submit a proposal.

• If the shareholder proponent is a natural person:

—The qualifications and background of such person or persons relevant to the plans or proposals; and

—Any interests or relationships of such person or persons that are not shared generally by the other shareholders of the company and that could have influenced the decision by such person or persons to submit a proposal.

With regard to these disclosures, examples of any interests or relationships of the shareholder proponent not shared by other shareholders of the company may include, but are not limited to, contractual arrangements, current or previous employment with the company, employment agreements, consulting agreements, and supplier or customer relationships.

d. Proposed New Item 24 to Schedule 14A

Because a shareholder proponent's relationships with the company often will be relevant to an informed voting decision by other shareholders, background information regarding these relationships should be disclosed not only by the shareholder proponent, but also the company. Accordingly, we are proposing to add a new Item 24 to Schedule 14A to require the disclosure by the company of the nature and extent of the relationship between the shareholder proponent, any affiliate, executive officer or agent of the shareholder proponent, or anyone acting in concert with, or who has agreed to act in concert with, the shareholder proponent with respect to the proposed bylaw amendment submitted in accordance with Rule 14a–8(i)(8), on the one hand, and the company, on the other. Item 24 disclosures would include:

• Any direct or indirect interest of the shareholder proponent in any contract with the company or any affiliate of the company (including any employment agreement, collective bargaining agreement, or consulting agreement);

• Any pending or threatened litigation in which the shareholder proponent is a party or a material participant, involving the company, any of its officers or directors, or any affiliate of the company; and

• Any other material relationship between the shareholder proponent and the company or any affiliate of the company not otherwise disclosed.

Additionally, Item 24 of Schedule 14A would require disclosure of the following with respect to the 12 months prior to the shareholder proponent forming any plans or proposals, or during the pendency of any proposal, regarding an amendment to the company bylaws in accordance with Rule 14a–8(i)(8):

• Any material transaction of the shareholder proponent with the company or any affiliate of the company; and

• Any meetings or contacts between the shareholder proponent and management or directors of the company.[51]

As with the shareholder proponent requirement, to the extent that the shareholder proponent and management or directors of the company have an ongoing dialogue, the company would be required to merely describe the frequency of and the subjects covered at the meetings, except where an event or discussion occurred that is material to the shareholder proponent's decision to submit a proposal.

For purposes of meeting these proposed disclosure requirements, the company would be entitled to rely on the Schedule 13G disclosures of the shareholder proponent concerning the date on which the shareholder proponent formed any plans or proposals regarding an amendment to the company bylaws in accordance with Rule 14a–8(i)(8).

Request for Comment

• The proposed disclosure standards relate to the qualifications of the shareholder proponent, any relationships between the shareholder proponent and the company, and any efforts to influence the decisions of the company's management or board of directors. To assure that the quality of disclosure is sufficient to provide information that is useful to shareholders in making their voting decisions and to limit the potential for boilerplate disclosure, we have proposed that the disclosure standards require specific information concerning these qualifications, relationships, and efforts to influence the company's management or board of directors. Is the proposed level of required disclosure appropriate? Are any of the proposed disclosure requirements unnecessary to

[51] As with the corresponding disclosure requirement for shareholder proponents, the proposed disclosures would include: a description, in reasonable detail, of the content of such direct or indirect communication; a description of the action or actions sought to be taken or not taken; the date of the communication; the person or persons to whom the communication was made; whether that communication included any reference to the possibility of such a proposal; and any response by the company or its representatives to that communication prior to the date of filing the required disclosure. *See* proposed Item 24(d)(2) of Schedule 14A.

shareholders' ability to make an informed voting decision? If so, which specific requirements are not necessary? Should we require substantially similar disclosure from both the proponent and the company as proposed or should the company be allowed to avoid duplicating disclosure relating to the proponent where the company agrees with the disclosure provided? Is any additional disclosure appropriate?

• We solicit comments with respect to any other types of background information regarding a shareholder proponent that should be disclosed in Schedule 13G or Item 24 of Schedule 14A. What other types of information do shareholders need to have about the shareholder proponent, or the shareholder proponent's course of dealing with the company, when voting on a proposal?

• Would the proposed Schedule 13G disclosure requirements for shareholder proponents be useful to other shareholders in forming their voting decisions? Are the requirements practical? Is any aspect of the proposed disclosure overly burdensome for shareholder proponents to comply with?

• As proposed, shareholder proponents would be required to disclose discussions with a proxy advisory firm prior to submitting a proposal. Is this disclosure requirement appropriate? Why or why not?

• We also propose that companies would be responsible for disclosure regarding their relationships and course of dealing with the shareholder proponent in Item 24 of Schedule 14A. Is this proposed additional disclosure useful? Would any aspect of this disclosure requirement be impractical or overly burdensome?

• As proposed, the disclosures concerning the shareholder proponent and company's relationship must be provided for the 12 months prior to forming any plans or proposals, or during the pendency of any proposals, with regard to an amendment to the company bylaws. Is this the appropriate timeframe? If not, should the timeframe be shorter (*e.g.*, 6 or 9 months) or longer (*e.g.*, 18 or 24 months)? Is any federal holding period requirement appropriate?

• Is the proposed reliance on the existing Schedule 13G framework appropriate? Should we require the type of disclosure found in Schedule 13G, but nevertheless permit a shareholder who holds less than 5% of a company's shares to file a Schedule 13G and to submit bylaw proposals of the type described herein? Is there another disclosure provision in the federal securities laws with a lesser ownership requirement that would more appropriate upon which to rely?

• Is it appropriate to require any additional disclosure by shareholders and/or the company, beyond what is currently required, in connection with a proposed amendment to the company's bylaws in accordance with proposed Rule 14a–8(i)(8)? Rather, should we require disclosure only when a shareholder actually seeks to nominate a director using a nominating procedure established pursuant to a company's bylaws?

e. Disclosure by Nominating Shareholders—Proposed New Rule 14a–17

One of our primary concerns with using Rule 14a–8 to nominate or establish a procedure for shareholders to nominate a candidate for director is that doing so could result in shareholders being asked to vote on a director nominee without the disclosure that otherwise would be required under the federal proxy rules applicable to elections involving solicitations in opposition to the company's nominees. To address this concern, we are proposing a new Rule 14a–17 that would provide that the existing disclosure requirements for solicitations in opposition (either for a short slate or for a majority of board seats) would apply to nominating shareholders and their nominees under any shareholder nomination procedure.[52] These disclosure requirements are found in Item 4(b), Item 5(b), Item 7, and Item 22(b) of Schedule 14A, and provide basic information regarding the nominating shareholder (or shareholder group) and nominee or nominees, including biography and shareholdings, other interests of the individuals (or group), methods and costs of the solicitation, and other information to enable voting shareholders to make an informed decision.

Because the shareholder nominee would be included in the company's proxy materials, the company would be required to include the disclosure in its proxy statement or, in the Internet version of its proxy statement, to link to a Web site address where those disclosures would appear. The nominating shareholder would be responsible for providing the information to the company.[53] Further, the nominating shareholder would be required to provide a statement that the shareholder nominee consented to being named in the proxy materials and to serve if elected.[54] Finally, a company would not be required to include a nominating shareholder's nominee in its proxy materials if the shareholder fails to provide the information required by proposed Rule 14a–17(b)–(c).[55]

f. Liability for, and Incorporation by Reference of, Information Provided by the Nominating Shareholder

It is our intent that a shareholder who nominates a director under a bylaw provision concerning the nomination of directors would be liable for any materially false or misleading statements in the disclosure provided to the company and included by the company in its proxy materials. The proposed rules contain express language, modeled on Exchange Act Rule 14a–8(*l*)(2),[56] providing that the company would not be responsible for that disclosure.[57] In addition, it is our intention that any information that is provided to the company for inclusion in its proxy materials by the nominating shareholder and included in the company's proxy statement would not be incorporated by reference into any filing under the Securities Act or the Exchange Act unless the company determines to incorporate that information by reference specifically into that filing.[58] However, to the extent the company does so incorporate that information by reference, we would consider the company's disclosure of that information as the company's own statement for purposes of the anti-fraud and civil liability provisions of the Securities Act or the Exchange Act, as applicable.

g. Filing Requirements

When, in accordance with a shareholder nomination bylaw procedure, a shareholder nominates a candidate for director, the company would be required to file its proxy statement in preliminary rather than definitive form, in the same manner as under the existing proxy rules

[52] *See* proposed Exchange Act Rule 14a–17(c).

[53] *Id.*

[54] *See* Exchange Act Rule 14a–4(d)(4) (17 CFR 240.14a–4(d)(4)). The rule provides that such consent is required in order for a person to be named in the proxy statement as a bona fide nominee.

[55] *See* proposed Exchange Act Rule 14a–17(d).

[56] 17 CFR 240.14a–8(*l*)(2). Exchange Act Rule 14a–8(*l*)(2) applies with respect to proposals and supporting statements that are submitted by shareholders and then required to be repeated in the company's proxy materials by Exchange Act Rule 14a–8. In this regard, Exchange Act Rule 14a–8 states that ''the company is not responsible for the contents of [the shareholder proponent's] proposal or supporting statement.''

[57] *See* proposed Exchange Act Rule 14a–17(e).

[58] *See* proposed Exchange Act Rule 14a–17(f).

applicable to proxy contests.[59] This is the same result that would be obtained in a traditional contested election in which the shareholder nominees appeared in a separate proxy statement.

It is possible that either the company or a nominating shareholder (or group of shareholders) may wish to solicit in favor of their nominee or nominees outside the company proxy materials. As in a traditional contested election, it is important that any soliciting materials in addition to the proxy statement be filed publicly with the Commission so that such materials are available to all shareholders, to the company, and to the Commission staff for review. Accordingly, where a shareholder or company chooses to solicit outside the company proxy materials, we intend that the existing filing requirements applicable to definitive additional soliciting materials would apply.[60] Under these requirements, all soliciting materials are required to be filed with the Commission in the same form as the materials sent to shareholders no later than the date they are first sent or given to shareholders.[61]

h. Proposed New Rule 14a–17(b)–(c) and Item 25 of Schedule 14A

As noted above, one of the primary concerns with using Rule 14a–8 to establish a procedure for shareholders to nominate directors is that doing so would not provide shareholders with disclosure they otherwise would be given in a proxy contest. In this regard, we note that it is of substantial importance to provide shareholders with clear, transparent disclosure regarding any shareholder or group of shareholders using a nominating procedure established pursuant to a company's bylaws to nominate a candidate for director. Therefore, the additional disclosures that are proposed to be added to Schedule 13G for shareholder proponents of a bylaw amendment concerning shareholder director nominations also would apply to a nominating shareholder under an adopted bylaw. In this regard, we are proposing to add new Rule 14a–17(b), which would require any nominating shareholder to provide to the company the disclosures required by Item 8A, Item 8B, and Item 8C of Schedule 13G.[62] These disclosures would be required at the time the shareholder forms any plans or proposals with respect to submission of a nominee for director to the company for inclusion in the proxy materials.[63] Immediately after the nominating shareholder provides the company with the disclosure, under Rule 14a–17(c), the company would be required to provide the information on its Web site or provide a link on its Web site to a Web site address where the disclosure would appear. In addition, pursuant to Item 25 of Schedule 14A, the company would be required to include the disclosure in its proxy statement or provide a link to a Web site address where the disclosure would appear in the Internet version of its proxy statement. Under Rule 14a–17(d), if a nominating shareholder fails to provide the required information, the shareholder's nominee will not be required to be included in the company's proxy materials.

Request for Comment

- As proposed, a nominating shareholder would be required to provide to the company, for inclusion in the company's proxy materials, disclosure responsive to Item 8A, Item 8B, and Item 8C of Schedule 13G, as well as Item 4(b), Item 5(b), Item 7, and Item 22(b) of Schedule 14A, as applicable. Is this the appropriate type and amount of disclosure for a nomination under a shareholder nomination procedure? If not, what disclosure requirement would be appropriate? Is the timing requirement for providing this disclosure appropriate? If not, when should such disclosures be provided?
- Is it appropriate for the disclosure to be provided to the company for inclusion on its Web site and in its proxy materials, or should the shareholder instead be responsible for filing the information provided that they beneficially own more than 5% of the company's securities entitled to be voted and are eligible to file on Schedule 13G?
- Does the proposal make sufficiently clear that the nominating shareholder would be responsible for the information submitted to the company? Should the proposal include language addressing a company's responsibility for including statements made by the shareholder that it knows are not accurate?
- Should information provided by a nominating shareholder be deemed incorporated by reference into Securities Act or Exchange Act filings? If so, why?
- Should companies that receive a nomination for director from a shareholder be required to file their proxy statement in preliminary form, as is proposed? If not, why would it be appropriate for companies to file directly in definitive form?
- Should solicitations in favor of or against a nominee for director, by either the company or the shareholder, be filed as definitive additional soliciting materials on the date of first use, as is proposed? If not, how should such materials be filed?
- As proposed, a nominating shareholder would be required to provide the information required by Item 8A, Item 8B and Item 8C of Schedule 13G to the company for inclusion on the company's Web site and in its proxy. Would it be appropriate to add a disclosure requirement on Form 8–K that would apply where a company does not maintain a Web site? Would it be appropriate to allow a company to choose between Web site disclosure and Form 8–K disclosure even where a company maintains a Web site? Why or why not?
- Is there disclosure other than that proposed concerning shareholder nominees that would be material to investors? If so, what are those disclosures and why would they be material? For example, should we require disclosure regarding the relationship between the nominating shareholder and shareholder nominee? If so, what disclosures would be appropriate and useful to shareholders?

B. Electronic Shareholder Forums

1. Background

The Commission's recent series of roundtables on the proxy process considered, among other issues, the role of technology in facilitating communications not only between shareholders and companies, but also among shareholders. Given the opportunities for collaborative discussion afforded by the Internet and related technological innovations, the proxy mechanism by comparison offers limited opportunities—usually only the

[59] *See* proposed amendment to Exchange Act Rule 14a–6.

[60] *See* Exchange Act Rule 14a–6(b) (17 CFR 240.14a–6(b)) and Exchange Act Rule 14a–12 (17 CFR 240.14a–12).

[61] *Id.*

[62] In this regard, it is important to note that a shareholder director nomination bylaw may establish any ownership threshold for nominating a director. Because we believe that the disclosure required by these items is important for an informed voting decision by shareholders, we are proposing new Item 25 of Schedule 14A in order to provide complete disclosure regarding nominating shareholders utilizing procedures established in bylaw amendments that allow for nominations by shareholders.

[63] We have proposed a Note to Exchange Act Rule 14a–17(a) stating that the formation of any plans or proposals includes instances where the shareholder has indicated an intent to management to submit a nomination or has indicated an intent to management to refrain from submitting a nomination conditioned on the taking or not taking of a corporate action.

annual meeting—for shareholders to provide advice to management. Accordingly, the proxy system may not be the only, or the most efficient, means of shareholder communication with management on purely advisory matters.

Alternatives or supplements to the proxy machinery that exploit the advantages of telecommunications technology have been suggested that could offer shareholders other means to communicate, including with regard to resolutions such as those typically submitted as non-binding proposals under Rule 14a–8. For example, an online forum, restricted to shareholders of the company whose anonymity is protected through encrypted unique identifiers, could offer the opportunity for shareholders to discuss among themselves the subjects that most concern them, and which today are considered—if at all—only indirectly through the proxy process. Shareholder expressions of interest on particular suggested actions, tabulated based on their ownership interest, could be determined on a real-time basis. The company could use the form to provide information, such as a copy of press release information regarding record dates and expression of views by the company. Moreover, the opportunity for this enhanced level of shareholder participation could be extended throughout the year, rather than only at annual meetings. From the company's standpoint, such a shareholder forum could provide more frequent information about the interests and concerns of investors.

We are not seeking, through the proxy rules or otherwise, to devise an approved regulatory version of an electronic shareholder forum. Myriad uses of the Internet to facilitate shareholder communication are already well under way, and as technology continues to develop, individuals and entities will find increasingly creative ways to address the challenges they face in presenting proposals to companies, determining support for proposals among other shareholders, conducting referenda on non-binding proposals, and organizing online petitions to management, among other potential activities. The Commission strongly encourages these developments. Rather than prescribe any specific approach to an online shareholder forum in the proxy rules, the proposed amendment is designed to remove any unnecessary real and perceived impediments to continued private sector experimentation and use of the Internet for communication among shareholders, and between shareholders and their company.

2. Proposed Amendment To Facilitate the Use of Electronic Shareholder Forums

We propose to facilitate greater online interaction among shareholders by removing obstacles in the current rules to the use of an electronic shareholder forum. To facilitate the establishment of such forums, which can be conducted and maintained in any number of ways, we propose to clarify that a company is not liable for independent statements by shareholders on a company's electronic shareholder forum. In addition, in order to enhance the efficacy of the forum, we propose to address any ambiguity concerning whether use of an electronic shareholder forum could constitute a proxy solicitation.

Proposed Rule 14a–18(a) would make clear that both companies and shareholders are entitled to establish and maintain an electronic shareholder forum under the federal securities laws, provided that the forum is conducted in compliance with the federal securities laws, applicable state law, and the company's charter and bylaws. While the proxy rules currently do not prohibit or delimit such activities, neither were they written in contemplation of the wide-ranging communications potential of the Internet. By addressing specific concerns relating to the use of the electronic shareholder forum in the proposed rule, we are seeking to remove legal ambiguity that might inhibit shareholders and companies from energetic exploitation of the potential of communications technology, and to encourage shareholders and companies to take advantage of this technology to facilitate better communication among shareholders and between shareholders and companies.

Liability for statements made on an electronic shareholder forum is one area of concern for companies and shareholders when making the decision whether to establish such a forum. To alleviate this concern, we propose to clarify in Rule 14a–18(b) that, for simply establishing, maintaining, or operating the electronic shareholder forum, a company or shareholder would not be liable under the federal securities laws for any statement or information provided by another person to the forum. The intent is for the person establishing, maintaining, or operating an electronic shareholder forum to be protected from liability in a similar way as the federal telecommunications laws protect an interactive computer service.[64]

Persons providing information to or making statements on the electronic shareholder forum would remain liable for the content of those communications under traditional liability theories in the federal securities laws, such as those in Section 17(a) of the Securities Act and Section 10(b), Rule 10b–5, and Section 20(e) of the Exchange Act. The prohibitions in the anti-fraud laws against primary or secondary participation in fraud, deception, or manipulation would continue to apply to those supplying information to the site, and claims would not face any additional obstacle because of the new rule. Any other applicable federal or state law would also continue to apply to a person providing information or statements to an electronic shareholder forum.

An additional concern regarding the use of an electronic shareholder forum relates to the broad general application of our proxy rules under Section 14(a) of the Exchange Act. Under the proxy rules, a solicitation encompasses any request for a proxy, any request to execute or revoke a proxy, and the furnishing of a form of proxy or other communication under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.[65] This broad definition of solicitation limits the kinds of activities that a shareholder or the company may undertake in a public forum when discussing issues that may be voted on at the company's annual or special meeting.

To facilitate greater use of the electronic shareholder forum concept and to encourage more robust communication with the company and among shareholders, we propose to exempt any solicitation in an electronic shareholder forum by or on behalf of any person who does not seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a shareholder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form or revocation, abstention, consent or authorization.[66] The solicitation would be exempt so long as it occurs more than 60 days prior to the date announced by the

[64] *See* Section 230(c)(1) of the Telecommunications Act of 1996 (47 U.S.C. § 230(c)(1)) (''No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.'').

[65] *See* Exchange Act Rule 14a–1(*l*) (17 CFR 240.14a–1(*l*)).

[66] *See* proposed Exchange Act Rule 14a–2(b)(6).

company for its annual or special meeting of shareholders or if the company announces the meeting less than 60 days before the meeting date the solicitation may not occur more than two days following the company's announcement.[67] We further propose to clarify in proposed Rule 14a–18(c) that a person who participates in an electronic shareholder forum and makes solicitations in reliance on the proposed exemption would continue to be eligible to solicit proxies outside of Rule 14a–2(b)(6) provided that any such solicitation complies with Regulation 14A.

The purpose of these amendments is to encourage the free flow of information, ideas, and opinions in an electronic shareholder forum. It is not the purpose of these amendments to allow such a forum to be used to circumvent the proxy or anti-fraud rules. We believe that there is less risk of an electronic shareholder forum being used for proxy solicitation more than 60 days prior to an annual or special meeting and therefore have proposed a 60-day limitation.[68] Communications within an electronic shareholder forum that occur less than 60 days prior to the annual or special meeting, or more than two days after the announcement of the meeting, would continue to be treated as any other communication would be treated today, and would be required to comply with our proxy rules if they are a solicitation unless they fall within an existing exemption. In addition, we propose to limit the exemption to persons who do not seek to act as a proxy for a shareholder or request a form of proxy from them.

We propose limitations to the exemption because, though we believe that an electronic shareholder forum should provide a medium for, among other things, open discussion, debate, and the conduct of referenda, we believe that the solicitation of proxies for an upcoming meeting is more appropriate under the protections of our proxy rules. Any proxies obtained prior to the application of our proxy rules would not benefit from the full and fair disclosure required under the regulations.

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- Our proposals are intended to provide a company or its shareholders with the flexibility under the federal securities laws to establish an electronic shareholder forum that permits interaction among shareholders and between shareholders and the company's management or board of directors, and permits the operator of the electronic shareholder forum to provide for non-binding referenda votes of forum participants. Do our proposals provide this flexibility? Are there additional steps that are necessary to assure that the federal securities laws do not hinder the development of these electronic shareholder forums?
- We propose to amend Regulation 14A to encourage the development of electronic shareholder forums that could be used by companies to better communicate with shareholders and by shareholders to better communicate both with their companies and among themselves. In addition, the electronic shareholder forum concept could offer shareholders a means of advancing referenda that might otherwise be proposed as non-binding shareholder proposals under Rule 14a–8. Is this appropriate and, if so, how can we further encourage the development of electronic shareholder forums?
- As proposed, the new rules would allow companies and shareholders to develop electronic shareholder forums as they see fit, as long as the forums are conducted in compliance with Section 14(a) of the Exchange Act, other federal laws, applicable state law, and the company's charter and bylaw provisions. Should we be more prescriptive in our approach, such as by providing direction or guidance relating to whether a forum is available for non-binding referenda, whether access is limited to shareholders, the frequency with which shareholder records are updated for purposes of enabling participation, or whether the forum assures the anonymity of shareholders who access it?
- As proposed, we make clear that a company or shareholder that establishes, maintains, or operates a forum is not liable for any statements or information provided by another person. Does the proposed rule adequately address the liability concerns that might face sponsors of and participants in an electronic shareholder forum?
- In order to encourage use of electronic shareholder forums, we are proposing an exemption for solicitations on an electronic shareholder forum. As proposed, solicitations that do not seek to act as a proxy for a shareholder or request a form of proxy from them and occur more than 60 days prior to an annual or special meeting (or within two days of the announcement of the meeting) are exempt under the proxy rules. Is it appropriate to provide this exemption from regulation for communications on an electronic shareholder forum? Should the exemption apply more broadly to all communications? Would it be possible to conduct an effective proxy solicitation on the forum despite the limitations? Is the 60-day limitation sufficiently long to protect shareholders from unregulated solicitations? Should the time period be shortened (*e.g.*, 30 or 35 days) or lengthened (*e.g.*, 75 or 90 days)? Is there a better alternative that would encourage free and open communication on electronic shareholder forums, but limit the use of the forums as a way to solicit proxies without providing the full and fair disclosure required in our proxy rules?
- As proposed, we have provided no guidance on what should happen to the communications and data on the forum within the 60-day period prior to the annual or special meeting. Solicitations that remain posted on the forum that were exempt under proposed Rule 14a–2(b)(6) may no longer be exempt. Should we require that the electronic shareholder forums be taken down within 60 days of a scheduled meeting? Alternatively, if the forum continues to run, should shareholders who continue making communications on the forum file any communications that are solicitations in compliance with Regulation 14A? Should those shareholders be required to file any solicitations on the forum that occurred more than 60 days prior to the meeting? How would the forums be policed to ensure that the responsible parties are properly filing?
- What would be the appropriate use of an electronic shareholder forum with regard to a bylaw proposal, as contemplated in this release? For example, should shareholders be able to use a forum to solicit other shareholders to form a 5% group in order to submit a bylaw proposal?

C. Request for Comment on Proposals Generally

1. Bylaw Amendments Concerning Non-Binding Shareholder Proposals

Several participants in the Commission's recent proxy roundtables expressed concern that by requiring the inclusion of non-binding shareholder proposals in company proxy materials, Rule 14a–8 expands rather than

[67] The proposal would not affect the application of any other exemptions under Regulation 14A. For example, a person could rely on the other applicable exemptions in Exchange Act Rule 14a–2 (17 CFR 240.14a–2).

[68] 60 days corresponds with the maximum amount of time prior to a scheduled meeting that the company may fix the record date for determining the stockholders entitled to notice of or to vote at a meeting under the Delaware Code. *See* Del. Code title 8, § 213 (2007).

vindicates the framework of shareholder rights in state corporate law.[69] A number of other participants in the roundtables indicated, however, that non-binding shareholder proposals have a useful role in the proxy process and in corporate governance.[70] Based, in part, on these and other views expressed by participants at the roundtables, we are requesting comment as to whether the Commission should adopt rules that would enable shareholders, if they choose to do so, to determine the particular approach they wish to follow with regard to non-binding proposals. Such an approach was proposed once before by the Commission but ultimately was not adopted;[71] however, in light of developments in the last 25 years that may have diminished the concerns about shareholders' ability to act as a group, which formed the basis of arguments for a mandated federal approach, we are again requesting comment on this approach. These developments include the increasing importance of institutional investors in contemporary capital markets, the significant role of private organizations that collect and disseminate information to institutional investors concerning corporate governance issues, the prevalence of widely published voting guidelines for market participants of all sizes, and the significantly enhanced opportunities for collaborative discussion and decision-making afforded by the Internet and related technological innovations.

We therefore are requesting comment on whether a company or its shareholders should have the ability to propose and adopt bylaws that would establish the procedures that the company will follow for including non-binding proposals in the company's proxy materials. In addition to general comment, we encourage commenters to address the following specific questions:

- Would it be appropriate to require the shareholder (or group of shareholders) that submits the proposal to file a Schedule 13G that includes specified public disclosures regarding its background and its interactions with the company, that corresponds to the proposed disclosure requirements for shareholder proponents of bylaw amendments concerning shareholder director nominations?
- Should a shareholder (or group of shareholders) proposing such a bylaw amendment be required to have continuously held a certain percentage of the company's securities entitled to be voted on the proposal at the meeting? What would the appropriate percentage be? Should a holding period be required? If so, how long should the holding period be?
- Should a proposal be required to otherwise satisfy the requirements of Rule 14a–8 (*e.g.*, the proposal would have to satisfy the procedural requirements of Rule 14a–8 and not fall within one of the other substantive bases for exclusion included in Rule 14a–8)?
- Under current Rule 14a–8, all shareholder proposals and supporting statements are limited to 500 words in total. Should the word limit be different for shareholder submissions of proposed bylaw amendments to establish procedures for non-binding proposals? If so, should the word limit be increased to 3,000 words in order to permit a more thorough description of the proposed procedural framework and in accordance with the approximate word count in current Rule 14a–8? If not 3,000, should the word limit be higher or lower than 3,000 (*e.g.*, 1,000, 2,000, 4,000)?
- Should the proxy statement for the shareholder vote be required to explain that approval of the bylaw would establish procedures that would govern in all circumstances with regard to shareholder requests for the inclusion of non-binding proposals? Should the bylaw itself be required to provide this explanation?
- Would it be appropriate for the Commission to provide that the substance of the procedure for non-binding proposals contained in a bylaw amendment would not be defined or limited by Rule 14a–8, but rather by the applicable provisions of state law and the company's charter and bylaws? For example, the Commission could provide that the framework could be more permissive or more restrictive than the requirements of existing Rule 14a–8 (*e.g.*, the framework could specify different eligibility requirements than provided in current Rule 14a–8, different subject-matter criteria, different time periods for submitting non-binding proposals to the company, or different resubmission thresholds; or it could specify that non-binding proposals would not be eligible for inclusion in the company's proxy materials, or alternatively that all non-binding proposals would be included in the company's proxy materials without restriction, if these approaches were consistent with state law and the company's charter and bylaws).
- To ensure that any new rule is consistent with the principle that the federal proxy rules should facilitate shareholders' exercise of state law rights, and not alter those rights, should any rule adopted include a specific requirement that, to be included in a company's proxy materials, a shareholder proposal establishing bylaw procedures for non-binding proposals would have to be binding on the company under state law if approved by shareholders?
- Would it be appropriate for the Commission to provide that, if shareholders approve a bylaw procedure for non-binding proposals, interpretation and enforcement of that procedure would be the province of the appropriate state court? Under such an approach, the Commission and its staff would not resolve such questions. Should the Commission or its staff instead become involved in interpreting or enforcing the company's bylaws? Is there any reasonably foreseeable situation where intervention by the Commission or its staff would be critical to the proper functioning of bylaw procedures for non-binding proposals? In addition, we solicit comments with respect to the practicality and feasibility of relying on state courts as the arbiter of disagreements between companies and shareholder proponents over the company's bylaws as they apply to non-binding shareholder resolutions.

[69] *See, e.g.*, Leo E. Strine, Jr., Vice Chancellor, Court of Chancery of the State of Delaware, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 18–23.

[70] *See, e.g.*, Ted White, Strategic Advisor, Knight Vinke Asset Management, Transcript of Roundtable on the Federal Proxy Rules and State Corporation Law, May 7, 2007, at 94–95; Damon A. Silvers, Associate General Counsel, AFL–CIO, Transcript of Roundtable on Proposals of Shareholders, May 25, 2007, at 8–11. *See also* Form Letters B and C, available on the Commission's Web site at *www.sec.gov*.

[71] In 1982, during a comprehensive review of the shareholder proposal process, the Commission proposed permitting companies and shareholders to formulate and adopt procedures for including shareholder proposals in the company's proxy materials. *See* Release No. 34–19135 (Oct. 14, 1982) [47 FR 47420]. Under the proposed approach, the Commission would have continued to have a rule that specified the procedures governing the submission and inclusion of shareholder proposals, but would have adopted a supplemental rule to permit a company and its shareholders to adopt a plan providing their own procedures to govern the process. The proposed approach would have allowed a company's board of directors and shareholders, rather than the Commission or its staff, to make judgments as to what proposals should be included in the company's proxy materials at the company's expense. The plan could have been proposed by either the company's board of directors or shareholders, and subject to certain minimum requirements, the provisions of the plan could have been as liberal or restrictive as shareholders were willing to approve. In 1983, the Commission adopted final rules amending Exchange Act Rule 14a–8, but left the Exchange Act Rule 14a–8 framework intact, concluding that, at that time, a federal framework for including shareholder proposals in company proxy materials was in the best interests of shareholders and issuers. *See* Release No. 34–20091 (Aug. 16, 1983) [48 FR 38218].

• Should the Commission encourage the proponent of any bylaw procedure governing non-binding proposals to include in the procedure a fair and efficient mechanism for resolving any disagreements between the company and the shareholder as to the bases for inclusion or exclusion of a proposal?

• Should the Commission specify that, even after the shareholders approve a bylaw procedure for non-binding shareholder proposals, a shareholder meeting the proposed eligibility requirements could later submit another bylaw procedure that removes or amends the previously-adopted non-binding procedure and that bylaw would not generally be excludable by a company under Rule 14a–8(i)(2) or Rule 14a–8(i)(3)?

• How might shareholders' overall ability to communicate with management and other shareholders be improved or diminished if shareholders were able to choose different procedures for non-binding proposals than those currently in Rule 14a–8? Are there additional or different procedures that the Commission should require, encourage or seek to prevent?

With respect to subjects and procedures for shareholder votes that are specified by the corporation's governing documents, most state corporation laws provide that a corporation's charter or bylaws can specify the types of binding or non-binding proposals that are permitted to be brought before the shareholders for a vote at an annual or special meeting. Further, most state corporation laws permit a company's board of directors to adopt, amend, or repeal bylaws without a shareholder vote. Because a company's board of directors could adopt a bylaw establishing procedures for the consideration of non-binding proposals at meetings of shareholders, we have not included in the above request for comment any discussion of a board of directors adopting bylaws that would limit the ability of shareholders to raise non-binding proposals for a vote at meetings of shareholders. To the extent a company had in place a bylaw under which non-binding shareholder proposals were not permitted to be raised at meetings of shareholders, a company may be able to look to Rule 14a–8(i)(1) with regard to the exclusion of such proposals. Such ability to exclude the proposals would, of course, be reliant on the bylaw's compliance with applicable state law and the company's governing documents. In light of the board's power to adopt such a bylaw under state law, please consider the following specific requests for comment:

• Should the board of directors be able to adopt a bylaw setting up a separate procedure for non-binding shareholder proposals and be able, under our proxy rules, to follow that procedure in lieu of Rule 14a–8 with regard to non-binding proposals? Should such procedures be deemed to comply with Rule 14a–8 if the bylaw is not approved by a shareholder vote, provided that state law authorizes the adoption of such a bylaw without a shareholder vote?

• Should a bylaw proposed and adopted by a company prior to becoming subject to Exchange Act Section 14(a) be deemed to comply with Rule 14a–8 once the company became subject to Exchange Act Section 14(a)? If so, should such companies be required to provide disclosure regarding the rights of shareholders with respect to the submission of non-binding shareholder proposals for inclusion in the company's proxy materials as part of the description of its equity securities in its Securities Act and Exchange Act registration statements. If not, should companies instead be required to submit the bylaw to a shareholder vote once the company becomes public and subject to Section 14(a) of the Exchange Act, either at a special meeting or an annual meeting?

• Is there a concern that affiliates of a company could obtain a sufficient number of votes to adopt a bylaw without obtaining a vote of the non-affiliates? Should the federal proxy rules further restrict the operation of bylaw provisions that are otherwise permissible under state law by requiring, for example, that once a company is subject to Section 14(a), the shareholders who are not affiliates of the company ratify the bylaw, or that the bylaw procedure be periodically re-approved by shareholders after its initial approval? Does the fact that the company's bylaws can generally be revised or repealed at any time after adoption mitigate the need for such extraordinary procedures?

• Should the Commission adopt a provision to enable companies to follow an electronic petition model for non-binding shareholder proposals in lieu of Rule 14a–8? Such a model could include some or all of the following parameters:

• Electronic petitions would be submitted by shareholders and posted by the company on the electronic proxy notice and access Web site;

• Only shareholders as of the record date could sign the electronic petition through the close of the applicable shareholder meeting;

• Execution of the electronic petition would occur through the same control numbers used to vote under electronic proxy;

• Communications would be subject to Rule 14a–9, but otherwise would be minimally restricted by the proxy rules;

• Results of petitions would be reported as a percentage of total outstanding shares;

• The decision to sign or not to sign an electronic petition would not be considered a shareholder vote;

• Petitions would follow current Rule 14a–8 guidelines (*e.g.*, would be limited to 500 words) and require the identification of the shareholder-sponsor;

• Companies would be permitted to post a response to each petition; and

• Petition sponsors could use an ''electronic-only'' solicitation approach with no obligation to send paper copies.

• Are there additional changes to Rule 14a–8 that would improve operation of the rule? If so, what changes would be appropriate and why? For example, should the Commission amend the rule to change the existing ownership threshold to submit other kinds of shareholder proposals? If so, what should the threshold be? Would a higher ownership threshold, such as $4,000 or $10,000, be appropriate? Should the Commission amend the rule to alter the resubmission thresholds for proposals that deal with substantially the same subject matter as another proposal that previously has been included in the company's proxy materials? If so, what should the resubmission thresholds be—10%, 15%, 20%? Are there any areas of Rule 14a–8 in which changes or clarifications should be made (*e.g.*, Rule 14a–8(i)(7) and its application with respect to proposals that may involve significant social policy issues)? If so, what changes or clarifications are necessary?

• Currently, Item 4 in Part I of Form 10–K and Form 10–KSB and Item 4 in Part II of Form 10–Q and 10–QSB require a company to disclose information regarding the submission of matters to a vote of security holders. The required disclosure includes a description of each matter voted upon at the meeting and the number of votes cast for, against, or withheld, as well as the number of abstentions and broker non-votes as to each such matter. In the interest of increased transparency, should additional disclosure be provided with regard to the voting results for non-binding shareholder proposals? For example, should the company be required to disclose votes for non-binding shareholder proposals as a percentage of the total outstanding

securities entitled to vote on the proposal? Or as a percentage of the total votes cast? Would shareholders benefit from receiving this type of information?

2. Other Requests for Comment

• Would adoption of the proposed rules conflict with any state law, federal law, or rule of a national securities exchange or national securities association? To the extent you indicate that the proposed rules would conflict with any of these provisions, please be specific in your discussion of those provisions that you believe would be violated.

• As the Commission staff noted in its July 15, 2003 Staff Report entitled ''Review of the Proxy Process Regarding the Nomination and Election of Directors,'' [72] the cost to shareholders of soliciting proxies in opposition to the company's solicitation has been considered to be prohibitive and, as such, has been a key component of arguments in favor of increasing the opportunity for the inclusion of shareholder nominees for director in the company's proxy materials. Significant recent technological advances appear to have the potential to substantially reduce the costs of such a proxy solicitation, including the Commission's recently adopted ''E-Proxy'' rules [73] and the electronic shareholder forum discussed in this release. Will these technological advances reduce the costs of proxy solicitations for both companies and those that solicit in opposition to a company?

• Should bylaw proposals establishing a shareholder director nomination procedure be subject to a different resubmission standard than other Rule 14a–8 proposals? If so, what standard would be appropriate and why?

• As proposed, the federal proxy rules would not establish a threshold for the votes required to adopt a bylaw procedure. This is because the voting thresholds for the adoption of bylaw amendments are established by state law and a company's governing documents. Is this reliance on state law and the company's governing documents appropriate? Should the proxy rules establish a different federal standard for the required vote to adopt a bylaw procedure, such as the majority of shares present in person or represented by proxy and entitled to vote on the proposal, or a supermajority vote?

• Our proposals assume that the existing exemptions for solicitations are sufficient to include soliciting activities of shareholders that are seeking to form a more than 5% group. Accordingly, the release does not address any such soliciting activities or propose any new rules in this regard. Is our assumption that the existing exemptions are sufficient for the purpose of forming a shareholder group to submit a bylaw proposal correct? If not, what would be the appropriate scope of any new exemption or amendment to an existing exemption?

• Is there an alternative to the proposal regarding shareholder director nomination bylaws that would provide a preferable method by which shareholders could establish procedures to place their candidates for director in the company proxy materials? For example, should shareholders be able to propose a bylaw amendment only where there has been a majority withhold vote for a specified director or directors, and the director or directors do not resign? If so, what ownership threshold would be appropriate in those circumstances?

• In light of developments that reduce the costs of proxy solicitations by shareholder proponents, such as the adoption of ''E-proxy,'' general advances in communication technology, the proposals concerning electronic shareholder forums, and, in some instances the ability of shareholders to request and receive reimbursement for election contest expenses, is there an alternative to the proposal regarding shareholder director nomination bylaws that would enable shareholders to conduct election contests without incurring the expense of a traditional contest and without being placed on the company ballot? For example, should our proxy rules be amended to permit pure electronic solicitation? Should we amend Rule 14a–2(b)(1) to enable shareholders to solicit a greater number of other shareholders than currently is permitted under the rule (the rule limits the number solicited to ten) without being required to furnish a proxy statement?

• Would additional amendments to the system for reporting beneficial and other ownership interests in securities be appropriate? If so, what additional amendments would be appropriate and why? Are there areas where additional disclosures would be appropriate (*e.g.*, with regard to the exercise of voting rights without an economic interest in the underlying security)? Are there ways in which the system could be simplified (*e.g.*, by combining the reports required to report beneficial and other ownership interests)?

III. General Request for Comment

We request and encourage any interested person to submit comments regarding:

• The proposed amendments that are the subject of this release;

• Additional or different changes; or

• Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of companies, investors and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Paperwork Reduction Act

A. Background

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995, the PRA.[74] We are submitting the proposal to the Office of Management and Budget for review in accordance with the PRA.[75] The titles for the collections of information are:

(1) ''Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15 and Schedule 14A)'' (OMB Control No. 3235–0059); and

(2) ''Securities Ownership—Regulation 13D and 13G (Commission Rules 13d–1 through 13d–7 and Schedules 13D and 13G)'' (OMB Control No. 3235–0145).

These regulations were adopted pursuant to the Exchange Act and the Investment Company Act of 1940 and set forth the disclosure requirements for securities ownership reports filed by investors and proxy statements filed by companies to help investors make informed voting or investing decisions.

The hours and costs associated with preparing and filing the disclosure, filing the forms and schedules and retaining records required by these regulations constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Summary of Proposals

The proposed amendments would establish a new procedure by which

[72] *See* Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors, Appendix A (Summary of Comments in Response to the Commission's Solicitation of Public Views Regarding Possible Changes to the Proxy Rules) (July 15, 2003).

[73] Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148].

[74] 44 U.S.C. 3501 *et seq.*

[75] 44 U.S.C. 3507(d); 5 CFR 1320.11.

shareholders could use Rule 14a–8 to propose bylaw amendments establishing procedures that would permit eligible shareholders to nominate candidates for the board of directors in the company's proxy materials.[76] As proposed, Rule 14a–8 would be amended to require inclusion of such proposals, provided that the proposals comply with the procedural requirements of Rule 14a–8 and the additional proposed disclosure requirements. To be included, the bylaw amendments would be required to be submitted by a shareholder proponent that is eligible to, and has, filed a Schedule 13G including all required disclosures and has continuously held more than 5% of the company's securities entitled to be voted on the proposal for at least one year. We also propose to amend Schedule 13G and add Item 24 and Item 25 of Schedule 14A to require disclosure regarding the shareholder proponent's background and relationships with the company. This disclosure would be provided by the shareholder proponent and the company, respectively.

In addition to the proposed amendments concerning shareholder proposals to amend company bylaws, we propose several amendments to require disclosure about shareholder nominees for director and nominating shareholders when shareholder nominees are included in the company's proxy material. Proposed Rule 14a–17 would require nominating shareholders to provide the company with certain Schedule 14A information regarding each director nominee for inclusion in the proxy statement or on a Web site to which the proxy statement refers. In addition, proposed Rule 14a–17 would require a nominating shareholder to provide information regarding the background of the nominating shareholder and its relationships with the company that would be required by proposed Items 8A, 8B and 8C of Schedule 13G to the company.

The proposed information collection requirements would be mandatory and responses would not be confidential. The hours and costs associated with preparing and filing forms and retaining records constitute reporting and cost burdens imposed by the collection of information requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number.

C. Paperwork Reduction Act Burden Estimates

The proposed amendments would, if adopted, require additional disclosure on Schedule 14A and Schedule 13G, as well as in a company's registration statements.

1. Proposed Amendments to Rule 14a–8 Concerning Bylaw Proposals for Shareholder Nominations of Directors

Schedule 14A prescribes the information that a company must include in its proxy statements to provide security holders with material information relating to voting decisions. For purposes of the PRA, we currently estimate that compliance with Regulation 14A, including preparation of Schedule 14A, requires 475,781 hours of company personnel time (approximately 66 hours per company) and costs $63,437,000 for the services of outside professionals (approximately $8,750 per company).[77] The proposed amendment to Rule 14a–8 would require the company to include shareholder proposed bylaw amendments that provide procedures for shareholder nominations of directors unless the shareholder has failed to comply with the procedural requirements of Rule 14a–8.

Historically shareholders have made relatively few binding proposals. In the 2006–2007 proxy season, companies received 1,250 shareholder proposals, of which only 100 were binding proposals.[78] Of those 100, only three related to bylaw amendments providing for shareholder nominees to appear in the company's proxy materials.[79] These three proposals were not subject to the additional disclosure requirements that would apply to shareholders under the proposed rules. In light of this historical data and given the proposed eligibility requirements to submit such proposals, we estimate that there would be a limited number of shareholder proposals to amend the bylaws to provide for shareholder nominees to be included in the company's proxy materials. We note, however, that by establishing procedures for submission of theses types of proposals, we are likely to encourage more bylaw amendment proposals than we currently receive. We therefore assume some increase in such proposals and estimate that the number would be 30 per year.[80]

For purposes of the PRA, we estimate that the proposed amendments to Rule 14a–8 would create an incremental burden of six hours of company personnel time and costs of $800 for the services of outside professionals. In sum, we estimate that the amendments to Regulation 14A will increase the annual paperwork burden by approximately 180 hours of company personnel time and a cost of approximately $24,000 for the services of outside professionals. These burdens and costs would include the additional disclosure in proposed Item 24 and Item 25 of Schedule 14A as well as the burdens and costs associated with including the proposal in the company's proxy materials.

2. Proposed Amendments to Schedule 13G Requiring Disclosure From Shareholder Proponents

Exchange Act Schedule 13G is a short-form filing for persons to report ownership of more than 5% of a class of voting equity securities registered under Section 12 of the Exchange Act. Generally, the filer must certify that the securities have not been acquired and are not held for the purpose of, or with the effect of, changing or influencing the control of the issuer of the securities. For purposes of the PRA, we currently estimate that compliance with the Schedule 13G requirements under Regulation 13D requires 98,800 burden hours, broken down into 24,700 hours (or 2.6 hours per respondent) of respondent personnel time and costs of $22,230,000 (or $2,340 per respondent) for the services of outside professionals.[81]

[76] Proposed Rule 14a–18 would establish special provisions in the proxy rules applicable to electronic shareholder forums in order to encourage shareholders and companies to take advantage of these forums. These rules are intended to allow issuers and shareholders broad latitude with regard to the forums and do not impose any new paperwork burdens.

[77] These figures assume 7,250 respondents that file Schedule 14A under Regulation 14A with the Commission. We estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of $400 per hour. The hourly cost estimate is based on our consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing with the Commission.

[78] Rachel McTague, 39 Securities Regulation & Law Report 911 (June 11, 2007) (stating that, according to data complied by the Institutional Shareholder Services, nearly 1,250 shareholder proposals were submitted to companies during the 2006 proxy season).

[79] Tomoeh Murakami Tse, The Washington Post, March 15, 2007, at D2 (stating that three proxy access proposals were submitted by shareholders during the 2006 proxy season).

[80] We estimate that the number of proposals for bylaw amendments to allow shareholder nominations of directors received last proxy season (3) would increase tenfold (30).

[81] These figures assume 9,500 respondents that file Schedule 13G with the Commission. We estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the issuer. These figures assume an average cost of $300 per hour. The Commission has increased the cost estimate $100

Continued

The proposed amendment to Rule 14a–8 would require the company to include certain shareholder proposed bylaw amendments only if they are submitted by a shareholder proponent that is eligible to, and has, filed a Schedule 13G that complies with proposed Schedule 13G Items 8A, 8B, and 8C. As explained above, we estimate that the number of shareholder proponents submitting such proposals under Rule 14a–8 would be 30. Rather than presume that any of the shareholder proponents previously filed a Schedule 13G on an individual or group basis, we assume for purposes of the PRA that each person or group will be a new Schedule 13G filer. This would increase the number of Schedule 13G filers. In addition, the proposed disclosure of each shareholder proponent's background and relationships with the company would be different and more detailed than the disclosure currently required by Schedule 13G, increasing the reporting burden associated with this schedule.

For purposes of the PRA, we estimate that the proposed amendments to Schedule 13G would create an incremental burden of 4.1 hours per response, which we would add to the existing Schedule 13G burden resulting in a total burden of 14.5 hours.[82] Each of the 30 additional filers would incur a burden of approximately 3.6 hours of respondent personnel time (25% of the total burden) and costs of $4,350 for the services of outside professionals (75% of the total burden). In sum, we estimate that the amendments to Schedule 13G will increase the annual paperwork burden by approximately 108 hours of respondent personnel time and a cost of approximately $130,000 for the services of outside professionals.

3. Proposed Rule 14a–17 To Require Disclosure From Nominating Shareholders and Shareholder Nominees

Proposed Rule 14a–17 would require nominating shareholders and their nominees to provide disclosure relating to their backgrounds and relationships with the company for inclusion in a Schedule 14A. As explained above, we estimate that there will be 30 proposals for bylaw amendments to allow shareholder nominations of directors annually. Of these, for purposes of this analysis we estimate that 50% will be successful. If we assume that in every case where a bylaw amendment is successful a shareholder nominee is proposed, the additional disclosure would be required 15 times annually.

For purposes of the PRA, we estimate that proposed Rule 14a–17 would create an incremental burden of six hours of company personnel time and costs of $800 for the services of outside professionals for each shareholder nominee included in a Schedule 14A. In sum, we estimate that the amendments will increase the annual paperwork burden of Regulation 14A by approximately 90 hours of company personnel time and a cost of approximately $12,000 for the services of outside professionals.

D. Solicitation of Comments

We request comment on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–16–07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–16–07, and be submitted to the Securities and Exchange Commission, Office of the Secretary—Records Management Branch, 100 F Street, NE., Office of Filings and Information Services, Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost-Benefit Analysis

We propose to revise and update the proxy rules to more effectively serve their essential purpose of facilitating the exercise of shareholders' rights under state law. We request any relevant data from commenters that would be helpful in quantifying these costs and benefits.

A. Benefits

The proposed amendments to Rule 14a–8 concerning binding bylaw proposals relating to shareholder nominations of directors on the company's proxy would help shareholders to exercise rights under state law to nominate and elect directors of their choosing. A bylaw amendment that allowed shareholder nominees to be included in the company's proxy materials would reduce the cost for a shareholder to nominate candidates for election on the board since the nominating shareholder would not need to incur the cost of preparing separate proxy materials and mailing those materials to other shareholders. Allowing shareholders to propose bylaw amendments that would enable them to include shareholder nominees on the company's proxy may provide shareholders a more effective voice than simply being able to recommend candidates to the nominating committee or being able to nominate candidates in person at a shareholder meeting.

The proposed amendment would require additional disclosure on Schedule 13G and Schedule 14A by shareholder proponents, nominating shareholders and shareholder nominees about their background and relationships with the company. This additional information provided by such disclosures would help provide transparency to shareholders in voting on bylaw amendments and shareholder nominees.

Finally, the proposed amendments to Regulation 14A regarding the electronic shareholder forum seek to remove unnecessary barriers to the use of technology to increase constructive communication between shareholders and between shareholders and the company. The exemption for communications more than 60 days prior to the announced meeting date would allow for more open and unfettered communication between parties. The enhanced communication may result in better coordination among the views of shareholders, more

since our last estimate provided to OMB based on our consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing with the Commission. In our PRA submission, we will increase the cost of outside professionals to meet the new $400 per hour estimate.

[82] We currently estimate the burden for preparing a Schedule 13G filing to be 10.4 hours.

effective exercise of state law rights, and a better alignment between the interests of shareholders and the company.

B. Costs

The proposed amendments would impose some direct costs on companies and shareholders who are subject to the new rules. For purposes of the PRA, we estimate that the annual additional burden to companies of preparing the required proxy disclosure would be approximately 270 hours of company personnel time and a cost of approximately $36,000 for the services of outside professionals. In addition, for purposes of the PRA, we estimate that the annual incremental burden to prepare the required disclosure for shareholder proponents, nominating shareholders and nominees would be approximately 108 hours of personnel time and a cost of approximately $130,000 for the services of outside professionals.

The bulk of the additional disclosure required by the amendments to Regulation 14A would be provided to the company by shareholder proponents and nominating shareholders. The proposed amendments would add costs to the preparation and dissemination of this information in the company's proxy statement where shareholders have chosen to make proposals or put forth nominees.

If shareholders have adopted a shareholder nomination bylaw amendment and chose to allocate company resources to facilitate shareholder nominations, the cost of preparing the company's proxy materials would be increased by the need to prepare and include information relating to the shareholder nominees. In addition, the company could incur increased costs relating to the solicitation of proxies in support of the board's candidates and against the shareholder nominees.

The proposed amendments to Regulation 14A and Schedule 13G would impose costs on shareholder proponents. Shareholder proponents would be required to provide extensive background information and information on their relationships with the issuer on Schedule 13G. Under the proposed amendments, a company would also incur preparation and filing costs associated with disclosing the nature and extent of its relationships with a shareholder proponent. In addition, companies may incur costs for procedures to monitor its relationships with shareholder proponents.

If a shareholder nomination bylaw amendment were adopted, shareholder nominees and nominating shareholders would also incur costs associated with the Rule 14a–17 disclosure requirements. Nominating shareholders and their nominees might also bear solicitation costs in seeking support for the nominee's election. However, these disclosure and solicitation costs are not expected to exceed the costs that would be incurred from a separate proxy contest.

Under the proposed rules, companies may choose to incur additional costs to establish more responsive policies and procedures in an attempt to avoid having shareholders seek bylaw amendments or propose shareholder nominees. The company and the board may spend more time on shareholder relations instead of the business of the company. In addition, it is possible that electing a shareholder nominee to the board could have a disruptive effect on boardroom dynamics.

Request for Comment

We are sensitive to the costs and benefits imposed by our rules, and have identified certain costs and benefits related to these proposals. We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs and benefits. We encourage commenters to identify and supply relevant data concerning the costs and benefits of the proposed amendments.

- What are the costs and benefits of a 5% threshold as opposed to alternative thresholds? How would the private costs of assembling a 5% coalition vary across different types or sizes of companies?
- What are the potential costs and benefits of facilitating an increase in the variation of nomination rules across companies?
- What are the costs and benefits of potentially moving away from a dual-slate structure in which voting shareholders choose between the management card and the dissident card toward a unitary slate voting system in which voters choose among items on a single proxy card?

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [83] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act [84] and Section 2(c) of the Investment Company Act [85] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The proposed rules are intended to promote the exercise of shareholder rights under state law and provide shareholders with information about shareholder proponents of, and shareholder nominees under, shareholder nomination bylaw amendments. The proposed rules, if adopted, would establish a fair and transparent mechanism for shareholders to propose and adopt bylaw amendments to establish procedures relating to shareholder director nominations inclusion in the company proxy materials.

The disclosure requirements in the proposed rules would require detailed information regarding the background and relationships of shareholder proponents of the bylaw amendments to be disclosed by the shareholder proponents and the company. This disclosure would provide shareholders a better informed basis for deciding whether to approve the bylaw amendments. Changes to the company's bylaws should therefore better reflect shareholders' preferences regarding director nomination procedures. Investors may value the information about whether companies have subjected these preferences to a vote and provided a specified alternative procedure for inclusion of shareholder nominees in the company's proxy materials. This may promote the efficiency of the exercise of shareholder rights under state law.

If the shareholders adopt a bylaw amendment and the company is required to include shareholder nominees in its proxy materials, there may be increased competition for board positions, which might encourage or discourage qualified candidates from running. The proposed rules focus on improving and streamlining information flow between investors and with the company, which we believe would give more direct effect to shareholder preferences regarding shareholder director nominees. We believe these changes are likely to have a limited effect on efficiency, competition and

[83] 15 U.S.C. 78w(a)(2).

[84] 15 U.S.C. 78c(f).

[85] 15 U.S.C. 80a–2(c).

capital formation. The effects of the proposed rules could be positive or negative depending on what shareholders deem is best for them given the additional information. We request comment on whether the proposals, if adopted, would promote efficiency, competition and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their view, if possible.

VII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to the rules and forms under the Exchange Act that would permit shareholders to propose bylaw amendments to establish procedures relating to shareholder director nominations for inclusion in the company's proxy materials. The proposed revisions would also facilitate the use of an electronic shareholder forum by companies and shareholders.

A. Reasons for, and Objectives of, Proposed Action

The proposed rules are intended to open up communication between the company and its shareholders, promote the exercise of shareholder rights under state law, and provide shareholders with better information to make an informed voting decision by requiring disclosure about shareholder proponents and shareholder nominees under any shareholder nomination bylaw amendments.

The proposals, if adopted, would facilitate the exercise of shareholders' rights under state law. As proposed, shareholders who have held more than 5% of the company's securities entitled to be voted at the meeting for at least one year by the date of their submission may submit binding proposals to amend the company bylaws to establish procedures for shareholder nominations of directors. Enabling shareholders to establish the company's procedures for inclusion of shareholder nominees on the company's proxy would provide shareholders with greater control over the use of the company's proxy process.

In addition, encouraging the use of electronic shareholder forums and the Internet may have the effect of improving shareholder communication. Any electronic shareholder forum may enhance shareholders' ability to communicate not only with management, but also with each other. Such direct access may improve shareholder relations to the extent shareholders have improved access to management.

B. Legal Basis

We are proposing amendments to the forms and rules under the authority set forth in Sections 13, 14, and 23(a) of the Exchange Act, as amended and Section 20(a) and 38 of the Investment Company Act, as amended.

C. Small Entities Subject to the Proposed Rules

The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [86] The Commission's rules define ''small business'' and ''small organization'' for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission.[87] A ''small business'' and ''small organization,'' when used with reference to an issuer other than an investment company, generally means an issuer with total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 issuers, other than investment companies, that may be considered reporting small entities.[88] For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[89] Approximately 215 investment companies meet this definition.[90] The proposed rules may affect each of the approximately 1,315 issuers that may be considered reporting small entities, to the extent companies and shareholders take advantage of the proposed procedures.[91] We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposals would require all companies, including small entities, to permit certain shareholders to submit the specified binding proposals to amend the company bylaws. Shareholder proponents, including proponents that are small entities, would be required to provide the proposed Schedule 13G disclosure regarding background and relationships with the company and companies would be required to include similar disclosure provided by the shareholder proponent with the company's proxy.

If a bylaw amendment with an alternate shareholder nomination procedure is adopted, issuers would be required to meet the new procedural requirements and provide disclosure relating to the shareholder nominee in the proxy and the nominating shareholders and shareholder nominees would be required to provide additional information regarding their background and relationships with the company.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or duplicate the proposed rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective of our proposals, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments and rules, we considered the following alternatives:

- The establishment of different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of the rule's compliance and reporting requirements for small entities;
- The use of performance rather than design standards; and
- An exemption from coverage of the proposed rules, or any part thereof, for small entities.

The Commission has considered a variety of reforms to achieve its regulatory objectives. The proposed amendments, if adopted, would require companies to include binding bylaw amendments relating to procedures for shareholder nominations of directors. The proposals are being made in order to more effectively serve the essential

[86] 5 U.S.C. 601(6).

[87] Securities Act Rule 157 (17 CFR 230.157) and Exchange Act Rule 0–10 (17 CFR 240.0–10) contain the applicable definitions.

[88] The estimated number of reporting small entities is based on 2007 data, including the Commission's EDGAR database and Thomson Financial's Worldscope database.

[89] Rule 0–10 under the Investment Company Act [17 CFR 270.0–10] contains the applicable definition.

[90] The estimated number of reporting investment companies that may be considered small entities is based on December 2006 data from the Commission's EDGAR database and a third-party data provider.

[91] The proposed amendments to Rule 14a–8 would not impact open-end investment companies that may be small entities because shareholders of those entities are not eligible to file Schedule 13G, which must be filed in order to rely upon the proposed rule. Of the 215 investment companies that may be considered small entities, 131 are open-end investment companies.

purpose of the proxy rules to facilitate the exercise of shareholders' rights under state law. The proposed amendments also would require additional disclosure by the shareholder proponent (or any subsequent nominating shareholder or shareholder nominee) and the company of the background of the proponent and its relationships with the issuer.[92] We believe this additional disclosure will assist investors in making an informed voting decision. It is not clear how applying separate compliance or reporting standards to small entities would further encourage facilitation of the exercise of these rights. However, we are considering what level of disclosure would be appropriate for shareholder proponents, nominating shareholders and shareholder nominees regarding their background and relationships with the company. If we require less disclosure from smaller issuers we are concerned that shareholders may not receive sufficient information with which to make an informed decision.

We considered the use of performance standards rather than design standards in the proposed rules. The proposal contains both performance standards and design standards. We are proposing design standards to the extent that we believe that compliance with particular requirements are necessary. However, to the extent possible, we are proposing rules that impose performance standards. By allowing companies to establish their own procedures relating to shareholder nominations, we seek to provide companies, shareholder proponents and nominating shareholders with the flexibility to devise the means through which they can comply with the standards.

We request comment on whether separate requirements for small entities would be appropriate. The purpose of the amendments is to provide certain shareholders with the ability to amend the bylaws to establish their own procedures for shareholder nominations of directors and to improve shareholder communications. Exempting small entities would not appear to be consistent with these goals. The establishment of any differing compliance or reporting requirements or timetables or any exemptions for small business issuers may not be in keeping with the objective of the proposed rules.

G. Solicitation of Comment

We encourage comments with respect to any aspect of this initial regulatory flexibility analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposals;
- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and
- How to quantify the impact of the proposed rules.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[93] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

IX. Statutory Basis and Text of Proposed Amendments

We are proposing amendments to rules pursuant to Sections 13, 14, and 23(a) of the Exchange Act, as amended, and Sections 20(a) and 38 of the Investment Company Act, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATION, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Section 240.13d–102 is amended by:

a. Removing the authority citation following the section; and

b. Adding Items 8A, 8B and 8C.

The additions are to read as follows:

§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1(b), (c), and (d) and amendments thereto filed pursuant to § 240.13d–2.

* * * * *

Item 8A. Shareholder Proponents

(a) Definition of shareholder proponent: In this item, the term ''shareholder proponent'' means:

(1) A person or group that has formed any plans or proposals regarding an amendment to a company's bylaws, in accordance with § 240.14a–8(i)(8);

(2) A nominating shareholder as defined in § 240.14a–17(a);

(3) Any affiliate, executive officer or agent acting on behalf of the person (or group) described above in Item 8A(a)(1)–(2) with respect to the plans or proposals; and

(4) Anyone acting in concert with, or who has agreed to act in concert with, the person (or group) described above in Item 8A(a)(1)–(2) with respect to the plans or proposals.

(b) A shareholder proponent, as defined in section (a), shall provide the additional disclosure required by Items 8B and 8C.

Note to Item 8A. For purposes of this Item 8A and for the disclosures required by Item 8B and Item 8C, the term ''plans or proposals'' shall include, but not be limited to, the submission of a proposal to amend a company's bylaws, and instances where a shareholder proponent has indicated an intent to management to submit such a proposal or has indicated an intent to management to refrain from submitting such a proposal conditioned on the taking or not taking of a corporate action. The term also shall include a shareholder nomination for director pursuant to a bylaw procedure

[92] The proposed ability for shareholder proponents to propose bylaw amendments to be included in the company's proxy material is linked to their filing on Schedule 13G. A lower ownership threshold for small entities would not be appropriate due to the loss of the additional disclosure and safeguards provided by Schedule 13G.

[93] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996)(codified in various sections of 50 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. § 601).

established pursuant to Rule 14a–8(i)(8), and instances where a shareholder proponent has indicated an intent to management to submit such a nomination or has indicated an intent to management to refrain from submitting such a nomination conditioned on the taking or not taking of a corporate action.

Item 8B. Relationships With the Company of Shareholder Proponents

(a) A shareholder proponent, as defined in Item 8A, must describe the following:

(1) Any direct or indirect interest in any contract between the shareholder proponent and the company or any affiliate of the company (including any employment agreement, collective bargaining agreement, or consulting agreement);

(2) Any pending or threatened litigation in which the shareholder proponent is a party or a material participant, involving the company, any of its officers or directors, or any affiliate of the company; and

(3) Any other material relationship between the shareholder proponent and the company or any affiliate of the company not otherwise disclosed.

Note to Item 8B(a)(3). Any other material relationship of the shareholder proponent with the company or any affiliate of the company may include, but is not limited to, whether the shareholder proponent currently has, or has had in the past, an employment relationship with the company or any affiliate of the company (including consulting arrangements).

(b) A shareholder proponent must describe the following items where they occurred during the 12 months prior to the formation of any plans or proposals, or during the pendency of any proposal or nomination:

(1) Any material transaction of the shareholder proponent with the company or any affiliate of the company; and

(2) Any discussion regarding the proposal or nomination between the shareholder proponent and a proxy advisory firm.

(c) If the shareholder proponent holds more than 5% of any enterprise with the same Standard Industrial Classification code as the company, the shareholder proponent must describe the number and percentage of securities held in the competitor, as of the date the shareholder proponent first formed any plans or proposals.

(d) Describe any material relationship of the shareholder proponent with any enterprise with the same Standard Industrial Classification code as the company other than as a shareholder, as of the date the shareholder proponent first formed any plans or proposals.

(e) Disclose any meetings or contacts, including direct or indirect communication by the shareholder proponent, with the management or directors of the company that occurred during the 12 months prior to the formation of any plans or proposals or during the pendency of any proposal or nomination, including:

(1) Reasonable detail of the content of such direct or indirect communication;

(2) A description of the action or actions sought to be taken or not taken;

(3) The date of the communication;

(4) The person or persons to whom the communication was made;

(5) Whether that communication included any reference to the possibility of such a proposal or nomination; and

(6) Any response by the company or its representatives to that communication prior to the date of filing the required disclosure.

Note to Item 8B(e). To the extent that a shareholder proponent conducts regularly scheduled meetings or contacts with management or directors of a company, the shareholder proponent may describe the frequency of the meetings and the subjects covered at the meetings rather than providing information separately for each meeting. However, if an event or discussion occurred at a specific meeting that is material to the shareholder proponent's decision to submit a proposal or nomination, that meeting should be discussed in detail separately.

Item 8C. Background Information Regarding Shareholder Proponents

(a) If the shareholder proponent is not a natural person, provide:

(1) The identity of the natural person or persons associated with the entity responsible for the formation of any plans or proposals;

(2) The manner in which such person or persons were selected, including a discussion of whether or not the equity holders or other beneficiaries of the shareholder proponent entity played any role in the selection of such person or persons or otherwise played any role in connection with any plans or proposals;

(3) Whether the person or persons associated with the entity responsible for the formation of any plans or proposals have, in forming such plans or proposals, a fiduciary duty to the equity holders or other beneficiaries of the entity;

(4) The qualifications and background of such person or persons relevant to the plans or proposals; and

(5) Any interests or relationships of such person or persons, and of that entity, that are not shared generally by the other shareholders of the company and that could have influenced the decision by such person or persons and the entity to submit a proposal or nomination.

(b) If the shareholder proponent is a natural person, disclose:

(1) The qualifications and background of such person or persons relevant to the plans or proposals; and

(2) Any interests or relationships of such person or persons that are not shared generally by the other shareholders of the company and that could have influenced the decision by such person or persons to submit a proposal or nomination.

Note to Item 8C(a)(5) and Item 8C(b)(2). Examples of interests or relationships of the shareholder proponent not shared by other shareholders of the company include, but are not limited to, contractual arrangements, current or previous employment with the company, employment agreements, consulting agreements, and supplier or customer relationships.

* * * * *

3. Section 240.14a–2 is amended by adding paragraph (b)(6) to read as follows:

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(b) * * *

(6) Any solicitation in an electronic shareholder forum established pursuant to the provisions of Rule 14a–18 by or on behalf of any person who does not seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization provided that the solicitation is made more than 60 days prior to the date announced by a registrant for its next annual or special meeting of shareholders or if the registrant announces the date of its next annual or special meeting of shareholders less than 60 days before the meeting date, then the solicitation may not be made more than two days following the date of the registrant's announcement of the meeting date.

4. Section 240.14a–6 is amended by removing the period at the end of the undesignated paragraph following paragraph (a)(6), prior to Note 1, and adding a comma in its place; and by adding ''or where the proxy materials include a shareholder nominee submitted pursuant to a bylaw adopted in accordance with § 240.14a–8(i)(8).'' after that new comma.

5. Section 240.14a–8 is amended by:

a. Revising paragraph (b)(1); and

b. Revising paragraph (i)(8);

The revisions read as follows:

§ 240.14a–8 Shareholder proposals.

* * * * *

(b) * * *

(1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal; except where additional eligibility requirements are specified in this rule. You must continue to hold those securities through the date of the meeting.

* * * * *

(i) * * *

(8) *Relates to election:* If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election, except for a proposal to establish a procedure by which shareholder nominees for election of director would be included in the company's proxy materials, where that proposal:

(i) Relates to a change in the company's bylaws that would be binding on the company if approved by the shareholders; and

(ii) Is submitted by a shareholder (or group of shareholders) that:

(A) Has continuously held more than 5% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date the shareholder submits the proposal;

(B) Is eligible to file a Schedule 13G (§ 240.13d–102) as an institutional investor or a passive investor, including pursuant to Rule 13d–1(l) (§ 240.13d–1(l)); and

(C) Has filed a statement of beneficial ownership on Schedule 13G (§ 240.13d–102), or an amendment thereto, that contains all required information;

* * * * *

6. Add § 240.14a–17 and § 240.14a–18 to read as follows:

§ 240.14a–17 Shareholder nominations for election as director.

(a) A nominating shareholder is any shareholder (or group of shareholders) that forms any plans or proposals regarding the submission of a nominee or nominees for director to the company for inclusion in the company proxy materials, in accordance with a company bylaw that has been adopted by shareholders, as provided in § 240.14a–8(i)(8).

Note to Rule 14a–17(a). The formation of any plans or proposals includes instances where the shareholder has indicated an intent to management to submit a nomination or has indicated an intent to management to refrain from submitting a nomination conditioned on the taking or not taking of a corporate action.

(b) A nominating shareholder shall provide the information required by Item 8A, Item 8B, and Item 8C of Schedule 13G (§ 240.13d–102) to the company at the time the shareholder forms any plans or proposals with regard to submission of a nominee or nominees for director. Immediately after receiving the information from the nominating shareholder, the company shall provide the information on its Web site, or provide a link to a Web site address where the information would appear. The company also shall include the information provided by the nominating shareholder pursuant to this section in its proxy statement or on a Web site to which the proxy statement refers.

(c) At the time that a nominating shareholder submits to the company for inclusion in the company proxy materials a nominee or nominees, in accordance with a company bylaw that has been adopted by shareholders, as provided in § 240.14a–8(i)(8), the nominating shareholder must provide to the company, for inclusion in the company proxy statement or on a Web site to which the proxy statement refers, the following:

(1) Information meeting the disclosure requirements of Item 4(b) of Schedule 14A, as applicable;

(2) Information meeting the disclosure requirements of Item 5(b) of Schedule 14A, as applicable;

(3) Information meeting the disclosure requirements of Item 7 of Schedule 14A, as applicable;

(4) Information meeting the disclosure requirements of Item 22(b) of Schedule 14A, as applicable; and

(5) The consent of the nominee or nominees to be named in the company's proxy statement and to serve if elected.

(d) Where a nominating shareholder fails to provide any of the information required under paragraphs (b) and (c) of this rule, the shareholder's nominee will not be required to be included in the company's proxy materials.

(e) The company will not be responsible for the information provided to the company by the nominating shareholder and included in the company's proxy statement or on a Web site to which the proxy statement refers, in satisfaction of the company's disclosure obligations under Regulation 14A.

(f) Information about a shareholder nominee or nominees that has been provided to the company by a nominating shareholder, and which is disclosed in the company's proxy statement or on a Web site to which the proxy statement refers, in satisfaction of the company's disclosure obligations under Regulation 14A, will not be deemed incorporated by reference into any filing under the Securities Act of 1933 or the Act, except to the extent that the registrant specifically incorporates that information by reference.

§ 240.14a–18 Electronic Shareholder Forums.

(a) A company or shareholder may establish, maintain, or operate an electronic shareholder forum to facilitate interaction among shareholders and between the company and its shareholders as the company or shareholder deems appropriate. Subject to (b) and (c) of this Rule, the forum must comply with the federal securities laws, including Section 14(a) of the Act and its associated regulations, other applicable federal laws, applicable state law, and the company's charter and bylaw provisions.

(b) No company or shareholder because of establishing, maintaining, or operating an electronic shareholder forum is liable under the federal securities laws for any statement or information provided by another person to the electronic shareholder forum. Nothing in this Rule 14a–18 prevents or alters the application of other provisions of the federal securities laws, including the provisions for liability for fraud, deception, or manipulation, or other applicable federal and state laws to a person or persons providing a statement or information to an electronic shareholder forum.

(c) Reliance on the exemption in Rule 14a–2(b)(6) to construct, maintain, support, or participate in an electronic shareholder forum does not eliminate a person's eligibility to solicit proxies after the date that the exemption in Rule 14a–2(b)(6) is available, provided that any such solicitation is conducted in accordance with this regulation.

7. Section 240.14a–101 is amended by adding Item 24 and Item 25 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 24. Relationships with Shareholder Proponents

Disclose the nature and extent of relationships between the shareholder proponent, any affiliate, executive officer or agent of such shareholder proponent, or anyone acting in concert with, or who has agreed to act in concert with, such shareholder proponent with

respect to the proposed bylaw amendment submitted in accordance with § 240.14a–8(i)(8), on the one hand, and the company, on the other, including:

(a) Any direct or indirect interest of the shareholder proponent in any contract with the company or any affiliate of the company (including any employment agreement, collective bargaining agreement, or consulting agreement);

(b) Any pending or threatened litigation in which the shareholder proponent is a party or a material participant, involving the company, any of its officers or directors, or any affiliate of the company; and

(c) Any other material relationship between the shareholder proponent, the company, or any affiliate of the company not otherwise disclosed.

Note to Paragraph (c): Any other material relationship between the shareholder proponent and the company or any affiliate of the company may include, but is not limited to, whether the shareholder proponent currently has, or has had in the past, an employment relationship with the company (including consulting arrangements).

(d) With respect to the 12 months prior to a shareholder proponent forming any plans or proposals, or during the pendency of any proposal, regarding an amendment to a company's bylaws in accordance with § 240.14a–8(i)(8):

(1) Any material transaction of the shareholder proponent with the company or any affiliate of the company; and

(2) Any meeting or contact, including direct or indirect communication by the shareholder proponent, with the management or directors of the company, including:

(i) Reasonable detail of the content of such direct or indirect communication;

(ii) A description of the action or actions sought to be taken or not taken;

(iii) The date of the communication;

(iv) The person or persons to whom the communication was made;

(v) Whether that communication included any reference to the possibility of such a proposal; and

(vi) Any response by the company or its representatives to that communication prior to the date of filing the required disclosure.

Note to Paragraph (d)(2): To the extent that a shareholder proponent conducts regularly scheduled meetings or contacts with management or directors of a company, the company may describe the frequency of the meetings and the subjects covered at the meetings rather than providing information separately for each meeting. However, if to the company's knowledge, an event or discussion occurred at a specific meeting that is material to the shareholder proponent's decision to submit a proposal, that meeting should be discussed in detail separately.

Note to Item 24. For purposes of the disclosures required by this item, the company will be entitled to rely upon the Schedule 13G disclosures of the shareholder proponent concerning the date upon which the shareholder proponent formed any plans or proposals with regard to the submission of a proposal to amend a company's bylaws.

Item 25. Relationships With Nominating Shareholders

(a) Provide the information submitted to the company by any nominating shareholder as required by § 240.14a–17(b) and (c).

(b) Disclose the nature and extent of relationships between the nominating shareholder, any affiliate, executive officer or agent of such nominating shareholder, or anyone acting in concert with, or who has agreed to act in concert with, such nominating shareholder with respect to a nomination pursuant to a bylaw adopted in accordance with Rule 14a–8(i)(8), on the one hand, and the company, on the other, including:

(1) Any direct or indirect interest of the nominating shareholder in any contract with the company or any affiliate of the company (including any employment agreement, collective bargaining agreement, or consulting agreement);

(2) Any pending or threatened litigation in which the nominating shareholder is a party or a material participant, involving the company, any of its officers or directors, or any affiliate of the company; and

(3) Any other material relationship between the nominating shareholder, the company, or any affiliate of the company not otherwise disclosed.

Note to Paragraph (b)(3): Any other material relationship between the nominating shareholder and the company or any affiliate of the company may include, but is not limited to, whether the nominating shareholder currently has, or has had in the past, an employment relationship with the company (including consulting arrangements).

(c) With respect to the 12 months prior to a nominating shareholder forming any plans or proposals to submit a nomination for director for inclusion in the company's proxy statement, or during the pendency of any nomination:

(1) Any material transaction of the nominating shareholder with the company or any affiliate of the company; and

(2) Any meeting or contact, including direct or indirect communication by the nominating shareholder, with the management or directors of the company, including:

(i) Reasonable detail of the content of such direct or indirect communication;

(ii) A description of the action or actions sought to be taken or not taken;

(iii) The date of the communication;

(iv) The person or persons to whom the communication was made;

(v) Whether that communication included any reference to the possibility of such a nomination; and

(vi) Any response by the company or its representatives to that communication prior to the date of submitting the nomination.

Note to Paragraph (c)(2): To the extent that a nominating shareholder conducts regularly scheduled meetings or contacts with management or directors of a company, the company may describe the frequency of the meetings and the subjects covered at the meetings rather than providing information separately for each meeting. However, if to the company's knowledge, an event or discussion occurred at a specific meeting that is material to the nominating shareholder's decision to submit a nomination, that meeting should be discussed in detail separately.

Note to Item 25. For purposes of the disclosures required by this item, the company will be entitled to rely upon the disclosures of the nominating shareholder submitted to the company as required by Rule 14a–17(c) concerning the date upon which the nominating shareholder formed any plans or proposals with regard to the submission of a nominee or nominees to be included in the company's proxy materials.

* * * * *

By the Commission.

Dated: July 27, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–14954 Filed 8–2–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–56161; IC–27914; File No. S7–17–07]

RIN 3235–AJ95

Shareholder Proposals Relating to the Election of Directors

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is publishing this

interpretive and proposing release to clarify the meaning of the exclusion for shareholder proposals related to the election of directors that is contained in Rule 14a–8(i)(8) under the Securities Exchange Act of 1934. Rule 14a–8 is the Commission rule that provides shareholders with an opportunity to place a proposal in a company's proxy materials for a vote at an annual or special meeting of shareholders. The Commission is publishing its interpretation of and proposing amendments to Rule 14a–8(i)(8) to provide certainty regarding the meaning of the exclusion in that Rule.

DATES: Comments should be received by October 2, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–17–07 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–17–07. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lillian Brown, Steven Hearne, or Tamara Brightwell, at (202) 551–3700, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010.

SUPPLEMENTARY INFORMATION: We are publishing our interpretation of Rule 14a–8(i)(8) [1] under the Securities Exchange Act of 1934.[2] We also are proposing amendments to Rule 14a–8(i)(8).

I. Overview

A. Federal Regulation of the Proxy Process

Regulation of the proxy process is a core function of the Commission and is one of the original responsibilities that Congress assigned to the agency in 1934. Section 14(a) of the Exchange Act [3] stemmed from a Congressional belief that ''fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange.'' [4] The Congressional committees recommending passage of Section 14(a) proposed that ''the solicitation and issuance of proxies be left to regulation by the Commission.'' [5] Congress intended that Section 14(a) give the Commission the ''power to control the conditions under which proxies may be solicited'' [6] and that this power would be exercised ''as necessary or appropriate in the public interest or for the protection of investors.'' [7] Because the Commission's authority under Section 14(a) encompasses both disclosure and proxy mechanics,[8] the proxy rules have long governed not only the information required to be disclosed to ensure that shareholders receive full disclosure of all information that is material to the exercise of their voting rights under state law and the corporation's charter, but also the procedure for soliciting proxies.[9]

B. Exchange Act Disclosure Requirements for Contested Elections

Several Commission rules, including Exchange Act Rule 14a–12,[10] regulate contested proxy solicitations to assure that investors receive adequate disclosure to enable them to make informed voting decisions in elections. The requirements to provide these disclosures to shareholders from whom proxy authority is sought are grounded in Rule 14a–3,[11] which requires that any party conducting a proxy solicitation file with the Commission, and furnish to each person solicited, a proxy statement containing the information in Schedule 14A.[12] Items 4(b) and 5(b) of Schedule 14A require numerous specified disclosures if the solicitation is subject to Rule 14a–12(c). A solicitation is subject to Rule 14a–12(c) if it is made ''for the purpose of opposing'' a solicitation by any other person ''with respect to the election or removal of directors. * * * '' [13] Thus, the result of Schedule 14A's cross-referencing of Rule 14a–12(c) is to trigger, when a solicitation with respect to the election of directors is conducted in opposition to another solicitation, a number of disclosures relevant in proxy contests, including disclosure of: [14]

[1] 17 CFR 240.14a–8(i)(8).

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 78n(a).

[4] *Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375, 381 (1970), *quoting* H.R. Rep. No. 1383, 73d Cong., 2d Sess., at 13 (1934). *See also J. I. Case Co.* v. *Borak*, 377 U.S. 426, 431 (1964).

[5] S. Rep. No. 792, 73d Cong., 2d Sess., at 12 (1934).

[6] H.R. Rep. No. 1383, 73d Cong., 2d Sess., at 14 (1934). The same report demonstrated a congressional intent to prevent frustration of the ''free exercise of the voting rights of stockholders.'' *Id.*

[7] 15 U.S.C. 78n(a).

[8] *See Business Roundtable* v. *SEC*, 905 F.2d 406, 411 (D.C. Cir. 1990) (''We do not mean to be taken as saying that disclosure is necessarily the sole subject of § 14''); *Roosevelt* v. *E.I. du Pont de Nemours & Co.*, 958 F.2d 416, 421–22 (D.C. Cir. 1992) (Congress ''did not narrowly train section 14(a) on the interest of stockholders in receiving information necessary to the intelligent exercise of their'' state law rights); *SEC* v. *Transamerica Corp.*, 163 F.2d 511, 518 (3d Cir. 1947) (in which the Commission's authority to promulgate Exchange Act Rule 14a–8 was upheld), *cert. denied,* 332 U.S. 847 (1948). *See also* John C. Coffee Jr., *Federalism and the SEC's Proxy Proposals*, New York Law Journal 5 (March 18, 2004) (Section 14(a) ''does not focus exclusively on disclosure; rather, it contemplates SEC rules regulating procedure in order to grant shareholders a 'fair' right of corporate suffrage''); Louis Loss & Joel Seligman, *Securities Regulation* 1936–37 (3d ed. 1990) (The Commission's ''power under § 14(a) is not necessarily limited to ensuring full disclosure. The statutory language is considerably more general than it is under the specific disclosure philosophy of the [Securities Act of 1933].'')

[9] *E.g.,* Exchange Act Rule 14a–4 (17 CFR 240.14a–4), Exchange Act Rule 14a–7 (17 CFR 240.14a–7), and Exchange Act Rule 14a–8 (17 CFR 240.14a–8). Each specifies procedural requirements that companies must observe in soliciting proxies. Exchange Act Rule 14a–4(b)(2) requires that the form of proxy furnish the security holder with the means to withhold approval for the election of a director. Exchange Act Rule 14a–7 provides a procedure under which a security holder may be able to obtain a list of security holders. Exchange Rule 14a–8 provides a procedure under which a qualifying security holder can obligate the company to include certain types of proposals, along with statements in support of those proposals, in the company's proxy statement.

[10] 17 CFR 240.14a–12.

[11] 17 CFR 240.14a–3.

[12] Rule 14a–3 provides, in pertinent part, that ''[n]o solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a publicly-filed preliminary or definitive written proxy statement containing the information specified in Schedule 14A. * * *''

[13] Because numerous protections of the federal proxy rules are triggered only by the presence of a solicitation made in opposition to another solicitation, the requirements regarding disclosures and procedures in contested elections do not contemplate the presence of nominees from different vying factions in the same proxy materials.

[14] *See* 17 CFR 240.14a–101, Items 4(b) and 5(b).

- By whom the solicitation is made;
- The methods to be employed to solicit;
- Total expenditures to date and anticipated in connection with the solicitation;
- By whom the cost of the solicitation will be borne;
- Any substantial interest of each participant in the solicitation;
- The name, address, and principal occupation or principal business of each participant;
- Whether any participant has been convicted in a criminal proceeding within the past 10 years;
- The amount of each class of securities of the company owned by the participant and the participant's associates;
- Information concerning purchases and sales of the company's securities by each participant within the past two years;
- Whether any part of the purchase price or market value of such securities is represented by funds borrowed;
- Whether a participant is a party to any contract, arrangements or understandings with any person with respect to securities of the company;
- Certain related party transactions between the participant or its associates and the company;
- Whether the participant or any of its associates have any arrangement or understanding with any person with respect to any future employment with the company or its affiliates, or with respect to any future transactions to which the company or its affiliates will or may be a party; and
- With respect to any person who is a party to an arrangement or understanding pursuant to which a nominee is proposed to be elected, any substantial interest that such person has in any matter to be acted upon at the meeting.[15]

In addition, Item 7 of Schedule 14A requires the furnishing of additional information as to nominees for director, including nominees of ''persons other than the [company]'' (*e.g.*, shareholders), including:[16]

- Any arrangement or understanding between the nominee and any other person(s) (naming such person(s)) pursuant to which the nominee was or is selected as a nominee;[17]
- Business experience of the nominee;[18]
- Any other directorships held by the nominee in an Exchange Act reporting company;[19]
- The nominee's involvement in certain legal proceedings;[20]
- Certain transactions between the nominee and the company;[21] and
- Whether the nominee complies with independence requirements.[22]

Finally, and of critical importance, all of these disclosures are covered by the prohibition on the making of a solicitation containing false or misleading statements or omissions that is found in Rule 14a–9.[23]

C. The Shareholder Proposal Process

Rule 14a–8 creates a procedure under which shareholders, subject to certain requirements, may present in the company's proxy materials a broad range of binding and non-binding proposals. The rule permits a shareholder owning a relatively small amount of the company's shares[24] to submit his or her proposal to the company, and requires the company to include the proposal alongside management's proposals in the company's proxy materials. In all cases, the proposal may be excluded by the company if it fails to satisfy the rule's procedural requirements or falls within one of the rule's thirteen substantive categories of proposals that may be excluded.[25]

Rule 14a–8 specifies that companies must notify the Commission when they intend to exclude a shareholder's proposal from their proxy materials. This notice goes to the staff of the Division of Corporation Finance or the Division of Investment Management. In the notice, the company provides the staff with a discussion of the basis or bases upon which the company intends to exclude the proposal and requests that the staff not recommend enforcement action if the company excludes the proposal. A shareholder proponent may respond to the company's notice, but is not required to do so. Generally, the staff responds to each notice with a ''no-action'' letter to the company, a copy of which is provided to the shareholder, in which the staff either concurs or declines to concur with the company's view that there is a basis for excluding the proposal.[26]

II. The Election Exclusion in Rule 14a–8(i)(8)

A. Introduction

Rule 14a–8(i)(8) sets forth one of several substantive bases upon which a company may exclude a shareholder proposal from its proxy materials. Specifically, it provides that a company need not include a proposal that ''relates to an election for membership on the company's board of directors or analogous governing body.'' The purpose of this provision is to prevent the circumvention of other proxy rules that are carefully crafted to ensure that investors receive adequate disclosure and an opportunity to make informed voting decisions in election contests.

In administering Rule 14a–8(i)(8), the staff has applied the following explanation of the election exclusion that the Commission gave in 1976 when it proposed the exclusion:

> [T]he principal purpose of [Rule 14a–8(i)(8)] is to make clear, with respect to corporate elections, that Rule 14a–8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature, since other proxy rules, including Rule 14a–11, are applicable thereto.[27]

[15] For purposes of Items 4 and 5, a ''participant'' in the solicitation includes: (i) Any person who solicits proxies; (ii) any director nominee for whose election proxies are being solicited; and (iii) any committee or group, any member of a committee or group, and other persons involved in specified ways in the financing of the solicitation. *See* Item 4, Instruction 3. Thus, for each of the numerous disclosures required as to a ''participant,'' the information must be disclosed as to all of such persons.

[16] *See* 17 CFR 240.14a–101, Item 7. *See also* 17 CFR 240.14a–101, Item 22(b).

[17] *See* Item 401(a) of Regulation S–K [17 CFR 229.401(a)], which is referenced in Item 7 of Schedule 14A.

[18] *See* Item 401(e)(1) of Regulation S–K [17 CFR 229.401(e)(1)], which is referenced in Item 7 of Schedule 14A.

[19] *See* Item 401(e)(2) of Regulation S–K [17 CFR 229.401(e)(2)], which is referenced in Item 7 of Schedule 14A.

[20] *See* Items 103 and 401(f) of Regulation S–K [17 CFR 229.103 and 17 CFR 229.401(f)], which are referenced in Item 7 of Schedule 14A.

[21] *See* Item 404 of Regulation S–K [17 CFR 229.404], which is referenced in Item 7 of Schedule 14A.

[22] *See* Item 407(a) of Regulation S–K [17 CFR 229.407(a)], which is referenced in Item 7 of Schedule 14A.

[23] *See* 17 CFR 240.14a–9.

[24] Exchange Act Rule 14a–8(b)(1) (17 CFR 240.14a–8(b)(1)) provides that a holder of at least $2,000 in market value, or 1% of the company's securities entitled to be voted, may submit a shareholder proposal subject to other procedural requirements and substantive bases for exclusion under the rule.

[25] With respect to subjects and procedures for shareholder votes that are specified by the corporation's governing documents, most state corporation laws provide that a corporation's charter or bylaws can specify the types of proposals that are permitted to be brought before the shareholders for a vote at an annual or special meeting. Rule 14a–8(i)(1) supports these determinations by providing that a proposal that is violative of the corporation's governing documents may be excluded from the corporation's proxy materials.

[26] The staff's response is an informal expression of its views, and does not necessarily reflect the view of the Commission. Either the shareholder proponent or the company may obtain a decision on the excludability of a challenged proposal from a federal court.

[27] Exchange Act Release No. 34–12598 (July 7, 1976) [41 FR 29982].

In its application of the Commission's explanation, the staff has permitted companies to exclude any shareholder proposal that may result in a contested election. For purposes of Rule 14a–8, the staff has expressed the position that a proposal may result in a contested election if it is a means either to campaign for or against a director nominee or to require a company to include shareholder-nominated candidates in the company's proxy materials. The staff's position is consistent with the explanation that the Commission gave in 1976, and with the Commission's interpretation of the election exclusion.

A recent decision by the U.S. Court of Appeals for the Second Circuit in *American Federation of State, County & Municipal Employees, Employees Pension Plan* v. *American International Group, Inc.,*[28] addressed the application of the election exclusion. In that decision, the Second Circuit held that AIG could not rely on Rule 14a–8(i)(8) to exclude a shareholder proposal seeking to amend a company's bylaws to establish a procedure under which a company would be required, in specified circumstances, to include shareholder nominees for director in the company's proxy materials. The Second Circuit interpreted the Commission's statement in 1976 as limiting the election exclusion ''to shareholder proposals used to oppose solicitations dealing with an identified board seat in an upcoming election and reject[ing] the somewhat broader interpretation that the election exclusion applies to shareholder proposals that would institute procedures making such election contests more likely.'' [29] It is the Commission's position that the election exclusion should not be limited in this way.[30]

We are concerned that the Second Circuit's decision has resulted in uncertainty and confusion with respect to the appropriate application of Rule 14a–8(i)(8) and may lead to contested elections for directors without adequate disclosure. In this regard, not only are shareholders and companies unable to know with certainty whether a proposal that could result in an election contest may be excluded under Rule 14a–8(i)(8), but the staff also is severely limited in their ability to interpret Rule 14a–8 in responding to companies' notices of intent to exclude shareholder proposals. Therefore, to eliminate any uncertainty and confusion arising from the Second Circuit's decision, we are issuing this release to confirm the Commission's position that shareholder proposals that could result in an election contest may be excluded under Rule 14a–8(i)(8). We also are soliciting comment as to whether we should adopt proposed changes to Rule 14a–8(i)(8) to further clarify the rule's application. If clarification of the text of Rule 14a–8(i)(8) would be helpful, we are seeking input as to whether the text of the proposed amendment provides adequate clarity.

B. The Purpose of the Election Exclusion

The proper functioning of the election exclusion is critical to prevent the circumvention of other proxy rules that are carefully crafted to ensure that investors receive adequate disclosure in election contests. Because the board of directors of a company most often will include its own director nominees in its proxy materials, allowing shareholders to include their nominees in company proxy materials would create what is, in fact, a contested election of directors, without the shareholders conducting a separate proxy solicitation.

The detailed and carefully crafted regulatory regime governing contested elections does not contemplate the presence of nominees from different vying factions in the same proxy materials. As explained above, numerous protections of the federal proxy rules are triggered only by the presence of a solicitation made in opposition to another solicitation. Accordingly, were the election exclusion to be applied as contemplated in the Second Circuit's decision in *AFSCME* v. *AIG*, it would be possible for a person to wage an election contest without conducting a separate proxy solicitation, and thus without providing the disclosures required by the Commission's present rules governing such contests, and potentially without liability under Rule 14a–9 for misrepresentations made by that person in its proxy solicitations. Such a result would be inconsistent with the Commission's 1976 statement regarding Rule 14a–8(i)(8) and the staff's application of that statement in responding to Rule 14a–8 notices of companies' intent to exclude proposals.

C. Application of the Election Exclusion Since 1976

Since the Commission made its original statement regarding the intended purpose of the election exclusion in 1976, the Commission has made few statements regarding the exclusion, instead leaving application of the exclusion to the staff to implement in accordance with its stated intent at adoption. When the Commission has had occasion to comment on the exclusion or to review staff positions in applying the exclusion, however, it has done so in a manner that is consistent with its longstanding view of the exclusion's purpose.

The Division issued a series of letters in 1990 that addressed nomination proposals similar to that presented in the *AFSCME* v. *AIG* matter. In those letters, the Division set forth its framework for applying Rule 14a–8(i)(8) to nomination proposals:

> There appears to be some basis for [the company's] view that the proposal may be omitted pursuant to rule 14a–8[(i)](8). That provision allows the omission of a proposal that ''relates to an election to office.'' In this regard, the staff particularly notes that the Commission has indicated that the ''principal purposes of [rule 14a–8(i)(8)] is to make clear [that] with respect to corporate elections, that [r]ule 14a–8 is not the proper means for conducting campaigns * * * since other proxy rules, including rule [14a–12] are applicable thereto.'' Securities Exchange Act Release No. 12598 (July 7, 1976). Insofar as it seeks to implement a common ballot procedure, it appears that this proposal * * * would establish a procedure that may result in contested elections to the board which is a matter more appropriately addressed under Rule 14a–12. Accordingly, this Division will not recommend enforcement action to the Commission if the Company excludes the proposal from its proxy materials.[31]

In 1992, in proposing reforms to the proxy rules, the Commission acknowledged the ''difficulty experienced by shareholders in gaining a voice in determining the composition of the board of directors'' but noted further that:

> Proposals to require the company to include shareholder nominees in the company's proxy statement [rather than in the dissident's own proxy statement] *would represent a substantial change in the Commission's proxy rules.* This would essentially mandate a universal ballot including both management nominees and independent candidates for board seats.[32] (emphasis added).

The Division continued to include the ''may result in contested elections'' language in its letters regarding shareholder nomination proposals and Rule 14a–8(i)(8) for 10 years.[33] In 1998,

[28] *American Federation of State, County & Municipal Employees, Employees Pension Plan* v. *American International Group, Inc.,* 462 F.3d 121 (2d Cir. 2006) (*AFSCME* v. *AIG*).

[29] *Id.* at 128.

[30] In this regard, we note that the Second Circuit noted in its decision that ''* * * if the SEC determines that the interpretation of the election exclusion embodied in its 1976 Statement would result in a decrease in necessary disclosures or any other undesirable outcome, it can certainly change its interpretation of the election exclusion, provided that it explains its reasons for doing so.'' *Id.* at 130.

[31] *See* Division letter to *Amoco* (Feb. 14, 1990).

[32] *See* Exchange Act Release No. 34–31326 (Oct. 16, 1992) [57 FR 48276].

[33] In each of 1993 and 1995, the Division issued one letter that took a view that was counter to

Continued

the Division included this language in its letter to Storage Technology Corporation.[34] In that letter, the Division agreed that there was a basis for the company's view that it could exclude, under Rule 14a–8(i)(8), a proposal that sought to amend the company's governing instruments to provide that any three shareholders who owned a combined minimum of 3,000 shares could include a director nominee in the company's proxy materials.[35] The shareholder sought Commission review of this Division position, but the Commission declined to review the no-action determination.[36]

As noted above, the Division continued to include the ''contested elections'' language in its Rule 14a–8(i)(8) no-action letters through and beyond the Commission's 1998 letter to Storage Technology Corporation. While the Division has continued to follow this analysis in past seasons, it ceased repeating this language in its letters during the 2000 proxy season, as the analysis had been established definitively through 10 years of Division positions and the Commission's letter to Storage Technology.

In 2003, the Division agreed that there was a basis for the view of Citigroup Inc. that it could exclude, under Rule 14a–8(i)(8), a proposal that was substantially similar to the proposal that was submitted to AIG by AFSCME and that was the subject of the Second Circuit's recent opinion. In its letter to Citigroup Inc. (Jan. 31, 2003), the Division agreed that there was a basis for the Citigroup's view that the company could exclude a proposal because the proposal, ''rather than establishing procedures for nomination or qualification generally, would establish a procedure that may result in contested elections of directors.'' The shareholder proposal at issue in Citigroup was submitted by AFSCME and, similar to the proposal submitted to AIG, would have amended the company's bylaws to require the company to include the name, along with certain disclosures and statements, of any person nominated for election to the board by a 3% or greater stockholder.

The shareholder sought Commission review of the Division's position in its 2003 letter to Citigroup. The Commission declined to review the staff's determination, stating:

> [t]he Commission has determined not to review the Division's no-action position under Rule 14a–8(i)(8). The Division's current no-action position is consistent with Division positions taken in recent years. Any change in the Division's current interpretation would require other significant adjustments in the system of proxy regulation under Section 14(a) of the Securities Exchange Act of 1934.[37]

While the Commission determined not to review the staff's position, it directed the Division of Corporation Finance to review the proxy rules regarding procedures for the election of corporate directors and provide the Commission with recommendations regarding possible changes to the proxy rules.

Following the Division's review of the proxy rules, in 2003 the Commission proposed a comprehensive new set of rules, based on the Division's recommendations, which would govern shareholder director nominations that are not control-related.[38] The Commission would not have taken such action had it believed that Rule 14a–8 provided an appropriate avenue for shareholder director nominations. In fact, in discussing alternatives considered but not chosen in proposing the rules, the Commission specifically noted the alternative of revising Rule 14a–8(i)(8) to enable shareholders to use the shareholder proposal rule to participate more fully in the director nomination process.[39]

D. Commission Interpretation of Rule 14a–8(i)(8)

As noted previously, the Commission stated clearly when it proposed amendments to Rule 14a–8 in 1976 that ''Rule 14a–8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature, since other proxy rules, including Rule 14a–11, are applicable thereto.''[40] Thus, Rule 14a–8 expressly was *not* intended to be a substitute, or additional, mechanism for conducting contested elections (the type of elections that would involve the ''conducting [of] campaigns''), or for effecting reforms in contested elections (elections whose ''nature'' involves campaigns). Based on the foregoing, it is the Commission's view that a proposal may be excluded under Rule 14a–8(i)(8) if it would result in an immediate election contest (*e.g.*, by making or opposing a director nomination for a particular meeting) *or* would set up a process for shareholders to conduct an election contest in the future by requiring the company to include shareholders' director nominees in the company's proxy materials for subsequent meetings.

In the *AFSCME* opinion, the Second Circuit agreed with the Commission's view that shareholder proposals can be excluded under Rule 14a–8(i)(8) if they would result in an immediate election contest. The court, however, disagreed with the view that a proposal can be excluded under Rule 14a–8(i)(8) if it ''establish[es] a process for shareholders to wage a future election contest.''

We believe that the fact a proposal relates to the process for future elections rather than an immediate election is not dispositive in determining whether the election exclusion applies to the proposal. As the Commission stated in 1976, the express purpose of the election exclusion is to make clear that Rule 14a–8 is not a proper ''means'' to achieve election contests because ''other proxy rules'' are applicable to such contests. The use of Rule 14a–8 to require companies to include proposals that would require election contests to be conducted without compliance with

existing precedent and its own statements with regard to similar proposals. *See Dravo Corp.* (Feb. 21, 1995); and *Pinnacle West Capital Corp.* (Mar. 26, 1993) (not permitting exclusion under Rule 14a–8(i)(8) of proposals seeking to include qualified nominees in the company's proxy statement). The staff issued these letters in error, as they clearly are inconsistent with the Commission statement in the 1976 release proposing Rule 14a–8(i)(8) and numerous Division statements before and after. Further, these letters are inconsistent with later Commission statements, as described below.

[34] *See* Division letter to *Storage Technology Corporation* (Mar. 11, 1998) (''There appears to be some basis for your view that the first proposal may be omitted under rule 14a–8[(i)](8). It appears that the first proposal, rather than establishing procedures for nomination or qualification generally, would establish a procedure that may result in contested elections of directors, which is a matter more appropriately addressed under Rule [14a–12]. Accordingly, the Division will not recommend enforcement action to the Commission if the Company excludes the first proposal from its proxy materials in reliance upon Rule 14a–8[(i)](8)'').

[35] *See id.*

[36] Letter of Jonathan Katz, Secretary of the Commission, to Dr. Seymour Licht P.E. (Apr. 6, 1998).

[37] *See* letter from Jonathan Katz, Secretary of the Commission, to Gerald W. McEntee (Apr. 14, 2003). In that letter, the Commission directed the Division to review the proxy rules and regulations, as well as the Division's interpretations, regarding procedures for the election of corporate directors. This review resulted in the Commission's proposal of revisions to the proxy rules in October 2003.

[38] Exchange Act Release No. 34–48626 (Oct. 14, 2003) [68 FR 60784].

[39] *Id. See also AFSCME* at 130, n. 8 (stating that, because of the court's determination, ''there might very well be no reason for a rule based on Proposed Rule 14a–11 to co-exist with the procedure that our holding makes available to shareholders'').

[40] Exchange Act Release No. 34–12598 (July 7, 1976). The Commission's reference in its 1976 statement to ''other proxy rules, including Rule 14a–11,'' reflects the fact that, in 1976, Rule 14a–11 was the Commission proxy rule governing election contests. As part of a series of rule changes in 1999, the Commission rescinded Rule 14a–11 and moved many of the requirements of prior Rule 14a–11 to the current Rule 14a–12. [17 CFR 240.14a–12] *See* Securities Act Release No. 33–7760 (Oct. 22, 1999) [64 FR 61408]. Accordingly, the Commission's reference to Rule 14a–11 in 1976 was to the rules governing election contests, which now may be found generally elsewhere in the proxy rules and, in particular, in Rule 14a–12.

the specific rules governing such contests would be contrary to the intent of the Commission's 1976 statement.

For these reasons, and to avoid such circumvention, the phrase ''relates to an election'' in the election exclusion cannot be read so narrowly as to refer only to a proposal that ''relates to the current election,'' or a particular election, but rather must be read to refer to a proposal that ''relates to an election'' in subsequent years as well. In this regard, if one looked only to what a proposal accomplished in the current year, and not to its effect in subsequent years, the purpose of the exclusion could be evaded easily. For example, such a reading might permit a company to exclude a shareholder proposal that nominated a candidate for election as director for the upcoming meeting of shareholders but not exclude a proposal that required the company to include the same shareholder-nominated candidate in the company's proxy materials for the following year's meeting.

In implementing the Commission's intended meaning, the staff has taken care not to adopt an inappropriately broad reading of whether a proposal ''relates to an election,'' as such a reading would permit the exclusion of all proposals regarding the qualifications of directors, the composition of the board, shareholder voting procedures, and board nomination procedures. We agree with the staff's application of the exclusion in this regard, as an inappropriately broad reading of the exclusion would deny shareholder access to the company proxy materials under Rule 14a–8 with respect to a vast category of election matters of importance to shareholders that would not result in an election contest between management and shareholder nominees, and that do not present significant conflicts with the Commission's other proxy rules.[41]

Our interpretation of the election exclusion is fully consistent with the Commission's statement in 1976, that the rule was not intended ''to cover proposals dealing with matters previously not held not excludable by the Commission, such as cumulative voting rights, general qualifications for directors * * * '' In the *AFSCME* v. *AIG* opinion, the Second Circuit inferred from this Commission statement that the Commission ''reject[ed] the somewhat broader interpretation that the election exclusion applies to shareholder proposals that would institute procedures for making election contests more likely.'' Our view that Rule 14a–8(i)(8) allows companies to exclude shareholder proposals that could result in election contests without compliance with the contested election proxy rules is consistent with the Commission's statement in 1976. As explained above, the analysis under Rule 14a–8(i)(8) does not focus on whether the proposal would make election contests more likely, but whether the resulting contests would be governed by the Commission's proxy rules for contested elections. The Commission's references in 1976 to proposals relating to ''cumulative voting rights'' and ''general qualifications for directors'' simply reflect the long-held belief that these proposals generally do not trigger the contested elections proxy rules and therefore are not excludable under Rule 14a–8(i)(8). Accordingly, the Commission's 1976 statement should not be interpreted to mean that Rule 14a–8(i)(8) is inapplicable to proposals establishing procedures for elections generally.

III. Proposed Amendments to Rule 14a–8(i)(8)

In addition to the guidance provided in this release regarding our interpretation of Rule 14a–8(i)(8), we are considering whether it would be appropriate to amend that rule to further clarify the meaning of its exclusion. The text of Rule 14a–8(i)(8) currently specifies only that a proposal may be excluded ''[i]f the proposal relates to an election for membership on the company's board of directors or analogous governing body.'' To clarify the meaning of the exclusion, consistent with the Commission's interpretation of that exclusion, we are proposing to revise the exclusion to read:

> If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election.

We believe that the added references to ''nomination'' and ''procedure'' in the rule text will reflect more appropriately the purpose of the election exclusion. Further, if adopted, we would indicate clearly that the term ''procedures'' referenced in the election exclusion relates to procedures that would result in a contested election, either in the year in which the proposal is submitted or in subsequent years, consistent with the Commission's interpretation of the exclusion.

As discussed above, we are proposing amendments to Rule 14a–8 that would clarify the operation of the exclusion in Rule 14a–8(i)(8) in a manner that is consistent with the Commission's interpretation of that exclusion. With regard to this proposed amendment, we are soliciting comment as to the following:

- Would the proposed amendments to Rule 14a–8(i)(8) provide sufficient certainty regarding the scope of the exclusion? If not, what additional amendments are necessary?
- Should the exclusion specify those procedures that the staff historically has found to fall within the exclusion?
- What additional clarification would be helpful and/or appropriate?

For further clarity, should the proposed amendments include a specific reference to the interpretation of the exclusion with respect to procedures that could not result in a contested election? An example of such a further clarification would be:

> In this regard, a proposal relates to ''a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election'' if it could have the effect of, or proposes a procedure that could have the effect of, any of the following: (A) Disqualifying board nominees who are standing for election; (B) removing a director from office before his or her term expired; (C) questioning the competence or business judgment of one or more directors; or (D) requiring companies to include shareholder nominees for director in the companies' proxy materials or otherwise resulting in a solicitation on behalf of shareholder nominees in opposition to management-chosen nominees.

IV. General Request for Comment

We request and encourage any interested person to submit comments regarding:

[41] In this regard, the staff has taken the position that a proposal relates to ''an election for membership on the company's board of directors or analogous governing body'' and, as such, may be excluded under Rule 14a–8(i)(8) if it could have the effect of, or proposes a procedure that could have the effect of, any of the following:

- Disqualifying board nominees who are standing for election;
- Removing a director from office before his or her term expired;
- Questioning the competence or business judgment of one or more directors; or
- Requiring companies to include shareholder nominees for director in the companies' proxy materials or otherwise resulting in a solicitation on behalf of shareholder nominees in opposition to management-chosen nominees.

Conversely, the staff has taken the position that a proposal may not be excluded under Rule 14a–8(i)(8) if it relates to any of the following:

- Qualifications of directors or board structure (as long as the proposal will not remove current directors or not disqualify current nominees);
- Voting procedures (such as majority or cumulative voting);
- Nominating procedures; or
- Reimbursement of shareholder expenses in contested elections.

- The proposed amendments that are the subject of this release;
- Additional or different changes; or
- Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of companies, investors, and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments. We will consider all comments responsive to this inquiry in complying with our responsibilities under Section 23(a) of the Exchange Act.[42]

V. Paperwork Reduction Act

A. Background

The proposed amendments affect ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995, the PRA.[43] The title for the affected collection of information is ''Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–16 and Schedule 14A)'' (OMB Control No. 3235–0059). This regulation was adopted pursuant to the Exchange Act and sets forth the disclosure requirements for proxy statements filed by companies to help investors make informed voting decisions.

The hours and costs associated with preparing and filing the disclosure, filing the forms and schedules and retaining records required by these regulations constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Summary of Proposals

Rule 14a–8 is the Commission rule that provides shareholders with an opportunity to place a proposal in a company's proxy materials for a vote at an annual or special meeting of shareholders. The proposed amendments to that rule are intended to clarify the scope of the exclusion in Rule 14a–8(i)(8), consistent with the Commission's interpretation of the exclusion. The amendments would provide certainty regarding the meaning of the exclusion in that rule.

C. Paperwork Reduction Act Burden Estimates

Adoption of the Rule 14a–8(i)(8) amendments would merely revise the text of the rule in a manner that is consistent with the Commission's interpretation of the rule. As such, the amendments proposed today would not change the information that companies are required to provide on Schedule 14A; the same information will be required if the proposed amendments are adopted.

D. Solicitation of Comments

We request comment on this Paperwork Reduction Act Analysis. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–17–07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–17–07, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Assistance, Washington, DC 20549.

VI. Cost-Benefit Analysis

We propose amendments that would clarify existing rules. The opinion in *American Federation of State, County & Municipal Employees, Employees Pension Plan* v. *American International Group, Inc.*[44] has created uncertainty regarding the Commission staff's longstanding administration of Rule 14a–8(i)(8), making it difficult for shareholders and companies to assess the operation of that rule. The proposed amendments to that rule are intended to clarify the scope of the exclusion in Rule 14a–8(i)(8), consistent with the Commission's interpretation of the rule. Without such clarification, shareholders and companies may be uncertain as to the range of shareholder proposals that are required to be included in company proxy materials and may be uncertain as to the proper range of proposals that shareholders may submit to companies for inclusion in those proxy materials. For example, without clarification of the exclusion in Rule 14a–8(i)(8), shareholders may incur costs in preparing and submitting proposals that a company may properly exclude from its proxy materials.

Because the proposed amendments would clarify that the scope of the exclusion in Rule 14a–8(i)(8) is consistent with the Commission's interpretation of that exclusion, shareholders and companies would not incur additional costs to determine the appropriate scope of that exclusion. Further, companies would not incur additional costs with regard to the inclusion of shareholder proposals in proxy materials.

The proposed amendments should improve the ability of shareholders to prepare and submit proposals that will be required to be included in a company's proxy materials, as those shareholders will have a clear understanding of the scope of the Rule 14a–8(i)(8) exemption. Further, without the clarification of the proper scope of the Rule 14a–8(i)(8) exclusion that would be provided by the amendments, shareholders and companies may incur substantial expense in litigating disputes regarding that exclusion.

Request for Comment

We are sensitive to the costs and benefits imposed by our rules. We have identified no costs and certain benefits related to these proposals. We request comment on all aspects of this cost-benefit analysis, including identification of any costs and additional benefits. We encourage commenters to identify and supply relevant data concerning the costs and benefits of the proposed amendments.

[42] 15 U.S.C. 78w(a).

[43] 44 U.S.C. 3501 *et seq.*

[44] 462 F.3d 121 (2d Cir. 2006) (*AFSCME*).

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[45] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act[46] and Section 2(c) of the Investment Company Act of 1940[47] requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The *AFSCME* opinion has created uncertainty regarding the Commission staff's longstanding administration of Rule 14a–8(i)(8), making it difficult for companies and shareholders to assess the operation of that rule. This has resulted in uncertainty regarding whether Rule 14a–8 requires companies to include in their proxy materials shareholder proposals that would establish procedures under which shareholder nominees for director, despite the exclusion provided by Rule 14a–8(i)(8). This uncertainty has made it difficult for shareholders and companies to assess the proper operation of the shareholder proposal rule and has generated economic inefficiency by introducing potential litigation costs, and costs incurred to prepare and respond to shareholder proposals.

The proposed amendments are intended to clarify the scope of the exclusion in Rule 14a–8(i)(8), consistent with the Commission's interpretation of the rule. This should improve shareholders' and companies' ability to assess shareholder proposals with a clear understanding whether Rule 14a–8 will require inclusion of the proposal. Informed decisions in this regard generally promote market efficiency and capital formation. We believe the proposed amendments to Rule 14a–8 would not impose a burden on competition.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition and capital formation. Finally, we request commenters to provide empirical data and other factual support for their views if possible.

VIII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments to Rule 14a–8 that would clarify the application of the exclusion provided by paragraph (i)(8) of that rule.

A. Reasons for, and Objectives of, Proposed Action

The purpose of the proposed amendments is to clarify the requirements of companies to include in their proxy materials shareholder proposals relating to procedures for the inclusion of shareholder nominees for directors in company proxy materials. The proposed amendments would clarify the scope of Rule 14a–8(i)(8), which permits companies to omit certain such proposals from their proxy materials.

The proposals, if adopted, should improve shareholders' and companies' ability to assess shareholder proposals with a clear understanding whether Rule 14a–8 will require inclusion of the proposal.

B. Legal Basis

We are proposing amendments to the rules under the authority set forth in Sections 14 and 23(a) of the Exchange Act, as amended, and Sections 20(a) and 38 of the Investment Company Act of 1940, as amended.

C. Small Entities Subject to the Proposed Rules

The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[48] The Commission's rules define ''small business'' and ''small organization'' for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission.[49] A ''small business'' and ''small organization,'' when used with reference to a company other than an investment company, generally means an company with total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 companies, other than investment companies, that may be considered reporting small entities.[50] The proposed rules may affect each of the approximately 1,315 small entities that are subject to the Exchange Act reporting requirements.

We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

D. Reporting, Recordkeeping and Other Compliance

Requirements

The proposed amendments would impose no new reporting, recordkeeping, or compliance requirements. The impact of these proposals relates to clarifying the scope of the requirement to include shareholder proposals in company proxy materials.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or duplicate the proposed rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective of our proposals, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments and rules, we considered the following alternatives:

- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and
- How to quantify the impact of the proposed rules.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of

[45] 15 U.S.C. 78w(a)(2).

[46] 15 U.S.C. 78c(f).

[47] 15 U.S.C. 80a–2(c).

[48] 5 U.S.C. 601(6).

[49] Securities Act Rule 157 (17 CFR 230.157), Exchange Act Rule 0–10 (17 CFR 240.0–10) and Investment Company Act Rule 0–10 (17 CFR 270.0–10) contain the applicable definitions.

[50] The estimated number of reporting small entities is based on 2007 data, including the Commission's EDGAR database and Thomson Financial's Worldscope database. Approximately 215 investment companies meet this definition.

1996,[51] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

[51] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 50 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. § 601).

X. Statutory Basis and Text of Proposed Amendments

We are proposing amendments to rules pursuant to Sections 14, and 23(a) of the Exchange Act, as amended, and Sections 20(a) and 38 of the Investment Company Act of 1940, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 24 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 240.14a–8 by revising paragraph (i)(8) to read as follows:

§ 240.14a–8 Shareholder proposals.

* * * * *

(i) * * *

(8) *Relates to election:* If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election;

* * * * *

By the Commission.

Dated: July 27, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–14955 Filed 8–2–07; 8:45 am]

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Federal Register

Friday,
August 3, 2007

Part VI

The President

Executive Order 13441—Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions

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Presidential Documents

Title 3—

The President

Executive Order 13441 of August 1, 2007

Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)(IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*)(NEA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, determine that the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions, to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation, to reassert Syrian control or contribute to Syrian interference in Lebanon, or to infringe upon or undermine Lebanese sovereignty contribute to political and economic instability in that country and the region and constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat. I hereby order:

Section 1. (a) Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to have taken, or to pose a significant risk of taking, actions, including acts of violence, that have the purpose or effect of undermining Lebanon's democratic processes or institutions, contributing to the breakdown of the rule of law in Lebanon, supporting the reassertion of Syrian control or otherwise contributing to Syrian interference in Lebanon, or infringing upon or undermining Lebanese sovereignty;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such actions, including acts of violence, or any person whose property and interests in property are blocked pursuant to this order;

(C) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to this order; or

(D) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section would seriously impair

my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by paragraph (a) of this section.

(c)The prohibitions in paragraph (a) of this section include but are not limited to (i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order, and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 4. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that, because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that, for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken. The Secretary of the Treasury shall ensure compliance with those provisions of section 401 of the NEA (50 U.S.C. 1641) applicable to the Department of the Treasury in relation to this order.

Sec. 6. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 7. This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

THE WHITE HOUSE,
August 1, 2007.

[FR Doc. 07–3835
Filed 8–2–07; 9:10 am]
Billing code 3195–01–P

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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