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WHEN: Tuesday, June 12, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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Federal Register

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27348; Directorate Identifier 2007–CE–015–AD; Amendment 39–15078; AD 2007–11–21]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Model DA 40 Airplanes

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

ACTION: Final rule.

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

Abnormal manufacturing variations of the universal joints in combination with mechanical wear can lead to a joint failure and subsequent disconnection between selector and the fuel valve. This result in a loss of capability to select the fuel tank for supply. This condition might remain unrecognised by the pilot and can result in fuel starvation during flight and/or unavailability of emergency fuel shutoff.

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

DATES: This AD becomes effective July 9, 2007.

On July 9, 2007 the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Mr. Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 2, 2007 (72 FR 15633). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Abnormal manufacturing variations of the universal joints in combination with mechanical wear can lead to a joint failure and subsequent disconnection between selector and the fuel valve. This result in a loss of capability to select the fuel tank for supply. This condition might remain unrecognised by the pilot and can result in fuel starvation during flight and/or unavailability of emergency fuel shutoff.

Revision History

This inspection was initially addressed by Austrian AD A–2004–003. The design of the fuel selector/fuel valve universal joint has than been changed by design change MÄM 40–142/a and was introduced into serial production. The initial repetitive AD inspection interval of 50 Hrs is also applicable for this design. The investigation of the inspections carried out, has identified that the new joint design eliminated the design problem and no additional inspection is required.

You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 476 products of U.S. registry. We also estimate that it will take about 1.5 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $57,120, or $120 per product.

In addition, we estimate that any necessary follow-on actions will take about 2.5 work-hours and require parts costing $382, for a cost of $582 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–11–21 Diamond Aircraft Industries GmbH: Amendment 39–15078; Docket No. FAA–2007–27348; Directorate Identifier 2007–CE–015–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 9, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model DA 40 airplanes, serial numbers 40.006 up to and including 40.079, 40.081 up to and including 40.083, 40.201 up to and including 40.417, that:

(1) Are certificated in any category; and

(2) have fuel shaft part number D41–2823–20–00 Rev ''-'' installed.

Subject

(d) Air Transport Association of America (ATA) Code 28: Fuel.

Reason

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

Abnormal manufacturing variations of the universal joints in combination with mechanical wear can lead to a joint failure and subsequent disconnection between selector and the fuel valve. This results in a loss of capability to select the fuel tank for supply. This condition might remain unrecognised by the pilot and can result in fuel starvation during flight and/or unavailability of emergency fuel shutoff.

Revision History

This inspection was initially addressed by Austrian AD A–2004–003. The design of the fuel selector/fuel valve universal joint has than been changed by design change MÄM 40–142/a and was introduced into serial production. The initial repetitive AD inspection interval of 50 Hrs is also applicable for this design. The investigation of the inspections carried out, has identified that the new joint design eliminated the design problem and no additional inspection is required.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) When the airplane reaches a total of 200 hours time-in-service (TIS) or within the next 15 hours TIS after July 9, 2007 (the effective date of this AD), whichever occurs later, inspect the universal joint in accordance with Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 40–030/3, dated January 31, 2006. Repetitively inspect thereafter at intervals not to exceed 50 hours TIS until the modified universal joint assembly specified in paragraph (f)(2) of this AD is installed.

(2) Before further flight, replace the complete joint assembly with the new joint assembly, part number (P/N) D41–2823–20–00 rev ''a'' or higher in accordance with Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 40–030/3, dated January 31, 2006, if one or more defects are found on the universal joint during any inspection required by this AD.

(3) The 50-hour TIS repetitive inspection requirement in paragraph (f)(1) of this AD is terminated when the universal joint has been replaced with the new universal joint assembly, P/N D41–2823–20–00 rev ''a'' or higher, as specified in paragraph (f)(2) of this AD.

(4) At 1,000-hour TIS intervals after the replacement specified in paragraph (f)(2) of this AD, inspect the universal joints in the fuel selector shaft as specified in Diamond Aircraft DA 40 Series Temporary Revision to the Airplane Maintenance Manual (AMM), AMM–TR–MÄM–40–142/a, Fuel Tank Selector, Doc. No. 6.02.01, Section 25–20–00, page 28a, dated May 23, 2005.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI incorporates the repetitive inspection requirement for the new joint assembly, P/N D41–2823–20–00 rev ''a'' or higher, into the AMM. In order for this inspection to be required for U.S.-owner/operators, we are incorporating the 1,000-hour repetitive inspection into this AD.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, Small Airplane Directorate, ATTN: Sarjapur Nagarajan, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090, 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.

(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

(44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2006–0067, dated March 24, 2006; and Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 40–030/3, dated January 31, 2006, for related information.

Material Incorporated by Reference

(i) You must use Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 40–030/3, dated January 31, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt; telephone: +43 2622 26700; fax: +43 2622 26780; e-mail: *office@diamond-air.at.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, 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/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on May 25, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10589 Filed 6–1–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 280

[Docket No. 070404076–7077–01]

RIN 0693–AB57

Fastener Quality Act

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Final Rule.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, and the Director of the United States Patent and Trademark Office (USPTO), United States Department of Commerce, are amending the rules that implement the Fastener Quality Act of 1999 to provide that all documents submitted in connection with the recordal of fastener insignia must be mailed to a particular postal box maintained by United States Patent and Trademark Office.

DATES: This final rule is effective on June 4, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Chicoski, Office of the Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313–1451, telephone number (571) 272–8943, e-mail address *jennifer.chicoski@uspto.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Fastener Quality Act of 1999, Public Law 101–592 (as amended by Pub. L. 104–113, Pub. L. 105–234 and Pub. L. 106–34) requires the Secretary of Commerce to establish a program for the recordation of the identifying insignia of certain fasteners. The rules set forth at Subpart D of 15 CFR 280.300 *et seq.* accordingly provide for a recordation system, and that system is maintained at the United States Patent and Trademark Office (USPTO). One of the rules, 15 CFR 280.310(d), provides that all documents pertaining to recordation must be mailed to a particular postal box maintained by the USPTO in Arlington, VA. A second rule, Section 280.323(a), requires copies of documentation of transfers or assignments of trademark applications or registrations which form the basis of a recorded insignia be sent to a postal box in Washington, DC.

The efficiency of the insignia recordation program will be enhanced if documents submitted in connection with the program are mailed to a postal box that is at the USPTO's headquarters in Alexandria, Virginia. Accordingly, Sections 280.300 *et seq.* are amended to provide that these documents be mailed to that postal box.

This final rule amends section 280.310, Application for Insignia, and section 280.323, Transfer or Assignment of the Trademark Registration or Recorded Insignia, to identify the postal box to which all documents pertaining to recordation should be sent. The United States Postal Service has provided a separate routing +4 zip code to distinguish mail relating to the Fastener Quality Act (FQA) from other USPTO mail, and all such correspondence should now be sent to the USPTO's main headquarters, addressed with the separate routing +4 zip code.

The USPTO appreciates that it will take some period of time for all persons filing correspondence relating to the FQA to become accustomed to the address change. Although the address change is effective immediately, the USPTO plans to arrange for continued delivery of correspondence addressed to the former Arlington, Virginia 22215 address as a courtesy for a limited period of time. The USPTO cannot ensure the availability of the Arlington, Virginia Post Office Box for receipt of FQA correspondence after October 31, 2007.

Additional Information

Executive Order 12866

This rule of agency organization and management is not subject to Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Administrative Procedure Act

Prior notice and an opportunity for public comment are not required for this rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A). This rule revises the regulations to identify the address where documents submitted in connection with the recordal of fastener insignia may be mailed.

Regulatory Flexibility Act

Because notice and comment are not required under 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. As such, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule involves a collection of information that is subject to the Paperwork Reduction Act (PRA), and that has been approved by the Office of Management and Budget (OMB) under control number 0651–0028. Notwithstanding any other provision of the law, no person is required to comply, nor shall any person be subject to penalty for failure to comply, with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the

National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 280

Business and industry, Imports, Laboratories, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the National Institute of Standards and Technology and the United States Patent and Trademark Office amend 15 CFR part 280, subpart D, as follows:

PART 280—FASTENER QUALITY

■ 1. The authority citation for part 280 continues to read:

Authority: 15 U.S.C. 5401 *et seq.*

Subpart D—Recordal of Insignia

■ 2. Section 280.310 is amended by revising paragraph (d) to read as follows:

§ 280.310 Application for insignia.

* * * * *

(d) Applications and other documents should be addressed to: Director, United States Patent and Trademark Office, ATTN: FQA, 600 Dulany Street, MDE–10A71, Alexandria, VA 22314–5793.

■ 3. Section 280.323 is amended by revising paragraph (a) to read as follows:

§ 280.323 Transfer or assignment of the trademark registration or recorded insignia.

(a) A trademark application or registration which forms the basis of a fastener recordal may be transferred or assigned. Any transfer or assignment of such an application or registration must be recorded in the United States Patent and Trademark Office within three months of the transfer or assignment. A copy of such transfer or assignment must also be sent to: Director, United States Patent and Trademark Office, ATTN: FQA, 600 Dulany Street, MDE–10A71, Alexandria, VA 22314–5793.

* * * * *

Dated: May 24, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Dated: May 29, 2007.

James M. Turner,

Deputy Director, National Institute of Standards and Technology.

[FR Doc. E7–10707 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–SC–0003, EPA–R04–OAR–2005–SC–0005–200620c; FRL–8321–4]

Approval and Promulgation of Implementation Plans; South Carolina: Revisions to State Implementation Plan; Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarification.

SUMMARY: EPA is clarifying its approval of revisions to the South Carolina State Implementation Plan (SIP), published in the **Federal Register** on December 7, 2006. EPA's action modified South Carolina's federally approved Regulation 61–62.1 ''Definitions and General Requirements,'' by revising the definition of Volatile Organic Compounds (VOC). This action merely clarifies the list of compounds which are excluded from the definition of VOC.

DATES: This action is effective June 4, 2007.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2005–SC–0005. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the 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: Stacy Harder, 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. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Is the Background for This Action?

Through a direct final rulemaking, published in the **Federal Register** on December 7, 2006, (71 FR 70880), EPA approved revisions to the South Carolina SIP. These revisions were submitted on October 24, 2005, by the South Carolina Department of Health and Environmental Control (SC DHEC). The purpose of EPA's action was to revise the definition of VOC. Specifically, that SIP revision updated the nomenclature for compounds excluded from the definition of VOC in SC Regulation 61–62.1, to be consistent with the Federal rule published on November 29, 2004, (69 FR 69298). It also added four compounds to the list of those excluded from the definition of VOC, on the basis that they make a negligible contribution to ozone formation, also consistent with the Federal rule. Additionally, the revision added the compound *t*-butyl acetate (TBAC or TBAc) to the list of compounds excluded from the definition of VOC for purposes of emissions limitations or VOC content requirements. EPA is clarifying the action taken on December 7, 2006, due to feedback that the rulemaking was not clear in its intent.

II. EPA's Action

The purpose of this action is only to clarify a previous action and no substantial changes are being made. Below is the list of the compounds presented in the December 7, 2006, rulemaking, which updates the nomenclature for the following compounds excluded from the definition of VOC in the South Carolina SIP:

- $(CF_3)_2CFCF_2OC_2H_5$ to (2-(ethoxydifluoromethyl)-(1,1,1,2,3,3,3-heptafluoropropane)
- CFC–113 (1,1,2-trichloro-1,2,2-trifluoroethane)
- CFC–114 (1,2-dichloro-1,1,2,2-tetrafluoroethane)
- HCFC–123 (1,1,1-trifluoro-2,2-dichloroethane)
- HCFC–134a (1,1,1,2-tetrafluoroethane)
- HCFC–141b (1,1-dichloro-1-fluoroethane)
- HCFC–142b (1-chloro-1,1-difluoroethane)
- HFE–7100 (1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane) or $(C_4F_9OCH_3)$

• HFE–7200 (1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane) or ($C_4F_9OC_2H_5$)
• Methylene chloride (dichloromethane)
• Perchloroethylene (tetrachloroethylene); and perfluorocarbon compounds that fall into these classes:
(i) Cyclic, branched, or linear, completely fluorinated alkanes;
(ii) cyclic, branched, or linear, completely fluorinated alkanes;
(iii) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
(iv) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

Additionally, the 2006 action added the following five compounds to the list of those excluded from the definition of VOC:

• HFE–7000 (1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane) or (n-$C_3F_7OCH_3$)
• HFE–7500 (3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane
• HFC–227ea (1,1,1,2,3,3,3-heptafluoropropane)
• Methyl formate ($HCOOCH_3$)
• The following compound(s) are defined as VOC only for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOC and shall be uniquely identified in emission reports; they are not, however, defined as VOC for purposes of VOC emissions limitations or VOC content requirements: T-butyl acetate (TBAC or TBAc).

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because today's action to provide clarification of those compounds exempted from the definition of VOC, has no substantive impact on EPA's December 7, 2006, approval. The clarification for the list of compounds exempted from the definition of VOC, in EPA's direct final rule published on December 7, 2006, makes no substantive difference to EPA's analysis as set out in that rule. In addition, EPA can identify no particular reason why the public would be interested in being notified of this clarification or in having the opportunity to comment on the clarification prior to this action being finalized, since this clarification action does not change EPA's analysis for the update to the nomenclature for those compounds excluded from the definition of VOC, and the addition of five compounds to the list of those excluded from the definition of VOC.

EPA also finds that there is good cause under APA section 553(d)(3) for this clarification to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3), is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule simply clarifies EPA's December 7, 2006, rulemaking. For these reasons, EPA finds good cause under APA section 553(d)(3), for this clarification to become effective on the date of publication of this action.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely clarifies the nomenclature and the list of compounds excluded from the definition of VOC in the South Carolina SIP as approved in EPA's December 7, 2006, rulemaking, 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 clarifies the nomenclature and the list of compounds excluded from the definition of VOC in the South Carolina SIP as approved in EPA's December 7, 2006, rulemaking, notice 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 clarifies the nomenclature and the list of compounds excluded from the definition of VOC in the South Carolina SIP as approved in EPA's December 7, 2006, rulemaking, 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.

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

The Congressional Review Act, U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 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 August 3, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: May 22, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E7–10696 Filed 6–1–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

42 CFR Part 136

Center for Medicare & Medicaid Services

42 CFR Part 489

[CMS–2206–F]

RIN 0917–AA02

Section 506 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Limitation on Charges for Services Furnished by Medicare Participating Inpatient Hospitals to Individuals Eligible for Care Purchased by Indian Health Programs

AGENCY: Indian Health Service (IHS), Center elsewhere for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Secretary of the Department of Health and Human Services (HHS) hereby issues this final rule establishing regulations required by section 506 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), (Pub. L. 108–173). Section 506 of the MMA amended section 1866 (a)(1) of the Social Security Act to add subparagraph (U) which requires hospitals that furnish inpatient hospital services payable under Medicare to participate in the contract health services program (CHS) of the Indian Health Service (IHS) operated by the IHS, Tribes, and Tribal organizations, and to participate in programs operated by urban Indian organizations that are funded by IHS (collectively referred to as I/T/Us) for any medical care purchased by those programs. Section 506 also requires such participation to be in accordance with the admission practices, payment methodology, and payment rates set forth in regulations established by the Secretary, including acceptance of no more than such payment rates as payment in full.

DATES: These final regulations are effective July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Carl Harper, Director, Office of Resource Access and Partnerships, IHS, 801 Thompson Avenue, Twinbrook Metro Plaza Suite 360, Rockville, Maryland 20852, telephone (301) 443–2694. Dorothy Dupree, Director, Tribal Affairs Group, OEA, CMS, 7500 Security Boulevard, Mail Stop: C1–13–11, Baltimore, Maryland 21244, telephone (410) 786–1942. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

On April 28, 2006, IHS and CMS published proposed rules in the **Federal Register** (71 FR 25124) as mandated by section 506(c) of the MMA, which requires the Secretary to publish rules implementing the requirements of section 506 of the MMA. Under that statutory provision, hospitals that furnish inpatient hospital services payable under Medicare are required to participate both in the contract health service (CHS) program of IHS operated by IHS, Tribes, and Tribal organizations, and in programs operated by urban Indian organizations (I/T/Us) that are funded by the IHS, for medical care purchased by those programs. Section 506 also requires such participation to be in accordance with the admission practices, payment methodology, and payment rates set forth in regulations established by the Secretary, including acceptance of no more than such rate as payment in full. The proposed rule provided interested persons until June 27, 2006 to submit written comments.

II. Provisions of the Proposed Regulations

a. The Proposed Rule

We proposed to amend the IHS regulations at 42 CFR part 136, by adding a new subpart D to describe the payment methodology and other requirements for Medicare-participating hospitals and critical access hospitals (CAHs) that furnish inpatient services, either directly or under arrangement, to individuals who are authorized to receive services from such hospitals under a CHS program of the IHS, Tribes, and Tribal organizations, and IHS-funded programs operated by urban Indian organizations (collectively, I/T/U programs). As provided in the statute, we also proposed to amend CMS regulations at 42 CFR part 489 to require Medicare-participating hospitals and critical access hospitals (CAHs) that furnish inpatient hospital services to individuals who are eligible for and authorized to receive items and services covered by such I/T/U programs to accept no more than the payment methodology under 42 CFR part 136, subpart D as payment in full for such items and services. The proposed rule did not include additional regulation of admission practices.

b. Summary of Changes in the Final Rule

In reviewing several comments, IHS and CMS determined that the payment methodology in the proposed rule was not adequately explained. Therefore, we are clarifying the payment methodologies established by this regulation to include more detail. For hospital services that would be paid under prospective payment systems (PPS) by the Medicare program, the basic payment methodology under this rule is based on the applicable PPS. For example, inpatient hospital services of acute care hospitals, psychiatric hospitals, rehabilitation hospitals, and long-term care hospitals will be paid based on the same four Medicare PPS systems as would be used to pay for similar hospital services to the hospitals' Medicare patients, as described under 42 CFR part 412, while outpatient hospital services and skilled nursing facility services (SNF) will be paid based on their Medicare PPS systems, as described under 42 CFR part 419 (outpatient) and 42 CFR part 413

(SNF) respectively. The basic payment methodology under this rule for Medicare-participating hospitals that furnish inpatient services but are exempt from PPS and currently receive reasonable cost reimbursement under the Medicare program (for example, critical access hospitals (CAHs), children's hospitals, cancer hospitals, and certain other hospitals reimbursed by Medicare under special arrangements), is based on 42 CFR part 413, which addresses reasonable cost reimbursement.

In addition, based on the comments received, IHS and CMS determined that the requirement that providers participate in IHS and Tribal CHS programs and IHS-funded urban Indian organization programs was not clear in the proposed rule and additional guidance was needed. Therefore, we clarified that hospitals participating in Medicare that furnish inpatient hospital services will be required to accept the payment methodology and no more than the rates established under 42 CFR part 136, subpart D as payment in full for such services. This change also clarifies that such hospitals may not refuse service to an individual on the basis that the individual may be eligible for payment under such CHS and IHS-funded urban Indian programs. We did not include additional prohibitions on discrimination in admission practices because such requirements are already covered and enforced by the HHS Office for Civil Rights under existing regulations at 45 CFR part 80.

III. Analysis of and Responses to Public Comments

The IHS received 35 comments from Tribes, Tribal organizations, hospital associations, CAHs, and individuals. The IHS, in partnership with CMS, carefully reviewed the submissions by individuals, groups, Indian, and non-Indian organizations. We did not consider 4 of these comments, because they were received after the closing date. Of the 31 timely comments, 26 comments supported the proposed regulation. Several comments requested clarification of certain sections of the rule.

Comment: We received 10 comments that expressed serious concern regarding the long delay in publication of the proposed rule and requested expedited publication of a final rule.

Response: The development of this final rule has been a long and careful process, involving consultation with the Tribes through the CMS Tribal Technical Advisory Group, and close collaboration between IHS and CMS. An incidental benefit of this process has been greater understanding by all parties of the service delivery and payment processes that are at issue in this rule.

Comment: A number of the comments from Tribes and Tribal organizations expressed concerns that affected Indian health programs would need training to fully implement and monitor the participation and payment requirements.

Response: IHS is authorized to provide technical assistance regarding implementation of this final rule. Tribal program representatives can contact Mr. Carl Harper at the phone number listed in the contact information.

Comment: One commenter expressed concern that American Indian/Alaska Native (AI/AN) populations have many complications and co-morbidities that do not exist to the same extent in the patient population as a whole, including diabetes, cardiovascular disease, injury, trauma, and alcoholism. The commenter suggested that costs to treat this population are higher and suggested IHS would be paying less for its patient population than Medicare actually pays for services furnished to a comparable population.

Response: Patients who are more seriously ill tend to require a higher level of hospital resources than patients who are less seriously ill even though they may be admitted to the hospital for the same reason. Recognizing this, Medicare payments can be higher for patients in certain diagnostic-related groups (DRGs) based on a secondary diagnosis that could indicate specific complications or co-morbidities. Also, the DRG groupings take into consideration co-morbidity factors, and payment adjustments that would be available to reflect the higher costs of disproportionate share hospital adjustments and outlier payments are provided for exceptionally high cost cases, all of which would address high costs of this patient population. As a result, IHS payment under this rule will reflect the serious health issues faced by its patient population.

Comment: One commenter expressed concern that the CHS program payments are not always timely and should be paid in accordance with Medicare timeline requirements.

Response: This regulation addresses practices, payment methodologies, and rates of payment that are not already addressed under current laws or regulations. The time frame for paying claims authorized by IHS under the CHS program is already governed by section 220 of the Indian Health Care Improvement Act (IHCIA).

Comment: One commenter expressed concern that payment for services should be absolute for services rendered, not at the service unit's discretion. In addition, this commenter suggested IHS set the timeline for notification of emergency services at a minimum of 30 days following services rendered.

Response: Payment for services is based on a medical priority system which is based on the availability of funds as established under 42 CFR part 136, subpart C. Under subpart C of title 42, notification of emergency services must be provided within 72 hours after the beginning of treatment or admission to a health care facility. The timeline for notification of emergency services for the elderly and disabled is currently set at 30 days in accordance with section 406 of the IHCIA.

Comment: One commenter expressed concern that the proposed rule places an additional burden on hospitals by capping rates paid to public and private non-IHS funded hospitals, with no additional responsibility or accountability placed on I/T/U programs regarding payments to such hospitals.

Response: This rule would provide for rates that hospitals accept under the Medicare program. We do not believe these rates place an additional burden on hospitals.

Comment: One commenter asked whether the payment rates required under this rule would apply to claims for services furnished by long-term care hospitals, independent inpatient rehabilitation facilities, and inpatient psychiatric facilities to individuals who were authorized for the service by an I/T/U program.

Response: Long-term care hospitals, independent inpatient rehabilitation facilities, and inpatient psychiatric facilities are covered by these rules because they meet the criteria of section 506 of the MMA: They are covered by the definition of ''hospital'' in section 1861(e) or (f), as applicable, of the Social Security Act and they furnish inpatient hospital services. They will be paid based upon their respective Medicare PPS systems.

Comment: A commenter asked whether agents will be precluded from charging the I/T/U for the records needed for payment determination or quality assurance in cases in which a facility is using an outside agent to manage its medical records and patient information.

Response: Under section 136.30(j), additional payment would not be available for the cost of copying of medical records to an outside agent who

manages medical records and patient information.

Comment: One commenter expressed concern that the proposed rule does not clearly define what it means to ''participate'' in programs operated by IHS, Tribes, Tribal organizations, or urban Indian (I/T/U) programs.

Response: Participation in I/T/U programs means that all hospitals covered by this rule must accept the admission practices, payment methodology, and no more than the rates of payment established under this rule as payment in full for items and services purchased by I/T/U programs for individuals eligible for and referred by such programs. To clarify that acceptance of these requirements is mandatory for participation in Medicare, IHS has revised the proposed rule in two ways. First, subsections (a) and (b) of 42 CFR 136.30 have been amended to clarify which entities are affected by the rule and the services that will be covered. Second, 42 CFR 489.29 has also been amended to be consistent with 42 CFR part 136, subpart D. Paragraph (b) has been added to 42 CFR 489.29 to clarify that hospitals cannot deny services to an individual on the basis that payment for such services is authorized by an I/T/U program. However, the rule does not provide additional regulation of discrimination in admission practices because such requirements are already covered and enforced by the HHS Office for Civil Rights under existing regulations at 45 CFR part 80.

Comment: One commenter asked whether hospitals which are not reimbursed on a reasonable cost basis will be reimbursed based on the Medicare DRGs or other prospective payment rate.

Response: We have clarified the payment methodology in the final rule in response to this comment. We are clarifying that, for hospital services that would be paid under prospective payment systems (PPS) by the Medicare program, the basic payment methodology under this rule is based on the applicable PPS. For example, inpatient services furnished by acute care hospitals, psychiatric hospitals, rehabilitation hospitals, and long-term care hospitals will be paid based on their respective PPS used in the Medicare program to pay for similar hospital services to the hospitals' Medicare patients, as described under 42 CFR part 412, while outpatient hospital services and skilled nursing facility (SNF) services will be paid based on their Medicare PPS, as described under 42 CFR part 419 (outpatient) and 42 CFR part 413 (SNF) respectively. Under the basic payment methodology of this rule for Medicare-participating hospitals that furnish inpatient services but are exempt from PPS and currently receive reasonable cost reimbursement under the Medicare program (for example, CAHs, children's hospitals, cancer hospitals, and certain other hospitals reimbursed by Medicare under special arrangements), I/T/Us will reimburse such hospitals for claims in accordance with 42 CFR part 413, which addresses reasonable cost reimbursement. In other words, hospitals reimbursed by Medicare on a reasonable cost basis will not be paid by use of DRGs or other case classification systems used under the various Medicare PPS payment methods. To clarify what hospitals can expect to receive as reimbursements, IHS has created two basic payment determinations under section 136.30(c) in the final rule; one for PPS based payments and one for payments based on reasonable costs.

Comment: Two commenters recommended that payment adjustments for organ acquisition costs, blood clotting factors, new technology services, and disproportionate share be included in the interim payment calculations in order to provide for an appropriate level of reimbursement.

Response: IHS agrees that payment adjustments for the types of services listed above should be included in the payment calculations in order to provide for an appropriate level of reimbursement. Payment adjustments for disproportionate share and new medical technology already are included in the PPS methodology under subparts F and G of part 412. Moreover, to ensure that hospitals receiving PPS payment include these payment adjustments, IHS will use the Medicare PRICER system (or a similar system) in calculating final payment. The system includes adjustments such as those above. For items not adjusted within the system, the IHS fiscal intermediary will be instructed to use standard payments calculated by CMS (for example, payments based on the Average Sales Price (ASP) for hemophilia clotting factors). To clarify that such payments will be added to the basic rate calculation, IHS has added a new section 136.30(d) to the rule.

Comment: Several commenters expressed concern that the interim payment rates will have a financial impact on CAHs. Another commenter expressed concern about the per diem mechanism used to make interim payments to CAHs because there is no requirement to follow Medicare regulations by the I/T/U.

Response: The economic financial impact study conducted by an IHS fiscal intermediary demonstrates that the interim payment rates will have limited financial impact on rural and small rural hospitals as explained in section VI of this final rule, Regulatory Impact Statement. Moreover, in revising the proposed adoption of the Medicare payment methodologies in section 136.30(c) of the final rule, IHS has identified two basic determinations for payment. Payments to CAHs are covered under section 136.30(c)(2). IHS will follow payment guidance based on the reasonable cost methodology under 42 CFR 413.70, ''Payment for services of a CAH''. As with other payments based on reasonable cost, payments to CAHs will be based on the interim payment rate established under 42 CFR part 413, subpart E.

Comment: One commenter asked whether the final rule will be applied to claims which are received after the effective date, regardless of the date of service, or only to claims with a date of service after the effective date.

Response: The requirements of the final rule will apply to claims with a date of service on or after the effective date of the final regulation.

Comment: A commenter asked whether contracts will become invalidated by this regulation or remain in effect until they expire in situations in which a hospital contract is currently in place with IHS, which has rates that are not based on Medicare or are not less than Medicare rates.

Response: Medicare-participating hospitals that furnish inpatient services must accept the rate methodology established under this regulation as a condition of participation in the Medicare program. Current hospital contract rates that are lower than the rates established by this regulation will continue to apply in accordance with section 136.30(c).

Comment: One commenter asked if the Medicare timely filing guidelines will be waived and/or modified for claims when the I/T/U (1) is not the primary payor and the patient has alternate resources or, (2) delayed in sending out a timely purchase order.

Response: Under 42 CFR 136.61, as applied in this rule, the I/T/U program is the payor of last resort for individuals eligible for any alternate resources. The timely filing period under 42 CFR 424.44 and provisions of the Medicare Claims Processing Manual will apply to all claims submitted to an I/T/U program for payment.

Comment: One commenter asked the IHS to remove the Health Insurance Portability and Accountability Act

(HIPAA) requirement for electronic claim submission.

Response: If the I/T/U program accepts paper claims, this is still an acceptable format for claims submission. However, if non-I/T/U providers generally submit their claims electronically to other payers, they should also do so for I/T/U payers that accept electronic claims. HIPAA requires electronic claims to be filed using the standard 837 format.

IV. Collection of Information Requirements

This document does not impose any new 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. 35). **Note:** The burden requirements in section 136.30(h)(1) for submitting a claim form are currently approved under OMB approval number 0938–0279.

V. Regulatory Impact Statement

The IHS has examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 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 1 year). This action is not a significant regulatory action under Executive Order 12866. Further regulatory evaluation is not necessary because the economic impact will be minimal.

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 hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity.

The I/T/Us have entered into contracts with many public and private non-I/T Medicare-participating hospitals at rates less than or equal to the rate proposed in this rule. IHS intends to continue existing contracts with these hospitals; however, to the extent that I/T/Us are not able to negotiate a contract with a hospital, payment rates established by this rule will apply. This action will alleviate the need for and administrative burden of negotiating rates through individual contracts by IHS as well as the Medicare-participating hospitals.

The IHS conducted a study to determine the financial impact the interim payment rates, as proposed by this regulation, would have on public and private non-I/T/U hospitals. As part of this study, IHS compared the interim rates to the rates that IHS has negotiated per contracts with public and private non-I/T/U hospitals. For FY 2003, of the 387 hospitals that IHS does business with, IHS has negotiated contracts with 48 percent of these hospitals. Based on IHS data, the findings revealed the overall negative impact on these public and private non-I/T/U hospitals would be less than 1 percent. Of the 387 hospitals in the study, 105 are rural hospitals. Out of the 105 rural hospitals, 84 are small rural hospitals (less than 100 beds). By comparing the interim rate to full billed charges, (that is, what IHS pays if a contract is not negotiated) revealed a negative financial impact of 8 percent on these rural hospitals. Further analysis of the inpatient bed utilization by hospital revealed IHS represents less than 2 percent of the rural and small rural hospitals total business meaning that 98 percent of the hospitals' income comes from other sources. For these reasons, IHS has determined that the rates proposed by these regulations will 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 et seq.

In addition, section 1102(b) of the Act requires IHS 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, IHS defines a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. For the reasons provided above, IHS has determined that this rule will not have a significant impact on the operations of a substantial number of small 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 requirements mandate expenditure in any 1 year by State, local, or Tribal governments, in the aggregate, or by the private sector, of $120 million. This proposal would not impose substantial Federal mandates on State, local or Tribal governments or private sector.

Executive Order 13132 establishes certain requirements that an Agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. It has been determined that this action 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, and therefore would not have Federalism implications.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

List of Subjects

42 CFR Part 136

American Indian, Alaska Natives, Health, Medicare.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

Dated: November 2, 2006.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

Dated: November 16, 2006.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: April 18, 2007.

Michael O. Leavitt,

Secretary.

■ The Indian Health Service is amending 42 CFR Chapter I as set forth below:

PART 136—INDIAN HEALTH

■ 1. The authority citation for part 136 continues to read as follows:

Authority: 25 U.S.C. 13; 42 U.S.C. 1395cc(a)(1)(U), 42 U.S.C. 2001 and 2003, unless otherwise noted.

■ 2. Add new subpart D consisting of §§ 136.30 through 136.32, to read as follows:

Subpart D—Limitation on Charges for Services Furnished by Medicare-Participating Hospitals to Indians

Sec.
136.30 Payment to Medicare-participating hospitals for authorized Contract Health Services.
136.31 Authorization by urban Indian organization.
136.32 Disallowance.

Subpart D—Limitation on Charges for Services Furnished by Medicare-Participating Hospitals to Indians

§ 136.30 Payment to Medicare-participating hospitals for authorized Contract Health Services.

(a) *Scope.* All Medicare-participating hospitals, which are defined for purposes of this subpart to include all departments and provider-based facilities of hospitals (as defined in sections 1861(e) and (f) of the Social Security Act) and critical access hospitals (as defined in section 1861(mm)(1) of the Social Security Act), that furnish inpatient services must accept no more than the rates of payment under the methodology described in this section as payment in full for all items and services authorized by IHS, Tribal, and urban Indian organization entities, as described in paragraph (b) of this section.

(b) *Applicability.* The payment methodology under this section applies to all levels of care furnished by a Medicare-participating hospital, whether provided as inpatient, outpatient, skilled nursing facility care, as other services of a department, subunit, distinct part, or other component of a hospital (including services furnished directly by the hospital or under arrangements) that is authorized under part 136, subpart C by a contract health service (CHS) program of the Indian Health Service (IHS); or authorized by a Tribe or Tribal organization carrying out a CHS program of the IHS under the Indian Self-Determination and Education Assistance Act, as amended, Pub. L. 93–638, 25 U.S.C. 450 *et seq.*; or authorized for purchase under § 136.31 by an urban Indian organization (as that term is defined in 25 U.S.C. 1603(h)) (hereafter ''I/T/U'').

(c) *Basic determination.* (1) Payment for hospital services that the Medicare program would pay under a prospective payment system (PPS) will be based on that PPS. For example, payment for inpatient hospital services shall be made per discharge based on the applicable PPS used by the Medicare program to pay for similar hospital services under 42 CFR part 412. Payment for outpatient hospital services shall be made based on a PPS used in the Medicare program to pay for similar hospital services under 42 CFR part 419. Payment for skilled nursing facility (SNF) services shall be based on a PPS used in the Medicare program to pay for similar SNF services under 42 CFR part 413.

(2) For Medicare participating hospitals that furnish inpatient services but are exempt from PPS and receive reimbursement based on reasonable costs (for example, critical access hospitals (CAHs), children's hospitals, cancer hospitals, and certain other hospitals reimbursed by Medicare under special arrangements), including provider subunits exempt from PPS, payment shall be made per discharge based on the reasonable cost methods established under 42 CFR part 413, except that the interim payment rate under 42 CFR part 413, subpart E shall constitute payment in full for authorized charges.

(d) *Other payments.* In addition to the amount payable under paragraph (c)(1) of this section for authorized inpatient services, payments shall include an amount to cover: The organ acquisition costs incurred by hospitals with approved transplantation centers; direct medical education costs; units of blood clotting factor furnished to an eligible patient who is a hemophiliac; and the costs of qualified non-physician anesthetists, to the extent such costs would be payable if the services had been covered by Medicare. Payment under this subsection shall be made on a per discharge basis and will be based on standard payments established by the Centers for Medicare & Medicaid Services (CMS) or its fiscal intermediaries.

(e) *Basic payment calculation.* The calculation of the payment by I/T/Us will be based on determinations made under paragraphs (c) and (d) of this section consistent with CMS instructions to its fiscal intermediaries at the time the claim is processed. Adjustments will be made to correct billing or claims processing errors, including when fraud is detected. I/T/Us shall pay the providing hospital the full PPS based rate, or the interim reasonable cost rate, without reduction for any co-payments, coinsurance, and deductibles required by the Medicare program from the patient.

(f) *Exceptions to payment calculation.* Notwithstanding paragraph (e) of this section, if an amount has been negotiated with the hospital or its agent by the I/T/U, the I/T/U will pay the lesser of: The amount determined under paragraph (e) of this section or the amount negotiated with the hospital or its agent, including but not limited to capitated contracts or contracts per Federal law requirements;

(g) *Coordination of benefits and limitation on recovery.* If an I/T/U has authorized payment for items and services provided to an individual who is eligible for benefits under Medicare, Medicaid, or another third party payor—

(1) The I/T/U shall be the payor of last resort under § 136.61;

(2) If there are any third party payers, the I/T/U will pay the amount for which the patient is being held responsible after the provider of services has coordinated benefits and all other alternative resources have been considered and paid, including applicable co-payments, deductibles, and coinsurance that are owed by the patient; and

(3) The maximum payment by the I/T/U will be only that portion of the payment amount determined under this section not covered by any other payor; and

(4) The I/T/U payment will not exceed the rate calculated in accordance with paragraph (e) of this section or the contracted amount (plus applicable cost sharing), whichever is less; and

(5) When payment is made by Medicaid it is considered payment in full and there will be no additional payment made by the I/T/U to the amount paid by Medicaid (except for applicable cost sharing).

(h) *Claims processing.* For a hospital to be eligible for payment under this section, the hospital or its agent must submit the claim for authorized services—

(1) On a UB92 paper claim form (until abolished, or on an officially adopted successor form) or the HIPAA 837 electronic claims format ANSI X12N, version 4010A1 (until abolished, or on an officially adopted successor form) and include the hospital's Medicare provider number/National Provider Identifier; and

(2) To the I/T/U, agent, or fiscal intermediary identified by the I/T/U in the agreement between the I/T/U and the hospital or in the authorization for services provided by the I/T/U; and

(3) Within a time period equivalent to the timely filing period for Medicare claims under 42 CFR 424.44 and provisions of the Medicare Claims Processing Manual applicable to the type of item or service provided.

(i) *Authorized services.* Payment shall be made only for those items and

services authorized by an I/T/U consistent with part 136 of this title or section 503(a) of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended, 25 U.S.C. 1653(a).

(j) *No additional charges.* A payment made in accordance with this section shall constitute payment in full and the hospital or its agent may not impose any additional charge—

(1) On the individual for I/T/U authorized items and services; or

(2) For information requested by the I/T/U or its agent or fiscal intermediary for the purposes of payment determinations or quality assurance.

§ 136.31 Authorization by urban Indian organization.

An urban Indian organization may authorize for purchase items and services for an eligible urban Indian (as those terms are defined in 25 U.S.C. 1603(f) and (h)) according to section 503 of the IHCIA and applicable regulations. Services and items furnished by Medicare-participating inpatient hospitals shall be subject to the payment methodology set forth in § 136.30.

§ 136.32 Disallowance.

(a) If it is determined that a hospital has submitted inaccurate information for payment, such as admission, discharge or billing data, an I/T/U may as appropriate—

(1) Deny payment (in whole or in part) with respect to any such services, and;

(2) Disallow costs previously paid, including any payments made under any methodology authorized under this subpart. The recovery of payments made in error may be taken by any method authorized by law.

(b) For cost based payments previously issued under this subpart, if it is determined that actual costs fall significantly below the computed rate actually paid, the computed rate may be retrospectively adjusted. The recovery of overpayments made as a result of the adjusted rate may be taken by any method authorized by law.

■ The Centers for Medicare & Medicaid Services is amending 42 CFR Chapter IV, as set forth below:

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 3. The authority citation for part 489 continues to read as follows:

Authority: Sec. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Essentials of Provider Agreements

■ 4. A new § 489.29 is added to subpart B to read as follows:

§ 489.29 Special requirements concerning beneficiaries served by the Indian Health Service, Tribal health programs, and urban Indian organization health programs.

(a) Hospitals (as defined in sections 1861(e) and (f) of the Social Security Act) and critical access hospitals (as defined in section 1861(mm)(1) of the Social Security Act) that participate in the Medicare program and furnish inpatient hospital services must accept the payment methodology and no more than the rates of payment established under 42 CFR part 136, subpart D as payment in full for the following programs:

(1) A contract health service (CHS) program under 42 CFR part 136, subpart C, of the Indian Health Service (IHS);

(2) A CHS program under 42 CFR part 136, subpart C, carried out by an Indian Tribe or Tribal organization pursuant to the Indian Self-Determination and Education Assistance Act, as amended, Public Law 93–638, 25 U.S.C. 450 *et seq.*; and

(3) A program funded through a grant or contract by the IHS and operated by an urban Indian organization under which items and services are purchased for an eligible urban Indian (as those terms are defined in 25 U.S.C. 1603 (f) and (h)).

(b) Hospitals and critical access hospitals may not refuse service to an individual on the basis that the payment for such service is authorized under programs described in paragraph (a) of this section.

[FR Doc. 07–2740 Filed 6–1–07; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070215036–7107–02; I.D. 012307A]

RIN 0648–AU79

International Fisheries; Pacific Tuna Fisheries; Restrictions for 2007 Purse Seine and Longline Fisheries in the Eastern Tropical Pacific Ocean

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to implement the 2007 management measures to reduce overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks in 2007, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The U.S. purse seine fishery for yellowfin, bigeye, and skipjack tunas in the ETP will be closed for a 6–week period beginning August 1, 2007, through September 11, 2007. The longline fishery for bigeye tuna will close when a 500 metric ton (mt) limit has been reached. These actions are taken to limit fishing mortality caused by purse seine fishing and longline fishing in the ETP and contribute to long-term conservation of the tuna stocks at levels that support healthy fisheries.

DATES: The 2007 purse seine fishery closure for yellowfin, bigeye, and skipjack tunas is effective on 12:00 a.m. Pacific Time, August 1, 2007, through 11:59 p.m. Pacific Time, September 11, 2007. For 2007, NMFS will close the bigeye longline fishery through appropriate procedures to ensure that the bigeye longline tuna catch does not exceed 500 mt.

ADDRESSES: Copies of the regulatory impact review/final regulatory flexibility analysis (FRFA) may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980–4030.

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.gpoaccess.gov/*

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established by international agreement through the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), which was signed in 1949. The IATTC was established to ensure the effective international conservation and management of highly migratory species of fish in the ETP. For the purposes of these closures, the ETP is defined to include the waters bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and

fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries.

In June 2006, the IATTC adopted a *Resolution for a Program on the Conservation of Tuna in the Eastern Pacific Ocean for 2007*. The June 2006 resolution is a 1–year program on the conservation of tuna in the ETP for 2007. This resolution offers a choice for closing the purse seine fishery: either a 6–week closure beginning August 1, 2007, or a 6–week closure beginning November 20, 2007. The resolution of June 2006 incorporated flexibility for nations to administer the purse seine closure in accordance with national legislation and national sovereignty. The selected measure should reduce overfishing in a manner that is fair, equitable, and readily enforceable.

A proposed rule to carry out the IATTC-recommended and DOS-approved closures for the ETP purse seine and longline tuna fisheries for 2007 was published in the **Federal Register** on February 26, 2007 (72 FR 8333). Under the Tuna Conventions Act, 16 U.S.C. 951–961 and 971 *et seq.*, NMFS must publish regulations to carry out IATTC recommendations and resolutions that have been approved by DOS.

For the target tuna stocks (yellowfin, bigeye, and skipjack) of this resolution, NMFS believes there may be a modest biological advantage for choosing one closure period over the other because the summer closure would foreclose opportunistic fishing by the southern California small purse seine fleet. This fleet does not fish for the target tuna stocks during the winter months when the target tuna stocks are not available within the range of the fleet's smaller vessels. NMFS also looked at possible economic advantages for determining which closure period to select. As discussed in response to comment 2, NMFS believes there may be value in evaluating whether a summer closure may be less of an economic burden to U.S. interests than a winter closure. For 2007, NMFS has selected the closure beginning August 1, 2007, through September, 11, 2007. All purse seine gear used to target yellowfin, bigeye, and skipjack tunas must be out of the water in the ETP and no yellowfin, bigeye, or skipjack tunas may be retained for the 6–week period beginning August 1, 2007, through September 11, 2007.

This final rule also provides that the U.S. longline fishery for bigeye tuna in the ETP will close for the remainder of the calendar year 2007 after the catch of bigeye by U.S. longline vessels reaches 500 mt. This closure will prohibit deep-set longline gear from being deployed and retaining bigeye tuna in the ETP. Longline vessels will not be subjected to this closure if the permit holder declares to NMFS under the Fishery Management Plan (FMP) for the Pelagic Fisheries of the Western Pacific Region that they intend to shallow-set to target swordfish (50 CFR 665.23). NMFS will close the longline fishery through appropriate procedures so that the 500 mt limit is not exceeded. These actions ensure that U.S. vessels fish in accordance with the conservation and management measures that the IATTC recommended in June 2006.

Comments and Responses

During the comment period for the proposed rule, NMFS received four comments. Comments were received from tuna vessel owners, tuna industry organizations, and a member of the public. Key issues and concerns are summarized below and responded to as follows:

Timing of the Closures

Comment 1: Comments supporting the closure period of August 1, 2007, through September 11, 2007, were received from U.S. large-scale purse seine vessel owners. They noted that in past years, they chose not to fish during the winter as inclement weather on the normal fishing grounds makes fishing difficult and there was an expectation that they could secure dockyard space and conduct vessel repairs during this period. However, during the winter closures in the ETP for years 2004–2006, vessel owners wasted much time in securing dockyard space due to competition for space with other nations. They expressed an interest in using the summer closure for one year to determine if vessel repairs could be conducted more efficiently during the summer closure period relative to past experience.

Response: NMFS understands that the U.S. large-scale purse seine vessel owners prefer the summer closure for 2007 as they envision that this choice may have economic benefits that have not been realized during the past three years when U.S. purse seine vessels were subject to a winter closure. In addition to the potential for a modest conservation benefit, discussed above, adopting the summer closure option for 2007 would allow NMFS to evaluate whether an economic benefit can be realized.

Comment 2: Two commenters expressed a preference for the winter closure for 2007. These comments stated that their ETP operations are based in Ecuador, and Ecuador in past years has chosen the summer closure. Assuming Ecuador's preferred closure will again be the summer period and the United States chooses the winter closure, this will provide some consistent distribution of their fish supply throughout the year. If the United States chooses the summer closure and Ecuador chooses the summer closure for 2007, their concern is that their fish supply opportunities will be limited.

Response: In the years 2004 - 2006, nations party to the IATTC evenly choose the summer and winter closure periods. NMFS believes as in years past, nations party to the IATTC will again evenly choose the summer and winter closure periods and that the global supply of tuna will be balanced and available for purchase to market. At this time, the United States cannot anticipate the closure period Ecuador will select for 2007. Consequently, the U.S. closure period may or may not coincide with Ecuador's.

2007 U.S. Longline Catch

Comment 3: A commenter stated that longlines should be banned permanently and totally forever, but noted that the longline season, as outlined, should be closed at a minimum of August 1 through December 1. The commenter added that the failure to adequately stem overfishing is reflected by this paucity of closure.

Response: The longline tuna fishery closure in the ETP was negotiated on a multilateral basis and strikes a balance between the many competing interests. The nations party to the IATTC prefer to set national quotas rather than time/area closures for this gear type. This final rule provides that the U.S. longline fishery for bigeye tuna in the ETP will close for the remainder of the calendar year 2007 when the catch by U.S. longline vessels reaches 500 mt.

Classification

This action is consistent with the Tuna Conventions Act and with the regulations governing the Pacific Tuna Fisheries at 50 CFR 300.25.

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

An FRFA was prepared that describes the economic impacts of this final rule. A copy of this analysis is available from NMFS (see **ADDRESSES**). Responses to comments received on the economic impact of the proposed rule were

provided above. A summary of the FRFA follows.

A description of the need for and objectives of this rule is included in the preamble and not repeated here.

The purse seine closure applies to the U.S. tuna purse seine fleet that targets yellowfin, bigeye, and skipjack tunas. The fleet consists of five to ten small vessels (carrying capacity below 400 short tons (363 mt)) and one to two large vessels (carrying capacity 400 short tons (363 mt) or greater). The large vessels usually fish outside U.S. waters and deliver their catch to foreign ports or transship to processors outside the mainland United States. The large vessels are categorized as large business entities (revenues in excess of $4 million per year). A large purse seine vessel typically generates 4,000 to 5,000 mt of tuna valued at between $4 and $5 million per year. The closure should not significantly affect the operations of the one to two large vessels because they are capable of fishing, and do fish, in other areas that would remain open.

The small vessels are categorized as small business entities (average annual revenues below $4 million per year). They fish out of California in the U.S. EEZ most of the year for small pelagic fish (Pacific sardine, Pacific mackerel) and for market squid in summer. Some small vessels harvest yellowfin and skipjack tunas seasonally when they are available. The southern California purse seine fishery opportunistically fishes for tropical tunas when the tropical tunas migrate further north and within range of these vessels, which are not equipped for long-range excursions. Specifically, yellowfin and skipjack tunas intermittently migrate within range of these vessels. However, predicting their movements is uncertain. Tuna landings reported by the Pacific States Marine Fisheries Commission show that since 2001, yellowfin and skipjack tunas can be landed by this southern California purse seine fishery during the months of August, September, and October, although the bulk of these landings occur in September. However, this is not always the case. For example, neither yellowfin nor skipjack tunas ventured close enough to the range of the southern California small purse seine fleet in 2006 resulting in zero landings. For the summer purse seine fishery closure option, this fishery would be precluded from fishing in August and for 11 days in September which still provides the fishery the opportunity to operate for the remainder of September as well as the month of October. In addition, the southern California small purse seine fleet periodically lands albacore and bluefin tunas which are not covered under the IATTC resolution of June 2006 and therefore can be fished during either closure option. It appears that bluefin tuna may also be the preferred species targeted by this fleet as bluefin provide a higher ex-vessel value than either yellowfin or skipjack tunas.

The existing California based longline fishery, which consists of one vessel, targets bigeye tuna. For the tuna longline fleet operating out of Hawaii, there is a maximum of 164 permits available, and 125 active longline vessels participated in the fishery in 2005. The California and Hawaii longline fleets are categorized as small business entities (average annual revenues below $4 million per year). The Hawaii longline fleet, which targets bigeye tuna and swordfish, has traditionally operated outside the boundaries of the ETP. However, in recent years, some vessels of the tuna longline fleet operating out of Hawaii have operated within the boundaries of the ETP. In 2004, 2005, and 2006, the California and Hawaii based longline fishery was limited to 150 mt of bigeye tuna in the ETP. For each of these three years, the 150 mt limit was reached in the ETP and the longline fishery for bigeye tuna was closed. A closure would affect operations of both longline fleets. However, the California based longline fleet is capable of fishing for other species of fish with other gear types in the ETP which should mitigate the effects of any closure. For example, the closure has occurred in the past several years beginning in the summer months when North Pacific albacore tuna appear on the west coast and vessels can switch to surface troll gear to participate in that fishery. Similarly, the Hawaii based longline fleet also fishes for swordfish and can also direct its efforts at bigeye tuna outside the ETP. Because both fleets are capable of fishing for other species, or in the case of the Hawaii longline fleet, in other areas outside the ETP that would remain open, they have the opportunity to continue to fish during the closure.

This rule does not impose reporting or recordkeeping requirements, and the compliance requirements for the closure areas are as described at the outset of this summary.

NMFS considered three alternatives for this final rule: a 6–week summer closure of the purse seine fishery from August 1 through September 20 of 2007, a 6–week winter closure of the purse seine fishery from November 20 through December 31, 2007, or no closures at all. The summer closure best satisfies the objectives of the resolution and the statute to conserve tuna stocks by prohibiting purse seine fishing for the target tuna stocks during the only time when the small purse seine fleet out of southern California might engage in opportunistic fishing for yellowfin, bigeye, and skipjack tuna. The opportunistic chance for the southern California small purse seine fleet to target yellowfin, bigeye, and skipjack tunas is not available in the winter as the tropical tunas do not migrate within the range of these vessels, which are not equipped for long-range excursions, during the winter season. While such fishing is only a very small portion of the overall catch of these species, NMFS believes that by foreclosing this additional fishing opportunity, the summer closure may provide a slightly greater conservation benefit than the winter closure.

The August 1 – September 11 closure alternative may have a slightly greater economic impact on small entities than the November 20 December 31 closure because the additional fishing opportunity for the southern California small purse seine fleet will not be available during the closure period, though this impact is not expected to be significant. The southern California small purse seine fishery normally fishes for coastal pelagic species such as Pacific sardines, Pacific mackerel and market squid. Fishing for these species of fish is not affected by this closure. In recent years, the seasonal tuna harvest has amounted to no more than 5–7% of the total catch for these vessels. The seasonal tuna catch is also intermittent - as stated previously, neither yellowfin nor skipjack tunas ventured close enough to the range of the southern California small purse seine fleet in 2006 resulting in zero landings. Based on an average since 2001, the economic impact on small entities in the California small purse seine fleet who opportunistically are able to target yellowfin, bigeye, and skipjack tunas is less than $0.5 million. Because the opportunity to fish seasonally for yellowfin, bigeye, and skipjack tuna will be available after the closure, during the latter half of September and for the month of October, the economic impact is likely to be less than $0.5 million on average. The ex-vessel value of all small purse seine vessels fishing for coastal pelagic species was $43.5 million in 2005. Therefore NMFS does not believe that the summer closure and an average of less than $0.5 million not realized for the southern California small purse seine fleet will be significant.

NMFS considered the option of a 6–week closure during the winter season beginning on November 20, 2007. Given that NMFS believes the summer closure

may provide a slightly greater conservation benefit than the winter closure, and that NMFS believes it is reasonable to evaluate whether the winter closure will allow fishery participants to realize an economic benefit pertaining to vessel operations, NMFS did not choose this alternative.

NMFS also considered the alternative of not implementing the 2006 IATTC Tuna Conservation Resolution. This alternative would have imposed no economic costs on small entities. However, failure to implement measures that have been agreed to pursuant to the Convention would violate the United States' obligations under the Convention, and would violate the Tuna Conventions Act.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: May 29, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070326070–7110–02; I.D. 032107A]

RIN 0648–AV47

Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to restrict the harvest of halibut by persons fishing on a guided sport charter vessel in International Pacific Halibut Commission (IPHC) Regulatory Area 2C. The current sport fishing catch or bag limit of two halibut per day is changed for a person sport fishing on a charter vessel in Area 2C. The final rule would require at least one of the two fish taken in a day to be no more than 32 inches (81.3 cm) in length. This regulatory change is necessary to reduce the halibut harvest in the charter vessel sector while minimizing negative impacts on this sector, its sport fishing clients, and the coastal communities that serve as home ports for the fishery. The intended effect of this action is a reduction in the poundage of halibut harvested by the guided sport charter vessel sector in Area 2C.

DATES: Effective June 1, 2007.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action are available from: NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; NMFS, Alaska Region, 709 West 9th Street, Room 420, Juneau, AK; or NMFS Alaska Region Website at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, telephone (907) 586–7228, e-mail *jay.ginter@noaa.gov*; or Jason Gasper, telephone (907) 586–7228, e-mail *jason.gasper@noaa.gov*.

SUPPLEMENTARY INFORMATION: The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention signed at Washington, D.C., on March 29, 1979. The IPHC's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). Approved regulations developed by the IPHC are published as annual management measures pursuant to 50 CFR 300.62. The annual management measures for 2007 were published on March 14, 2007 (72 FR 11792).

The Halibut Act provides the Secretary with the authority and general responsibility to carry out the requirement of the Convention and Halibut Act. Regulations that are not in conflict with approved IPHC regulations may be recommended by the North Pacific Fishery Management Council (Council) and implemented by the Secretary through NMFS to allocate harvesting privileges among U.S. fishermen in and off of Alaska. The Council has exercised this authority, most notably in the development of its Individual Fishing Quota (IFQ) Program, codified at 50 CFR part 679, and subsistence halibut fishery management measures, codified at 50 CFR 300.65. The Council also has been developing a regulatory program to manage the guided sport charter vessel fishery for halibut and is continuing this work. This program could include harvest restrictions in regulatory Area 2C and 3A for 2008, and a moratorium on new entry into the Area 2C and Area 3A charter vessel fishery.

Background and Need for Action

The background and need for this action were described in the preamble of the proposed rule published in the **Federal Register** on April 6, 2007 (72 FR 17071). In summary, this final rule will reduce sport fishing mortality of halibut in the Area 2C charter vessel sector to a level comparable to the level that would have been achieved by the one-fish bag limit recommended by the IPHC. Of the alternatives analyzed in the EA/RIR/FRFA, the alternative selected for the final rule is expected to provide the necessary level of harvest reduction while also reducing adverse impacts on the charter fishery, its sport fishing clients, the coastal communities served by the charter sector, and on the fisheries for other species.

The harvest of halibut occurs in three basic fisheries the commercial, sport, and subsistence fisheries. An additional amount of fishing mortality occurs as bycatch, wastage, and incidental catch while targeting other species. The IPHC annually determines the amount of halibut that may be removed from a regulatory area without causing biological conservation concerns for the entire Pacific halibut stock. In Convention waters in and off Alaska, the IPHC sets an annual catch limit specific for the commercial fishery. Thus, to maintain conservation goals, the IPHC reduces commercial catch when other sources of fishing mortality (e.g., sport fishing) grow. Although most of the non-commercial uses of halibut have been stable, growth in the charter vessel fishery in recent years, particularly in Area 2C, has resulted in a shift of the halibut resource away from the commercial fishery to the charter fishery. Moreover, the rate of growth in the charter vessel sector in Area 2C has made it difficult for the IPHC to forecast future removals of halibut in the charter vessel sector and set appropriate commercial harvest limits.

The IPHC addressed the increase in the harvest of halibut by the charter vessel fishery at its annual meeting in January 2007. The IPHC adopted a motion to reduce the daily bag limit for anglers fishing on charter vessels in Areas 2C and 3A from two halibut to one halibut per day during certain time periods. Specifically, the IPHC recommended a one-fish bag limit apply to guided anglers in Area 2C from June 15 through July 30, and in Area 3A from

June 15 through June 30. In Area 3A, the one-fish bag limit would reduce the charter vessel harvest of halibut by an estimated 326,000 lb (147.9 mt). In Area 2C, the one-fish bag limit restriction would reduce the charter vessel harvest of halibut by an amount estimated to range from 397,000 lb (180.1 mt) to 432,000 lb (195.9 mt).

In a letter to the IPHC on March 1, 2007, the Secretary of State, with concurrence from the Secretary of Commerce, rejected the IPHC-recommended one-fish bag limit in Areas 2C and 3A, and indicated that appropriate reduction in the charter vessel harvest in these areas would be achieved by a combination of State of Alaska Department of Fish and Game (ADF&G) and NMFS regulatory actions. Prior to Secretarial rejection of the IPHC-recommended harvest measures, ADF&G promulgated regulations for Area 3A that prohibited skipper and crew from harvesting halibut onboard a charter vessel and limited the number of lines that could be fished from a charter vessel. ADF&G estimates that its action in Area 3A would reduce harvest the charter halibut harvest to or close to the Area 3A guideline harvest level (GHL). Thus, NMFS believed this level of harvest reduction was sufficient to meet management goals for the halibut fishery in Area 3A.

The one-fish bag limit recommended by the IPHC would have had negative economic impacts on the charter vessel industry. Comments from charter vessel guides before, during, and after the IPHC meeting in January 2007 indicated that changing the bag limit for anglers on charter vessels from two fish to one fish per day for the six-week period in Area 2C would have an adverse impact on charter vessel bookings that had been or were in the process of being made for the 2007 charter fishing season. Charter vessel operators and representatives stated that the ability to offer an opportunity to harvest more than one fish was important for their charter business. To reduce potential negative impacts on the charter fishing sector, NMFS considered regulatory alternatives for analysis that reduced the charter vessel fishery's amount of halibut harvest in Area 2C to a level comparable to the level that would have been achieved by the IPHC recommended one-fish bag limit while preserving a two-fish bag limit. The preamble to the proposed rule provides a detailed description of these analytical alternatives (March 14, 2007, 72 FR 11792).

Current Federal halibut fishing regulations published in the annual management measures (March 14, 2007, 72 FR 11792) allow sport anglers to retain two halibut of any size, per calender day. This action will amend those regulations to allow a daily bag limit of two halibut per sport fishing client on a charter vessel operating in Area 2C provided that at least one of the two halibut retained is no longer than 32 in (81.3 cm) with its head on. If only one halibut is retained by the sport fishing client, it could be of any length. The regulations in this final action would apply for the entire fishing season.

This action will require enforcement officers to determine the size of some halibut caught during a charter vessel trip. To accommodate this enforcement need, halibut must remain in measurable form until all halibut fillets are offloaded from the charter vessel. Thus, persons onboard a charter vessel are prohibited from possessing halibut that have been mutilated or disfigured in a way that prevents determining the size or number of halibut. Charter operators may fillet halibut onboard their vessels if the entire carcass is retained as a single piece until all fillets are offloaded. This requirement also is expected to improve the quality of data collected on the length composition of halibut harvested in the sport fishery. This requirement may increase the number of carcasses brought back to a port which may lead to disposal problems at some ports. NMFS strongly encourages charter operators to properly dispose of carcasses, including following all port-specific policies.

Expected Harvest Reduction

The draft EA/RIR/IRFA and the proposed rule (April 6, 2007, 72 FR 17071) indicated that the IPHC-recommended one fish bag limit would result in a harvest reduction by the charter vessel sector in Area 2C of between 397,000 lb (180.1 mt) and 432,000 lb (195.9 mt). The best scientific information available when these documents were prepared included an ADF&G estimate that the proposed regulation would reduce the charter vessel fishery harvest in Area 2C by 425,000 lb (192.8 mt). The proposed action appeared to be the best of several alternatives considered in the EA/RIR/IRFA, in part because the estimated reduction in poundage of halibut taken by the charter vessel sector was about 98 percent of the poundage range estimated for the IPHC-recommended action.

After publication of the proposed rule, however, ADF&G discovered a calculation error and corrected its harvest estimates. The correction changed the harvest reduction estimate for the proposed regulation from 425,000 lb (192.8 mt) to 518,000 lb (235.0 mt). This ADF&G correction increased the estimated poundage reduction of the proposed regulation by 93,000 lb (42.2 mt).

The revised poundage reduction estimate based on the ADF&G correction does not change the preferred alternative selected by NMFS. That preferred alternative published as a proposed rule on April 6 2007 (72 FR 17071), and implemented by this final rule, will achieve a harvest reduction that is comparable to the IPHC-recommended action while maintaining the traditional two-fish bag limit and reducing negative impacts on the charter vessel sector. NMFS is not changing its preferred alternative in light of the ADF&G correction for several reasons. First, the additional 93,000 lb (42.2 mt) reduction of charter vessel halibut harvest in Area 2C based on the revised estimates amounts to about four percent of the estimated 2,113,000 lb (958.4 mt) of halibut harvested by the charter vessel fishery in Area 2C in 2006. Second, changing the preferred alternative to the next more lenient alternative of a 35–inch (88.9–cm) maximum size limit would result in a difference of only 46,000 lb (20.9 mt) or about two percent of the Area 2C charter vessel harvest in 2006. Although the revised ADF&G estimates of predicted halibut poundage reductions are based on the best scientific information available, they are based on confidence ranges that have not been calculated, but are believed to be high based on the type of data available. Therefore, no change is made in the preferred alternative and no change is made from the proposed rule to this final rule.

Summary of Comments

The proposed rule was published in the **Federal Register** on April 6, 2007 (72 FR 17071), and invited public comments until April 23, 2007. NMFS received 477 comments in 128 letters and e-mail messages.

Comments Supporting the Proposed Rule

NMFS received 23 letters that supported, either in whole or in part, the adoption of the proposed rule to restrict the size of one of two harvested halibut caught by anglers fishing from a charter vessel in Area 2C. Of these letters, 18 were from the commercial fishing sector, including two commercial fishing associations. Comments in support of the proposed rule from the commercial fishing industry generally indicated a preference that halibut harvest in the

charter halibut fishery be reduced to the GHL, but believed the NMFS action was a first step towards managing the level of halibut harvest in the charter sector. These letters indicated that a long term solution is needed to manage the charter vessel sector to the GHL. Several letters, including two from the charter industry, indicated partial support of the action and that the chosen preferred alternative was better than Alternative 2, which would require one of two harvested halibut to be at least 45 inches (114.3 cm), 50 inches (127.0 cm), 55 inches (139.7 cm), or 60 inches (152.4 cm) in head-on length. The principle reasons given for supporting the proposed rule were that it would accomplish the following:

(1) Provide a necessary first step in reducing the charter halibut harvest to the GHL;

(2) Be the best choice for lessening the impact on the charter industry and associated sport mortality of the halibut resource by handling larger halibut;

(3) Reduce the erosion of the commercial quota by halibut harvested in the charter fishery; and

(4) Improve data collection and enforcement because charter operators would be required to keep the entire carcass until fillets are offloaded.

Comments Opposing the Proposed Rule

NMFS received a total of 103 letters opposed to the proposed rule. Of these letters, 11 were from the commercial fishing industry, 33 were from the charter industry, 54 were from recreational anglers, and 5 letters were of other origin. Many of the letters from commercial fishermen did not explicitly indicate disapproval of the NMFS action. These letters indicated that charter fishery harvest should be limited to the GHL instead of a level comparable to the IPHC-recommended action and requested that NMFS promulgate a rule to maintain charter harvest of halibut within the GHL.

Several letters from the commercial industry indicated that the proposed rule did not provide a long-term solution to manage the charter fishery to the GHL. Several letters indicated that a one-fish bag limit should have been included in the EA/RIR/IRFA because the amount of harvest reduction and assumptions associated with bycatch mortality are easier to predict with a bag limit than with any size limit. Two letters indicated that NMFS should support continued efforts by the Council to develop market-based allocation solutions for the charter fishery. Two letters indicated the Council should identify and NMFS should implement management measures that can be annually adjusted to control charter harvest. Several letters from the commercial and charter sectors indicated support for the moratorium adopted by the Council. One letter from a commercial fisherman indicated he would not be satisfied until an IFQ program is implemented for the charter fishery.

The majority of letters from the commercial sector noted the substantial investment made by the commercial industry to obtain halibut quota shares and how the lack of controls on the charter vessel fishery will compromise their investment, negatively impact coastal communities, crew, and the processing sector, and reduce the surplus for seafood consumers. Other letters noted that localized depletion of halibut and other species caused by the guided recreational vessels and commercial vessels is a concern that must be controlled. Several letters suggested that NMFS needs to manage the fishery to the GHL to prevent over harvesting the halibut resource. Two letters indicated that NMFS should enhance current data collection methods to include an electronic monitoring program. Three letters recommended that NMFS increase enforcement effort in the charter fishery. Several commercial operators expressed that NMFS should have taken action in Area 3A to reduce charter halibut harvest because of confusion associated with the accounting of skipper and crew fish in the ADF&G postal survey and whether skipper and crew fish were included in the calculation of the original GHL. These letters also indicated that NMFS' decision to take no action in Area 3A will lead to a GHL overage in 2007; especially if anglers substitute Area 2C halibut trips with those in Area 3A. Several letters indicated that halibut harvest above the GHL has a negative impact on subsistence users, non-guided anglers, and other resource users that rely on a healthy halibut stock, and indicated that the problem statement should have included these groups. Three letters also expressed concerns about increased mortality of demersal shelf rockfish (DSR), lingcod, and halibut. These letters indicated that the regulation would likely increase discards of these species, which would create more allocative concerns, result in local depletion, and increase conservation concerns.

Several letters from the commercial industry supported the preferred alternative over Alternative 2 because of concerns associated with harvesting and handling large halibut, which may lead to increased mortality rates. These letters also supported the requirement to retain carcasses because it would improve data quality and enforcement efforts.

Many of the letters from charter operators indicated the proposed rule would harm their business because charter trips in Area 2C will be less desirable to anglers. The majority of letters indicated that charter clients would be disappointed and confused when they learned that the daily bag limit for halibut had changed. Several letters indicated general support for the Council process and believed NMFS should not implement the final action because the Council is currently developing long-term management measures for the charter fishery. Three letters were received from travel agents that sell charter vessel trips in Alaska. These letters all indicated that the proposed rule would reduce tourism and disappoint charter clients. One letter indicated that they were obligated under Arizona State law to refund trips if clients were not satisfied because of the harvest regulation. Twelve letters from charter vessel operators indicated that a fishery management plan for the halibut fishery should be developed by the Council and approved by the Secretary to comply with the Magnuson Stevens Fishery Conservation and Management Act.

Most letters from the charter industry indicated support for the NMFS decision to disapprove the IPHC-recommended bag limit. Several letters suggested NMFS create slot limits to allow anglers to harvest two fish, but maintain the opportunity to harvest two large halibut. Eight letters from charter vessel operators and several letters from the commercial industry expressed concerns for increased catch-and-release mortality of halibut and other species. Authors of thirteen letters believed the rule would increase the number of halibut caught and released, and four letters believed the rule would increase the mortality of species other than halibut.

Most of the letters from recreational anglers were form letters. The majority of these letters indicated that the current GHL was not a fair allocation for the sport fishing sector for the following reasons:

(1) The GHL fails to account for recent growth in the charter industry and is set too low;

(2) The sport fishery harvests much less of the exploitable biomass than the commercial fishery (including bycatch and wastage) and should thus be allowed to increase its allocation;

(3) The GHL discriminates between guided and non-guided anglers and

should be the same for both angling groups; and

(4) The GHL should increase stepwise if the abundance of halibut also increases.

Letters from recreational anglers generally indicated their disappointment in a reduction in the amount of halibut they may harvest. These anglers provided a description of their angling experience and indicated they may not return to Area 2C for halibut fishing if the harvest regulation is approved. The majority of letters indicated that the halibut harvest by charter anglers should not be restricted because the commercial fishery accounts for a large portion of the halibut removals, including bycatch and wastage. The letters also indicated that the proposed rule should reduce commercial harvest and bycatch, that the sport fishery should not be restricted because the data used to determine sport harvest for 2006 is preliminary, the rule discriminates based on the state of residency, and that the proposed rule will limit growth in the charter sector. Twenty-one letters indicated that the Council should develop a fishery management plan for halibut to protect the halibut resource and fairly allocate between the commercial and sport sectors. Many letters indicated that NMFS should not reallocate halibut from the sport sector to the commercial sector with this action.

NMFS received 10 comments that could not be categorized as having a commercial, charter, or recreational angler perspective. Three of these comments were from government agencies. Of the non-government comments, two supported the NMFS action, but believed harvest should be reduced to the GHL, and five did not support the action because it did not reduce harvest to the GHL.

A detailed response to the comments is provided in the following section entitled ''Comments and Responses.''

Comments and Responses

Of the 477 comments NMFS received on the proposed rule and EA/RIR/IRFA, 60 were considered unique and are summarized and responded to as follows:

Comment 1: The EA/RIR/IRFA underestimates the expected landed catch (and therefore overestimates the reduction in catch) by the sport charter sector by using an inappropriate average weight for the retained halibut less than 32 inches (81.3 cm). The analysis uses an average weight of 9.0 lbs (4.05 kg, net weight) to estimate the landed catch under the preferred alternative. The average weight of the smaller halibut will be closer to the weight of 32–inch (81.3 cm) halibut because anglers will highgrade to keep the largest fish possible.

Response: A considerable amount of highgrading occurred in the 2006 charter halibut fishery under a two-fish bag limit with no size limits. The Area 2C length distribution of halibut 32 inches or under that were harvested in the 2006 charter vessel fishery is strongly skewed, presumably as a result of highgrading. Although additional highgrading would increase the skewness towards the 32–inch (81.3 cm) size limit, no information exists to indicate whether or to what degree highgrading would increase beyond the level observed in 2006. A substantial portion of the 2006 charter halibut harvest consisted of halibut under 29 inches (73.4 cm) even without size limits imposed on the charter fishery. The size distribution of halibut also varies by port, with halibut smaller than 32 inches (81.3 cm) halibut composing a large portion of the total harvest in some ports. Hence, the analysis assumes that anglers highgrade smaller halibut to the greatest extent possible. This assumption is believed to be reasonable because very small halibut generally are less desirable than larger halibut, and the abundance of halibut and amount of time available for fishing is often limited (especially for charter vessel anglers who are cruise ship passengers). This action also may change fishing behavior such that anglers increase their ability or desire to highgrade halibut. However, the harvest selection process for anglers in the Area 2C halibut fishery is poorly understood and NMFS believes the 9 lb (4.1 kg) average used reflects the best available data.

Comment 2: The proposed rule is a violation of the Halibut Act, Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the Convention because it changes allocation between the commercial and sport sectors without a re-allocation recommendation from the Council.

Response: This rule does not violate the Halibut Act, MSA, or Convention. As discussed in the preamble to this action, the Secretary has the general authority and responsibility to carry out the Convention and Halibut Act. This includes the authority to promulgate regulations without Council consultation. This final rule is necessary to address management concerns expressed by the IPHC and NMFS about the magnitude of the charter halibut harvest and its impact on the IPHC's ability to set the appropriate commercial catch limits that are necessary to maintain the sustainability of the halibut stock.

Comment 3: The EA/RIR/IRFA fails to consider local depletion of demersal shelf rockfish assemblage (DSR) and lingcod stocks, which results in an incorrect conclusion that the proposed rule will not have a significant impact on these species.

Response: The EA/RIR/IRFA references current management practices by ADF&G and NMFS that establish harvest limits for DSR and lingcod. In establishing these harvest limits, both agencies rely on scientific information and solicit public comment through their respective processes, including the Gulf of Alaska Plan Team, State of Alaska Board of Fish, Council, and the Federal regulatory process. The analysis indicates that an increase in sport harvest of these species may lead to increased allocation problems between the sport and commercial sectors. However, these allocation problems occur within the confines of the management measures established by each government to maintain sustainable stocks.

Comment 4: The sport charter fleet should be required to contribute money to the research of the halibut biomass.

Response: The purpose of this final rule is not to collect fees from the charter vessel fishery. However, the State of Alaska (State) currently collects fees from charter businesses and recreational anglers to support management and research of the halibut biomass. Charter businesses and charter vessel operators are required to pay business and guide license fees, which are used in part to fund the State's charter logbook program. Businesses and guides paid over a quarter-million dollars in license fees in 2006. Charter vessel operators and clients, as well as unguided anglers, also are required to purchase State fishing licenses. The sport fishing license money is used by the State to match Federal Aid in Sport Fish Restoration funds to pay for creel surveys that estimate fishery statistics for halibut and other species such as rockfish and salmon. The State's survey information is used by the Council and NMFS to develop management policy for the charter halibut fishery.

Comment 5: The preamble to the proposed rule incorrectly uses ten and three year averages to estimate halibut harvest in the charter and commercial sectors. The proposed rule should have compared harvest that occurred two years prior to the GHL implementation (2003 and 2002), with two years under the GHL (2004 and 2005). This would have shown the magnitude of the commercial harvest increase when

compared with the increase of harvest in the charter vessel sector and would not have included a partial year under the GHL.

Response: The years selected in the preamble were used to provide a general example of the difference in the proportion of the total amount of halibut removals in the commercial and charter sectors, and the difference in harvests between the charter and non-charter sport fisheries. The preamble to the proposed rule is not an analytical document. However, the numbers used in the preamble accurately illustrate recent removals in the charter sector, and recent quota levels for the commercial IFQ fishery. Using the three most recent years provides a more robust average. Moreover, the GHL does not impose a harvest restriction on the charter fishery and thus would not likely be directly responsible for changes in charter harvest during pre-GHL and post-GHL periods. The 10-year average was used to illustrate the general long-term ratio of harvest between the non-guided and guided fishing sectors; not the commercial fishing sector in comparison with the sport fishing sector.

Comment 6: This action will interfere with the progress of the Council's Charter Halibut Stakeholders Committee.

Response: This action does not change charter management measures currently being developed by the Charter Halibut Stakeholder Committee (CHSC), nor does it prevent the Council from adopting management measures currently being considered by the CHSC. The intent of this action is to implement a harvest reduction for the 2007 Area 2C charter fishing season. Management options developed by the Council and CHSC to reduce halibut harvested in Area 2C could not be implemented in time for the 2007 fishing season. However, the Council is considering management measures for the Area 2C charter sector that would reduce charter vessel harvest of halibut to the Area 2C GHL. If adopted, the Council's Area 2C management measures would likely replace this action. In addition, the Council and CHSC are developing measures for the long-term management of the charter and commercial halibut sectors.

Comment 7: The proposed rule will increase the number of halibut harvested that are under 32 inches (81.3 cm) which will reduce the number of larger halibut available for the recreational and commercial fisheries, and potentially endanger recruitment.

Response: The final rule is expected to increase the harvest of halibut that are 32 inches (81.3 cm) and smaller. Under the previous two-fish bag limit, some charter vessel anglers likely would have released more halibut that are 32 inches (81.3 cm) or under in favor of a larger halibut. However, the number of these halibut that would have been released, survived to a large size, and would have been available for the commercial and sport fisheries in Area 2C is unknown. To grow beyond 32 inches (81.3 cm) in length and be available for the Area 2C sport and commercial fisheries, a halibut must survive to an older age and reside in Area 2C. Natural mortality, fishing mortality (including catch-and- release mortality in the sport and commercial fisheries), migration rates, and immigration rates complicate any attempt to estimate the probability of a halibut under 32 inches (81.3 cm) being caught in Area 2C several years later. Further, the management methods used by the IPHC carefully consider age structure in the halibut stock to ensure the long-term sustainability of the halibut stock. Hence, the EA/RIR/FRFA concludes that this action will not have a significant impact on the halibut stock.

Comment 8: The proposed rule violates Executive Order (E.O.) 12962 because it reduces the amount of halibut recreational anglers may harvest, resulting in a loss of angling opportunity.

Response: This final rule does not violate E.O. 12962. To the extent permitted by law, E.O. 12962 directs Federal agencies to improve the quality, function, sustainability, productivity, and distribution of aquatic resources for increased recreational fishing opportunities. Although this rule is designed to reduce the poundage of halibut harvested in Area 2C by the charter vessel fishery, it maintains the opportunity of charter vessel anglers to harvest two halibut per day, and has no effect on recreational anglers not fishing from a charter vessel.

In addition, this final rule is promulgated to meet the management goals set forth in the Halibut Act and Convention and implemented by the Secretary. These management goals include setting annual limits on the amount of halibut that may be removed without endangering the long-term sustainability of the halibut stock, including the achievement of maximum sustainable yield for halibut fisheries including commercial and subsistence, as well as recreational. This final rule does not diminish that productivity or violate E.O. 12962.

Comment 9: A two-fish bag limit with no size limit should be maintained because the 2006 ADF&G mail survey estimates are preliminary and thus not likely to be accurate.

Response: This action is designed to achieve a harvest reduction that is comparable to the IPHC-recommended one-fish bag limit. In making its recommendation, the IPHC used a preliminary estimate from the ADF&G mail survey in conjunction with ADF&G weight data collected from the creel survey to predict the amount of halibut harvested in 2006. The IPHC relies on preliminary estimates from the ADF&G mail survey because final mail survey results for the year immediately prior to the IPHC's annual meeting in January are typically not available. During its January meeting, the IPHC must determine the commercial catch limit using the best available information that includes the preliminary ADF&G mail survey estimate. Hence, the 2006 mail survey numbers were used by the IPHC to set the commercial halibut catch limit in 2007. The analysis also uses the mail survey data, as well as logbook and creel data to estimate potential impacts from this action. These data sources represent the best available scientific information. The use of the projected mail survey estimate is consistent with the goal of this action, which is to achieve a comparable reduction to the IPHC-recommended action.

Comment 10: The proposed rule should not be adopted because the current composition of the Council does not represent recreational fishing interests.

Response: This final rule was not developed by the Council nor does it affect membership of the Council or that of its Scientific and Statistical Science Committee and Advisory Panel. The final rule was initiated in response to a recommendation by the IPHC to reduce the harvest of halibut in Area 2C by the charter vessel fishery. In making its recommendation, the IPHC Commissioners highlighted their preference for the Council to resolve allocation issues between the commercial and sport fishing sectors. However, an action could not be approved by the Council and promulgated by the Secretary in time for the 2007 fishing season. Therefore, consistent with his responsibility under the Convention and Halibut Act, the Secretary is taking action to manage the halibut resource for 2007. This final rule may be replaced by regulations developed by the Council and approved by the Secretary.

Comment 11: It is unlikely that charter vessel logbook records will accurately reflect catch and discards. Reported discards are likely to be less

than those reported under the current two-fish bag limit, because charter skippers and anglers will know that discard mortality will decrease the amount of catch available to them in the future. An alternate method of estimating discards, instead of self-reporting in logbooks, will be required. That method could be based on IPHC survey of length frequencies, since those data would likely be a minimum estimate of the size frequency encountered by anglers.

Response: The ADF&G resumed mandatory collection of halibut harvest data in its charter logbooks in 2006 to gather data on harvest that is specific to individual businesses and vessels. Data required to be reported in ADF&G charter vessel logbooks include the number of halibut retained and released by individual anglers. Additional data collection measures implemented by ADF&G include (1) validation of the numbers of halibut offloaded by creel survey technicians whenever possible, (2) increased logbook inspections by deputized ADF&G staff, (3) increased review of submitted logbooks and follow-up calls to charter operators to resolve missing or misreported information, and (4) a mail survey of a random sample of clients to compare their reported harvest to logbook data recorded by operators. The evaluation of logbook data quality is ongoing. The ADF&G can also directly or indirectly estimate the numbers of released halibut through logbooks, the statewide sport fish mail survey, and creel survey interviews. Therefore, alternate methods of estimating discards exist; however, uncertainties exist in estimating discards by any method, including the use of the IPHC length frequency data.

Comment 12: The proposed rule will confuse anglers that booked charter trips that thought the daily bag limit is two-halibut of any size.

Response: Disapproval of the IPHC one-fish bag limit was described in the annual management measures for the Pacific halibut fishery, which published on March 14, 2007 (72 FR 11792). NMFS indicated in the annual management measures that the IPHC-recommended reduced bag limits for the charter vessel halibut fishery in Area 2C were rejected in favor of alternative restrictions that would be implemented through a separate domestic action. The proposed rule for this final action published in the **Federal Register** on April 6, 2007, with a public comment period that closed on April 23, 2007 (72 FR 17071). Thus, the public was notified about this action as required by law. In addition, NMFS published an information bulletin on its website and press release notifying the charter industry about the proposed regulation changes. Further public outreach will be conducted by NMFS and ADF&G when this final rule is published.

Comment 13: The proposed rule fails to consider the need for increased halibut harvest in the charter fishery to accommodate growth.

Response: Growth in the charter vessel fishery for halibut would be at the expense of other resource users, principally the commercial fishery. The question of what is the right proportion of the allowable halibut harvest to allocate between the commercial and sport fishing sectors is a fundamental question that will be answered later with Council involvement. The purpose of this action is to prevent further *defacto* reallocation to the charter vessel sector to allow the Council time to develop the fundamental resource allocation policies. The Council process is appropriate to determine whether and how much growth in the charter vessel fishery should be accommodated.

Comment 14: The proposed rule should discriminate between non-Alaska residents and Alaska residents by requiring that the harvest limit only be applied to non-Alaska residents.

Response: Federal law prohibits discrimination based on state residency. This rule applies to all anglers who harvest halibut on charter vessels regardless of their state of residency.

Comment 15: The language in the proposed rule fails to acknowledge that the total Constant Exploitation Yield (CEY) is threatened because of the overharvest of halibut by the sport fishery.

Response: The proposed rule describes the IPHC process in determining the total CEY, including a discussion about how it may be exceeded. In summary, the IPHC considers removals from all directed fisheries, including the sport and subsistence fisheries and removals resulting from bycatch and wastage, when setting the commercial harvest limit. This process allows an increase of harvest from one removal source to be balanced against other sources of removals. For example, an increase of halibut harvest in the charter fishery may result in a decline in the commercial catch limit. With this method, the IPHC attempts to maintain fishery removals within biological conservation limits.

Only halibut bycatch in directed commercial fisheries for other species (prohibited species catch limits, (PSC)) and the directed commercial fishery for halibut have an allocation that requires the fishery to be closed, or IFQ holders to stop fishing, when PSC or IFQ limits are reached. The charter halibut fishery is not restricted to an annual amount of halibut that when reached closes the fishery. Thus, the amount of halibut harvested in the charter fishery increases with increases in angling effort on charter vessels. As discussed in the preamble to the proposed rule, the IPHC must predict the annual growth of charter harvest, bycatch, subsistence, and wastage based on the previous year's level. The proposed rule states that ''this method has worked well for many years to conserve the halibut-resource, provided that the other non-commercial uses of the resource have been relatively stable.'' If any of the removal categories grow beyond the IPHC's annual prediction, the total CEY may be exceeded, which occurred in 2006 and may occur again in 2007. Generally, bycatch, wastage, and subsistence harvests of halibut have been relatively stable, while charter halibut harvest has increased in recent years. To compensate for the increase in charter harvest, the IPHC has reduced the commercial set line catch limit and recommended a catch reduction in the charter sport fishery.

Comment 16: The problem statement was not properly defined because it did not include a statement about protecting resource health by managing to the CEY and preventing disruptive impacts to all sectors by reducing halibut harvest in the charter sector to the GHL.

Response: This rule is not designed to manage the halibut fishery to either the CEY or GHL. The CEY is a biological conservation objective of the IPHC and the GHL is an allocation objective of the Council. Those resource management institutions make regulatory recommendations as needed to achieve their respective objectives. This action is not intended to usurp these functions, and consequently, the problem statement did not include the goals of achieving the CEY or GHL.

The problem statement in the preamble to the proposed rule for this final action indicates the alternatives in the EA/RIR/IRFA were developed to reduce the amount of halibut harvested in the Area 2C charter halibut fishery to a comparable level that would have been achieved by the IPHC-recommended one-fish bag limit. The problem statement also requires that the harvest reduction occur in a manner that, when compared to the one-fish bag limit, reduces negative impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and fisheries for other species. Of the alternatives considered, this action met the goals

described in the problem statement, including protecting resource health by meeting the harvest reduction the IPHC indicated was necessary for its management and limiting the negative economic impacts associated with the IPHC-recommended level of harvest reduction.

Comment 17: The proposed action should not be implemented until NMFS and the Council implement a fishery management plan for Pacific halibut.

Response: A fishery management plan for halibut developed under the Magnuson-Stevens Fishery Conservation and Management Act is not necessary because the Halibut Act provides sufficient authority to the Secretary to implement regulations for the conservation and management of the halibut resource.

Comment 18: NOAA Fisheries should implement regulations in Area 3A because the data are not certain as to the actual harvest level and the GHL is likely to be exceeded in future years.

Response: The preamble of the proposed rule for this final action provides a detailed discussion about why NMFS decided not to impose additional harvest restrictions in Area 3A. In summary, on January 26, 2007, ADF&G issued an Emergency Order (2–R–3–02–07) for the 2007 charter halibut season that prohibited the retention of halibut by skipper and crew and limited the number of lines that could be fished on a charter vessel. The State estimates its action will reduce charter harvest by 7.7 to 10.6 percent of the 2006 harvest or 306,000 lb (138.8 mt) to 421,000 lb (191.0 mt). Assuming the 2007 charter halibut fishery is similar to the 2006 fishery, this reduction in charter harvest is expected to be at or near the Area 3A GHL. In 2006, the GHL was predicted to be exceeded by nine percent, or 297,000 lb (134.7 mt).

The amount of harvest in the 2006 charter fishery is based on preliminary estimates of charter fishery halibut harvests from the State. These preliminary estimates have been used historically by the IPHC in determining the most recent year's sport harvest and represent the best information available. The Council recognizes the potential for growth in the charter fishery in Area 3A and currently is developing alternatives to allocate halibut between the commercial and the charter vessel sport fishery. NMFS supports the Council's continued progress in developing long-term management policies for the halibut fisheries.

Comment 19: The proposed rule will reduce the number of charter anglers in Area 2C and encourage them to fish in Canada or Area 3A. An increase of halibut anglers in Area 3A would exacerbate that area's GHL overage.

Response: Data are not available to predict the number of clients that will choose to not take a charter vessel trip in Area 2C as a direct result of this rule. Likewise, no data exist on the portion of clients that would choose to maximize their experience with some other type of fishing experience. For example, some anglers may value the opportunity to catch a large halibut more than the need to harvest a large amount of halibut, or a segment of anglers may value harvesting halibut more than the experience of catching and releasing halibut. Other than acknowledging these possibilities, as was done in the EA/RIR/IRFA, NMFS cannot forecast their probability.

Comment 20: Because halibut that are 32 inches (81.3 cm) or under are not included as part of the set-line commercial quota limit, they should not be included in the charter vessel sport harvest estimate.

Response: The annual management measures (72 FR 11792, March 14, 2007) prohibit the harvest of halibut less than 32 inches (81.3) in the commercial set line fishery. These halibut are not counted towards a person's IFQ because they are not landed and do not enter commerce. The sport fishery does not have a minimum size limit. Thus, halibut that are 32 inches (81.3 cm) or under in total length are targeted and retained by sport anglers and are not required to be discarded as they would be in the commercial fishery. Therefore, it is reasonable to include halibut 32 inches (81.3 cm) and under in the charter vessel harvest estimate.

Comment 21: The proposed rule should not be adopted by NMFS until the Council develops and approves an allocation solution to the commercial and charter vessel halibut fisheries.

Response: As explained in the preamble to this final action, NMFS is taking this action because of concerns by the IPHC that its management goals were in danger by the unpredictable growth of halibut harvest in the charter fishery. In making its recommendation, the IPHC expressed its desire for the Council to manage the harvest of halibut in the charter fishery, but believed a harvest reduction was needed for the 2007 charter fishing season. A Council action to reduce charter halibut harvest could not be implemented for the 2007 fishing season. Hence, NMFS is promulgating this regulation in response to the recommendation by the IPHC that its management goals were thwarted by the magnitude of charter halibut harvest in excess of the GHL. The Council is considering harvest reduction measure for Area 2C and management measures that would resolve the allocation issues between the commercial and charter vessel sectors. Future Council actions to manage the charter fishery may replace the regulations in this final rule.

Comment 22: The EA/RIR/IRFA incorrectly states that the preferred alternative will have a similar level of discard (catch and release) mortality as the current (two fish of any size) regulation. The release mortality associated with the proposed rule will be higher than the status quo, if for no other reason than the preferred alternative requires discard of fish above the 32–inch (81.3 cm) maximum size limit. In addition, it is reasonable to expect that anglers will catch and release a number of small fish in order to take home the largest fish possible under the 32–inch (81.3 cm) size limit.

Response: The EA/RIR/IRFA discusses the potential impacts of this rule on the number of halibut that may die soon after release. Only a qualitative discussion was provided in the analysis, however, because of limited information about how anglers may respond to changes in the traditional two-fish bag limit. All available data were collected under the traditional two fish bag limit, and information about size distribution of halibut released in the sport fishery was not available. The analysis provided a qualitative discussion about the relative impact the final rule may have on the number of halibut released, including the impact local catch rates may have on the number of fish released, the type of charter trip taken (half-day or full-day), and the amount of catch and release and high grading of fish that currently occurs in the fishery.

Based on differences in the length composition of the charter halibut harvest among Area 2C ports, it is reasonable to assume that the size composition of discarded fish also varies among ports. For Area 2C overall, however, halibut under 32 inches comprised nearly half of the charter harvest in 2006. Therefore the analysis assumed that the majority of discarded fish were under 32 inches in length because, under the traditional two-fish bag limit, anglers were highgrading to the maximum extent possible or optimizing the size of harvested halibut based on individual preferences. While some larger halibut may be released in pursuit of a fish under 32 inches (81.3 cm) (''lowgrading'') in areas where halibut under 32 inches (81.3 cm) are less common, size data from the 2006 charter fishery indicated that in most areas halibut that are 32 inches or under in length would be more readily available than larger halibut. Under the

preferred alternative, many of the smaller fish that would have been released in pursuit of larger halibut would be retained, reducing some highgrading that occurred under the traditional two-fish bag limit. Anglers could continue to highgrade. Therefore, it was assumed that on balance, reductions in discard mortality from highgrading would offset discard mortality from lowgrading, although NMFS has no data to test this assumption.

In addition, the selection process used by anglers under the each of the options is poorly understood. The analysis relies on gross assumptions regarding highgrading and angler responses to management. Some anglers likely prefer to harvest large fish, while others select a halibut based on other attributes such as perceived differences in the taste of the fish, the amount of halibut they may transport home, the amount of fishing time is limited, the local catch rates, discards, and other factors. Thus, a high degree of uncertainty exists on the amount of discard that occurred in the fishery in the past and the amount of discard that may occur under this rule. The conclusions reached in the analysis represent the best qualitative estimate based on assumptions regarding highgrading and angler behavior.

Comment 23: There was no discussion or analysis in the EA/RIR/IRFA of the amount of halibut discards. While size composition data on discards have not been collected, an analysis using the size composition of the landed catch or from IPHC survey data could have been used for illustrative purposes to describe the relative differences between the alternatives.

Response: The EA/RIR/IRFA discussed problems associated with estimating the amount of discards, including the lack of information about the size composition of halibut released in the sport fishery and a lack of information about angler preferences concerning the size of fish caught. The analysis also provided a qualitative discussion about whether discards from this action were likely to increase or decrease in comparison to the traditional two-fish bag limit. Data were not available for the EA/RIR/IRFA to quantitatively evaluate the magnitude of changes in the size composition of halibut released in the sport fishery under the final rule. Length data collected in the IPHC survey and ADF&G creel survey represent halibut harvested in the charter fishery under the traditional two-fish bag limit. Given that anglers highgrade the size of halibut harvested under the traditional two-fish bag limit, the size composition of released fish is likely smaller than harvested halibut. Hence, the IPHC length frequency data may not provide a baseline representation of fish released under the traditional two fish bag limit. The lack of an accurate baseline from which to compare the size frequency is further compounded by unknown behavioral responses to the rule. For these reasons, the EA/RIR/IRFA did not provide a point estimate for the number of halibut discarded in the charter fishery.

Comment 24: The EA/RIR/IRFA is not adequate because it does not contain an analysis for a one-fish bag limit.

Response: In formulating alternatives for the EA/RIR/IRFA, NMFS considered and rejected options that reduced the daily bag limit for anglers fishing from a charter vessel. The preamble to the proposed rule provides a detailed explanation about why the one-fish bag limit was rejected as an alternative for analysis. In summary, a reduced bag limit would impose a considerable economic burden on the charter sector that could be mitigated by maintaining the traditional two-fish bag limit. Charter operators commenting on the IPHC recommended action indicated that it was important for their business to maintain a two-fish bag limit. NMFS rejected an alternative for one-fish bag limit because: (1) it likely would not reduce the economic burden on the charter industry; and (2) a comparable harvest reduction could be achieved with alternatives that maintained a two-fish bag limit in the charter fishery.

Comment 25: Failure to reduce halibut harvest to the GHL will result in overfishing of the halibut resource and is thus in violation of the Convention and Halibut Act.

Response: This rule is designed to reduce the charter vessel harvest of halibut in Area 2C to a level comparable to the IPHC-recommended one-fish bag limit. The IPHC recommended a reduction in the harvest of halibut by the charter vessel sector to achieve its conservation and management goals pursuant to the Halibut Act and Convention. The EA/RIR/FRFA concludes that the expected level of halibut removals from the charter vessel fishery after this rule is implemented will not significantly impact the sustainability of the halibut stock. Therefore, a reduction of the Area 2C charter vessel halibut harvest to a level comparable to the IPHC-recommended action is not likely to result in overfishing of the halibut resource, regardless of whether the GHL is achieved or exceeded.

Comment 26: The final rule introduces management complexity to the charter fishery without a reliable catch accounting program.

Response: The final rule does not require additional data collection. ADF&G currently has an extensive data collection program for Alaska recreational fisheries including halibut. Because sport fishery landings happen over long periods, throughout most hours of the day, and at hundreds of access points including private lodges, ADF&G uses a variety of assessment methods including on-site creel surveys, and offsite methods including logbooks and postal surveys. In 2006, the ADF&G resumed collection of halibut harvest data in charter logbooks to gather data on halibut harvest specific to individual businesses and vessels. In addition, several measures were implemented to ensure accurate reporting of halibut harvest. These measures included (1) requiring reporting of fishing license numbers and numbers of halibut kept and released by individual anglers, (2) validation of the numbers of halibut offloaded by creel survey technicians whenever possible, (3) increased logbook inspections by deputized ADF&G staff, (4) increased review of submitted logbooks and follow-up calls to charter operators to resolve missing or misreported information, and (5) a mail survey of a random sample of clients to compare their reported harvest to logbook data recorded by operators. The evaluation of logbook data quality is ongoing.

Comment 27: The EA/RIR/IRFA does not analyze the impact the final rule will have on crews, processors, and coastal communities.

Response: The EA/RIR/IRFA provides an analysis of the potential socioeconomic impacts on commercial fishermen, charter guides, their customers, and other parties. This information is summarized in table 22 of the analysis.

Comment 28: The problem statement fails to identify impacts on commercial fishermen, subsistence users, non-guided sport anglers, the non-angler public, and coastal communities that result from the charter sector's harvest of halibut in excess of the GHL.

Response: The goal of this action is reduce halibut harvest in the Area 2C charter fishery to a level that is comparable to the IPHC-recommended action while lessening the negative impacts of that action on the charter industry, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. This goal does not include lessening the impact on subsistence users, non-guided sport anglers, or commercial fishermen,

although that may be an indirect effect. This rule is not designed to change current regulations that govern the subsistence fishery or non-guided sport fishery, including personal bag and harvest limits. Commercial fishermen were not included in the problem statement because this action does not change the regulations associated with the commercial fishery nor does it establish an annual allocation of halibut for the commercial and sport fisheries. While a harvest reduction in the charter sport fishery may benefit the commercial fishery in the future, this rule is intended to meet the management goals of the IPHC, and in doing so, the charter sport fishery is the entity directly regulated by this final rule.

Comment 29: The creel survey, postal survey, and logbook data collected by ADF&G and used in the EA/RIR/IRFA do not accurately estimate halibut removals or the average weight of halibut harvested in the charter fishery.

Response: The EA/RIR/IRFA for this final action uses sport fishing data collected by ADF&G through its postal survey, logbook program, and creel survey program. These data comprise the best scientific information available for the EA/RIR/IRFA and are appropriate for use in estimating the impact of the final rule on the charter halibut and commercial sectors. These data collection programs all use statistical methods accepted by the scientific community to collect and extrapolate sport fishing information, including the disclosure of known statistical biases and verification of data collection methodology.

Comment 30: The preferred alternative will not result in a level of savings that is comparable to the IPHC-recommended action because the second fish harvested by most anglers is not 32 inches (81.3 cm).

Response: The 32–inch (81.3 cm) maximum size limit proposed in the final action applies to persons who harvest two halibut regardless of the order in which those fish are caught. If a person harvests only one halibut, it may be of any size. Thus, a person may choose whether the first or second halibut harvested is 32 inches (81.3 cm) or less.

The reduction in guided sport harvests described in the EA/RIR/IRFA was determined by multiplying the proportion of halibut taken as a second fish by the proportion of harvest weight associated with halibut that would have been under the 32–inch (81.3 cm) size restriction in this final rule. The analysis did not predict the probability of harvesting one or two fish and instead assumed persons would maximize the size of their first halibut and harvest the smaller 32–inch (81.3 cm) halibut as their second fish. Using this assumption, the analysis shows that approximately 518,000 lb (233,100 kg) of halibut would not be harvested in the Area 2C charter vessel fishery under this rule.

Comment 31: The weight estimates for the Area 2C charter fishery are not accurate and should not be used in the EA/RIR/IRFA because they do not represent a random sample of harvested halibut.

Response: See response to comment 29.

Comment 32: The proposed rule is misleading because it insinuates growth in the charter vessel sector without providing supporting information.

Response: The preamble of the proposed rule on page 1073 under the heading ''Recent Harvests of Halibut in Areas 3A and 2C'' states: '' In Area 2C, based on ADF&G sport fishing survey data, the charter vessel harvest in 2003 was one percent under the GHL, but in 2004 and 2005, it was 22 percent and 36 percent over the GHL, respectively. In 2006, based on sport fishing survey data [,] the GHL for Area 2C was projected to be exceeded by 42 percent, or 596,000 lb (270.3 mt).'' The preamble does not discuss the average annual increase of charter harvest since 1995. However, information that is provided in the background section of the EA/RIR/IRFA shows that the guided sport harvest of halibut in Area 2C has increased from approximately 0.986 million lb (443,700 kg) in 1995 to 2.028 million lbs (912,600 kg) in 2007. In addition to increased harvests in the charter fishery for halibut, the number of trips, businesses, vessels, and the number of second trips per day has increased since 2004.

Comment 33: The description of the fishery CEY in the preamble to the proposed rule as it relates to the commercial catch limit is incorrect because the commercial catch limit is not equal to the fishery CEY and bycatch and wastage are commercial removals.

Response: The preamble to the proposed rule states that the IPHC subtracts estimates of all non-commercial removals (sport, subsistence, bycatch, and wastage) from the total CEY. The remaining CEY, after removals are subtracted, is the maximum catch or ''fishery CEY'' for an area's directed commercial fixed gear fishery. The description in the preamble is not accurate because while the commercial catch limit for the fixed gear fishery may be set below the fishery CEY, it may exceed the fishery CEY. IPHC staff recommendations are based on estimates for the fishery CEY, but may be higher or lower depending on a number of biological, statistical, and policy considerations. Similarly, the IPHC commissioners final quota decisions for the commercial fishery may be higher or lower than the fishery CEY.

In addition, the description in the preamble of the proposed rule does not accurately indicate that bycatch and wastage are non-commercial removals. These removal categories are a result of commercial fisheries operating in Convention waters.

Comment 34: The description of the relationship between the total CEY and halibut removals in the preamble to the proposed rule is not correct. The preamble incorrectly states that: ''As conservation of the halibut resource is the overarching goal of the IPHC, it attempts to include all sources of fishing mortality of halibut within the total CEY.'' The preamble is not correct because the IPHC accounts for commercial wastage and bycatch of halibut 32 inches (81.3 cm) or smaller in the exploitation rate, which is applied before the total CEY is calculated.

Response: NMFS agrees that halibut under 32 inches (81.3 cm) caught as bycatch and wastage are accounted for in the exploitation rate that is used to determine the total CEY. On an annual basis, the IPHC deducts projected halibut removals resulting from bycatch, wastage, sport fishing, and subsistence from the total CEY. The total CEY is the product of an area-specific harvest rate and the exploitable (recruited) biomass. Only the bycatch and wastage of halibut 32 inches (81.3 cm) or greater are deducted from the total CEY.

Comment 35: The proposed rule should not be adopted because it will not achieve the GHL or result in a long-term solution to the allocation issues between the commercial sector and charter halibut sector.

Response: The purpose and need for this final rule is to reduce halibut harvest in the charter vessel sector in Area 2C to levels that are comparable to the IPHC-recommended one-fish bag limit. Based on the 2006 harvest level for the charter vessel sector in Area 2C, the IPHC-recommended action was determined to result in a reduction between 397,000 lb (180.1 mt) and 432,000 lb (195.9 mt). This level of reduction would not reduce harvest to the GHL, which was exceeded by approximately 596,000 lb (270.3 mt) in 2006. Management measures designed to achieve the GHL and resolve long-term allocation issues are being

developed currently by the Council. NMFS supports the Council's continued efforts to develop a long-term solution to the allocation issues between the commercial and charter vessel sectors.

Comment 36: The proposed rule is a misuse of the GHL because downward adjustments to the GHLs are only to be taken when there is a decline in Pacific halibut abundance. The GHL should stair-step with increases in halibut abundance.

Response: This rule was not designed to change either the 2007 GHL published in the **Federal Register** (72 FR 12771, March 19, 2007) or the GHL regulations at 50 CFR 300.65. The GHL ''stair steps'' down only during periods when the CEY established by the IPHC falls below benchmark levels in the GHL regulation. To change the GHL regulations would require separate rulemaking.

Comment 37: The proposed rule discriminates between Alaska resident and non-Alaska resident anglers because a large portion of anglers fishing from a charter vessel in Area 2C are not Alaska residents. Discriminating between residents of different states violates the Halibut Act Section 773c and the Magnuson-Stevens Act National Standard 4.

Response: This final rule does not discriminate between U.S. citizens based on their state of residence because the regulations apply equally to Alaska residents and non-Alaska residents who harvest halibut from a charter vessel in Area 2C. This action is consistent with the Halibut Act, based upon rights and obligations in existing Federal law, and reasonably calculated to promote conservation.

Comment 38: The proposed regulation is in violation of the Halibut Act and Convention because it treats recreational halibut anglers fishing from a charter vessel differently than halibut anglers not fishing from a charter vessel.

Response: The Halibut Act and Convention does not prevent the Secretary from tailoring a management action so that it addresses the concern that prompted action in a reasonable manner. This management action was designed to address the current allocation problem between the halibut charter fishery and the commercial fishery and does not directly address other user groups, i.e., non-guided anglers and subsistence users. The reason for this action is clearly indicated in the preamble to the proposed and final rules. Therefore, this rule is consistent with the Halibut Act and Convention.

Comment 39: The EA/RIR/IRFA incorrectly concludes that impacts from the final action on groundfish stocks, notably the Demersal Shelf Rockfish Assemblage (DSR) and lingcod, will not be significant. The proposed action will increase the mortality on species other than halibut because anglers will catch these species while targeting halibut.

Response: The EA/RIR/IRFA indicated that this action is not expected to significantly increase the mortality of DSR and lingcod over that which would have been experienced under the traditional two-fish bag limit for halibut. Moreover, the EA/RIR/IRFA indicates that these groundfish stocks are managed by the State of Alaska and Federal governments using biological benchmarks that prompt agency response to constrain harvest to maintain sustainable stocks.

Comment 40: The EA/RIR/IRFA fails to note that the preliminary catch estimate for DSR harvested in the charter fishery that is provided in the analysis has been updated by ADF&G.

Response: The EA/RIR/IRFA used a preliminary estimate in the December 2006 Stock Assessment and Fishery Evaluation Report of 64 mt of directed harvest and 7 mt of discard mortality in the Area 2C sport fishery. In January 2007 ADF&G updated its discard estimate for the sport fishery from about 7 mt to 9 mt. The EA/RIR/IRFA has been corrected to reflect the ADF&G correction for DSR harvest in the sport fishery.

Comment 41: The EA/RIR/IRFA incorrectly states that overall lingcod harvest has been stable for the sport fishery in Area 2C.

Response: The EA/RIR/IRFA states that lingcod harvests in recent years have remained stable under strict regulations on the sport fishery imposed by the State. Table 4 in the draft EA/RIR/IRFA did not include harvest estimates for 2005. Table 4 has been updated in the EA/RIR/FRFA to show that 16,281 lingcod were harvested in 2005. Inclusion of the 2005 lingcod harvest data show that lingcod harvest in the sport fishery has increased since 2002.

Comment 42: The EA/RIR/IRFA did not analyze a sufficient range of alternatives, including length limits, slot limits, or boat limit on the number of halibut harvested.

Response: The EA/RIR/IRFA analyzed a range of reasonable alternatives that would achieve the purpose and need of the action in this final rule. As stated in the preamble to the proposed rule, the purpose and need for this action is to reduce harvest in the charter vessel halibut fishery in Area 2C to level that is comparable to the IPHC-recommended one-fish bag limit, but in a manner that produces smaller adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. The alternatives considered provide a range tailored to the purpose and need for this final action, which focused on maintaining the opportunity for a sport angler to harvest two halibut per day. The alternatives also provide a wide range of limits on the size of halibut harvested, including length limits that span the distribution of halibut currently caught in the sport fishery.

Comment 43: The retention requirement associated with the proposed rule will create pollution problems at the dock where charter operators offload fish and clients. It will also increase the burden on charter operators because of an increase in the amount of time to properly dispose of carcasses.

Response: This rule would require charter operators to retain halibut carcasses intact onboard the charter vessel until fillets are offloaded. This regulation will likely increase the number of carcasses brought back to the dock in some ports and may thus increase the burden on ports and charter operations to dispose of carcasses. The current carcass disposal practices by charter operators is largely unknown. Anecdotal information suggests that some ports require charter operators to properly dispose of carcasses on land or at sea. In addition, it may be common practice for charter operators to bring whole halibut back to ports that do not have a port offal policy. The EA/RIR/IRFA concludes that the costs associated with carcass disposal may be placed on charter operators if discard is prohibited by the port authority or such casts may be spread more widely if the port authority provides discard services.

Comment 44: The proposed action will increase the harvest of large female halibut because anglers will attempt to maximize the size of one of their two halibut. An increase in the harvest of halibut that have a higher fecundity will endanger the halibut stock.

Response: The EA/RIR/IRFA considers the IPHC catch accounting and stock assessment process and concludes, based on the IPHC management measures, that the final action would not have a significant impact on the halibut stock.

The comment presumes that harvesting large female halibut will substantially decrease egg production and the resultant abundance of juvenile halibut. In 1999, the IPHC reviewed options for a maximum size limit of 60 inches (150 cm) in the commercial

fishery and concluded that, based on the research at the time, it did not add substantial production to the stock. Applying the limit to the sport fishery would show even smaller production benefits given the harvest attained by the sport fishery is substantially smaller than the level of commercial harvest and this action only applies to Area 2C. The halibut stock is managed as a single population throughout its entire range.

Comment 45: The proposed action does not address the potential for the near-shore depletion of halibut.

Response: The best scientific information available is not clear whether nearshore depletions exists and, if so, about the causes, magnitude, and geographical distribution of nearshore depletion of halibut. This final rule is not expected to significantly impact the sustainability of the halibut stock. As discussed in the EA/RIR/IRFA, the IPHC sets catch limits for the commercial fishery in proportion to the amount of halibut that may be sustainably removed. This harvest philosophy protects against overharvest and spreads fishing effort over the entire range for halibut to prevent regional depletion. Small scale local depletion is not expected to have a significant biological effect on the resource as a whole. Egg and larval drift and subsequent migration by young halibut cause significant mixing within the population. Ultimately, counter migration and local movement tend to fill in areas with low halibut density, although continued high exploitation may maintain or cause small, but temporary, localized depletions. However, information about local biomass, immigration and emigration rates, seasonal changes, and the relationship of these factors with environmental characteristics are not available on a geographical resolution that would provide information about small areas that may experience local depletion in Area 2C.

Comment 46: The EA/RIR/IRFA did not discuss enforcement and data collection issues associated with this final action.

Response: The RIR analysis provides a detailed discussion about enforcement issues associated with this final action. The analysis indicates that enforcement of this action would require on-the-water or dockside counting and measurement of harvested halibut by enforcement officers. For these reasons, enforcement of the bag and size limit would require regular visits by enforcement officers to areas where halibut harvested on charter vessels are landed. These include remote areas such as lodges as well as urbanized areas such as Sitka, Ketchikan, and Juneau. No reporting requirements are associated with this action.

Comment 47: The final regulation will be difficult to enforce in situations with multiple anglers because enforcement cannot attribute individual halibut harvested on a charter vessel to a specific person.

Response: Determining the number of halibut harvested by a person fishing from a charter vessel is difficult because halibut may be distributed among anglers, resulting in more successful anglers harvesting more than two halibut to maximize the collective daily bag limit for licensed anglers onboard the charter vessel. This practice is often referred to as a ''boat limit'' and is not legal because anglers are harvesting more halibut than their bag limit. The RIR analysis discusses this issue and indicates that these situations require NOAA Office of Law Enforcement (OLE) or the U.S. Coast Guard to investigate allegations of bag limit violations through interviews, direct observation of fishing or other techniques. Enforcing the two-fish bag limit in this rule will be no more difficult than enforcing the previous two-fish bag limit.

Comment 48: The proposed rule should not be adopted because the minimum size limit and associated harvest reduction in this final action will negatively impact the charter industry, including non-charter businesses that rely on revenue generated from the charter industry.

Response: An important objective of this action is to reduce the Area 2C guided sport halibut harvest to a level comparable to the IPHC-recommended action in a manner that has less adverse impact than the IPHC-recommended one-fish bag limit would have had on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for the charter fishery, and on fisheries for other species. The RIR/IRFA provides a detailed discussion on the potential economic impacts of this action. In summary, this rule is expected to reduce the charter vessel harvest of halibut, but may also reduce short run profit levels or create short run losses for operators when compared with the previous two-fish bag limit. The charter industry may lose revenue if the number of clients declines as a result of the regulation. Charter operators also may incur increased costs associated with disposing of halibut carcasses, due to the requirement of retaining carcasses until fillets are offloaded from the charter vessel. Guides may pass carcass disposal costs to their clients, depending on market conditions.

In selecting a preferred alternative, NMFS considered the economic impacts of all alternatives in the RIR/IRFA. Three alternatives resulted in harvest reduction that was comparable to the IPHC-recommended action: (1) a minimum size limit of 45 inches (114.3 cm) on one of two harvested halibut; (2) the action in this final rule; and (3) a maximum size limit of 35 inches (88.9 cm) on one of two harvested halibut. The economic impacts from alternative (1) were expected to be greater than the action in alternative (2) because halibut greater than 45 inches (114.3 cm) are not abundant in some geographical areas. A maximum size limit of 35 inch (88.9 cm) on one of two harvested halibut also resulted in the appropriate level of harvest reduction. However, the difference between the 32 inch and 35 inch (88.9 cm) maximum size limit is relatively small and subject to statistical confidence ranges of unknown size and therefore did not justify changing the preferred alternative. Thus, this final rule achieves the stated objectives for the action, while simultaneously recognizing potential adverse economic impacts that may accrue to directly affected small entities and taking all practicable steps to reduce impacts.

Comment 49: The proposed rule should impose restrictions on the commercial fishing sector, including reducing commercial bycatch levels and the commercial set-line quota.

Response: This rule is not designed to impose further restrictions on commercial fisheries that take halibut. The commercial fishery for halibut and the commercial fishery for groundfish that take halibut as bycatch to the harvest of other species are strictly limited to a specified amount of halibut mortality. Unlike the charter vessel fishery for halibut, these commercial fisheries are closed when their limits are reached.

Comment 50: The IPHC-recommended action for the Area 2C and Area 3A charter fishery should have been approved by the Secretary of State in concurrence with the Secretary.

Response: A detailed explanation of the reasons for disapproval of the IPHC-recommended one-fish bag limit in the preamble to the proposed rule (72 FR 17071, April 6, 2007) and the annual management measures for the halibut fishery (72 FR 11792, March 14, 2007). In brief, the IPHC-recommended action was disapproved because control of the charter vessel harvests of halibut is more appropriately done by domestic agencies and could be achieved by a combination of ADF&G and NMFS regulatory actions.

Comment 51: This final action will not address harvest by ''self-guided'' anglers that are provided a vessel and fishing knowledge by a fishing operation, but do not have a hired operator.

Response: This final rule will apply only to anglers fishing from a charter vessel. A charter vessel is defined at 50 CFR 300.61 as a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator. Self-guided trips do not have a hired operator and are thus not subject this final rule. The harvest of halibut by independent anglers has been relatively stable in recent years. It has not demonstrated the growth rates of the charter vessel sector. Therefore, self-guided anglers were not considered part of the problem addressed by this rule.

Comment 52: The EA/RIR/IRFA indicates that DSR harvest could be managed under the overfishing level (OFL) even if harvest exceeded the allowable biological catch (ABC).

Response: The EA/RIR/IRFA does not imply that the DSR stocks should be managed to OFL, in fact, it states that removals of DSR because of this rule would likely not exceed the ABC or OFL. The purpose of an EA is to determine the potential impacts the alternatives may have on the human environment and if those impact are significant. The EA/RIR/IRFA indicates that in 2006, DSR stocks were well under their harvest and biological benchmarks for the sport and commercial fisheries. The biological benchmarks are the ABC and the OFL. The ABC is an annual sustainable target harvest (or range of harvests) for a stock complex, determined by the Council's Plan Team and the Scientific and Statistical Committee during the assessment process. It is derived from the status and dynamics of the stock, environmental conditions, and other ecological factors, given the prevailing technological characteristics of the fishery. The target reference point is set below the limit reference point for overfishing and is precautionary. The OFL is a limit reference point set annually for a stock or stock complex during the assessment process. Overfishing occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce maximum sustained yield (MSY) on a continuing basis. Operationally, overfishing occurs when the harvest exceeds the OFL. Thus, the OFL is a valid biological reference point indicating that the stock cannot maintain long-term sustainability without a reduction in harvest.

Comment 53: The five-percent discard mortality estimate in the EA/RIR/IRFA does not account for halibut that were caught and released multiple times.

Response: The discard estimate in Appendix A of the EA/RIR/FRFA is based on a survey of the scientific literature about discard mortality rates in the charter fishery, harvest data from the Area 2C, and anecdotal information about the prevalence of circle hooks in the charter fishery. This information in the EA/RIR/IRFA is based on the best available scientific information. Data is not available that would provide a reliable estimate about the number of times a halibut is caught in the halibut fishery and the amount of time between capture. .

Comment 54: In calculating the estimated harvest reduction, the EA/RIR/IRFA inappropriately uses the average weight of halibut harvested in the recreational fishery in 2006 rather than an average weight calculated using multiple years.

Response: The principle goal of this rule is to achieve a harvest reduction that is comparable to the IPHC-recommended action. In making its recommendation, the IPHC used the average weight of halibut harvested in the charter fishery in 2006 to predict the level of harvest that may occur in 2007. Thus, the EA/RIR/IRFA used the same weight measurement as used by the IPHC to predict removals in the sport fishery. Use of the 2006 average weight is consistent with the goal of the analysis.

Comment 55: The final rule should require the use of circle hooks on halibut charter vessels because this hook type has been shown in the scientific literature to reduce the mortality of discarded fish.

Response: NMFS considered requiring the use of circle hooks in the halibut charter vessel fishery for halibut. A circle hook requirement was considered not practical for several reasons: (1) NMFS has the authority to regulate the methods used to harvest halibut but not other species commonly caught on a charter vessel; (2) the requirement would apply only to halibut because it would be impossible to determine whether a person was targeting halibut or a different species (e.g., lingcod, shark, or rockfish); and (3) halibut that would ordinarily be harvested using non-circle hook gear while targeting other species would need to be released. Hence, this may increase the discard mortality of halibut. In addition, anecdotal evidence described in the EA/RIR/IRFA suggests that the use of circle hooks is already prevalent in the charter fishery. In an effort to improve its discard morality estimate, ADF&G will be collecting information about the prevalence of circle hook use in the 2007 charter fishery.

Comment 56: The proposed rule should provide notice to the public that NMFS may annually adjust harvest control measures to prevent charter harvest from exceeding the GHL.

Response: This rule is not designed to manage the charter vessel fishery halibut in Area 2C to its GHL on an annual basis. NMFS believes it is important that management measures for the charter halibut fishery be developed by the Council. This final rule was developed by NMFS independent of the Council because management measures developed by the Council to reduce harvest in the charter vessel halibut fishery could not be implemented in time for the 2007 fishing season. NMFS does not anticipate that this final rule would be adjusted on an annual basis.

Comment 57: The proposed rule should not be implemented because ADF&G regulations prohibiting skipper and crew fish in Area 2C have not had time to reduce harvest.

Response: The prohibition on skipper and crew fishing in Area 2C was first implemented in 2006. This measure resulted in a harvest reduction estimated to be approximately 84,000 lb (381 mt), which reduced the amount that the GHL was exceeded from 47 percent to 42 percent. The same level of reduction is expected for the 2007 charter fishery. Thus, the prohibition in Area 2C of skipper and crew fishing on charter vessels was not considered sufficient to control charter vessel harvest of halibut in 2007 to the level recommended by the IPHC.

Comment 58: The proposed rule is arbitrary and capricious because the Secretary must have a recommendation from the Council to promulgate a rule that determines an allocation for a sector. The Council's policy is that harvest of halibut by the charter vessel sector may not exceed the GHL. The proposed rule selected a new allocation for the charter vessel fishery for halibut without Council input or technical and public review and is thus in violation of Federal law.

Response: See response to comment 2.

Comment 59: The EA/RIR/IRFA does not discuss the management history of the GHL, including the Council intent to trigger management measures when exceeded.

Response: The EA/RIR/IRFA does provide a detailed discussion about the

management history of the GHL on page 3.

Comment 60: The proposed rule fails to mention the economic effect on the commercial industry when halibut in excess of the GHL is harvested by the charter vessel sector.

Response: This action is not designed to reduce halibut harvest in the charter sector to the GHL. The purpose of this action is to reduce the harvest of halibut in the charter vessel sector to a level that is comparable to the IPHC-recommended action. The impacts of that action was analyzed and the economic impacts of exceeding the GHL was not because it was not relevant to this rulemaking.

Changes From the Proposed Rule

No changes are made in this final rule from the proposed rule.

Classification

This final rule does not require recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules. This final rule has been determined to be not significant for the purposes of Executive Order 12866. This final rule complies with the Halibut Act and the Secretary's authority to implement allocation measures for the management of the halibut fishery.

Included in this final rule is a Final Regulatory Flexibility Analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analysis completed in support of this action. A copy of the FRFA is available from the NMFS Alaska Region Office (see **ADDRESSES**). The preamble of the proposed rule for this action includes a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

Statement of Objective and Need

A description of the reasons why this action is being considered as well as the objectives and legal basis for the action are contained in the preamble to this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Comments received prior to the close of the comment period for the proposed rule focused on a range of issues. Specifically, the majority of comments from the charter industry that did not support the action indicated that the action would cause economic hardship on the charter vessel industry. These comments indicated that the action would result in a reduction of revenue (reduced clients) for Area 2C charter operators and businesses that rely on the charter industry. Comments received from the commercial sector generally indicated that halibut harvest above the GHL would reduce the amount of halibut available to the commercial industry and this reduction would cause economic hardship for IFQ quota holders, their crew, seafood consumers, processors, and the communities that rely on the commercial fishing industry. For detailed summary of the comments received, refer to the section of this final rule titled ''Comments and Responses.''

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

A description and estimate of the number of small entities to which the final rule will apply is provided in the FRFA (SEE **ADDRESSES**) and the IRFA summary contained in the Classification section of the proposed rule for this action (72 FR 17071, April 6, 2007) and is not repeated here.

Steps Taken to Minimize Economic Impacts on Small Entities

This final rule limits the harvest of halibut by sport anglers fishing from a charter vessel in Area 2C to a daily limit of two halibut, except one halibut shall not be larger than 32 inches (81 cm) as measured from the head to the middle of the caudal fin. This final rule is expected to achieve the level of harvest reduction needed by the IPHC to meet its management goals while reducing potential adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. This final rule is expected to reduce the halibut harvest in the Area 2C charter fishery by approximately 518,000 lb (235.0 mt), which is comparable to a harvest reduction of between 397,000 lb (180.1 mt) and 432,000 lb (195.9 mt) that is associated with the IPHC-recommended action. This final rule also requires charter vessel operators to retain intact carcasses of halibut until all fillets are offloaded from the charter vessel. The potential economic impacts of these measures are described in detail in the IRFA and the IRFA summary contained in the Classification section of the proposed rule.

In summary, this final rule will have different effects on the charter and commercial sectors, and persons relying on those industries. This regulation is expected to reduce the overall harvests in the charter fishery, and may reduce growth of the charter sector. In the short run, the charter industry may experience a reduction in revenues and profit levels due to a reduction in the demand for charter services, although the extent of this outcome is unknown. In the medium to long term, charter businesses are likely to exit the industry, so the prices and profits of the remaining operations may tend to recover towards previous levels, although the equilibrium level cannot be estimated at present. Charter operations may incur costs if they are required by port authorities to change current disposal methods for halibut offal. The extent of these costs are unknown. In some situations, the costs may be borne by the charter operator and in others the cost may be distributed by the port authority. This regulation will also impose a burden on charter vessel operators to measure some halibut before landing.

While not directly regulated by this action, the commercial industry may realize positive economic benefit from this action. For the commercial industry, this action is expected to reduce the amount of halibut harvested by the charter sector, which may increase future commercial quota levels and associated revenues generated from the quota. An increase in revenue in the commercial fishery also may increase consumer surplus for seafood consumers, and have a positive economic impact on persons and communities that are relatively more involved with the commercial sector than charter sector.

This action incorporates several provisions specifically intended to reduce the potential economic and operational burden on small entities, relative to the other alternatives considered. Other alternatives considered for this action that would have resulted in a comparable reduction to the IPHC-recommended action include a regulation that would allow anglers to harvest two halibut if one halibut was greater than 45 inches (114.3 cm) in head-on length. This provision was rejected for two primary reasons: (1) operators may be required to incur physical risk associated with measuring a large halibut; (2) some locations in Southeast Alaska may have a small abundance of larger fish that would result in the regulation effectively being a one-fish bag limit. Another alternative that would have met the harvest reduction goal is a regulation that would have allowed anglers to harvest two halibut, except one must be smaller than 35 inches (88.9 cm), in head-on length. This alternative was rejected for the reasons

explained in the preamble to this final rule. NMFS also considered and rejected a one-fish bag limit for inclusion in the EA/RIR/IRFA. However, for the reasons explained in the preamble to the proposed rule, this option was not considered reasonable because it would defeat part of the purpose of this action to reduce economic impacts on the charter vessel and related businesses.

The no action alternative would have no direct impact on small entities. Under this alternative, current regulations for the charter sport fishery would not be changed. This would not meet the objectives of this action which were to achieve a harvest reduction that is comparable to the one-fish bag limit recommended for Area 2C.

For the previous described reasons, this final rule meets the objectives of this action while recognizing the potential adverse economic impacts that may accrue to directly regulated small entities, and taking all practical means to limit these impacts. NMFS is not aware of any alternatives in addition to those considered for this action that would practicably achieve a harvest reduction comparable to the IPHC-recommended action while limiting the potential negative economic impacts on the charter industry, its sport fishing clients, and coastal communities that serve as home ports for this fishery, and on fisheries for other species.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 state 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 will explain the actions a small entity is required to take to comply with the rule or group of rules.

NMFS will post a small entity compliance guide on the Internet at *https://www.fakr.noaa.gov* and provide the compliance guide to sport anglers through ADF&G. The guide and this final rule will be available upon request (see **ADDRESSES**).

This final rule is effective on filing with the Office of the **Federal Register**. The 30-day delayed effectiveness period required by the Administrative Procedure Act, if applied to this final rule, would substantially reduce it ability to fulfill its conservation and management objectives. These objectives are NOAA Fisheries' attempt to fulfill its international treaty obligations regarding the management of Pacific halibut. This action is intended to achieve a reduction in Area 2C charter halibut harvest that is comparable to the reduction that would have resulted from the bag limit reduction recommended by the IPHC, the international body authorized to make recommendations to the domestic parties (United States and Canada) of the Convention. Estimates of halibut poundage reduction in the Area 2C charter vessel fishery were based on an assumption that this final rule would be effective for the full charter fishing season of June, July, and August.

Furthermore, the determination by the Secretaries of State and Commerce to implement these management measures by domestic regulations did not occur until March 1, 2007. NOAA Fisheries published a proposed rule on April 6, 2007, with a public comment period that closed on April 23, 2007. NOAA Fisheries received a large number of detailed comments from the public representing divergent points of view. The need to provide meaningful analysis and responses to these comments prevented NOAA Fisheries from publishing the final rule with enough time to allow for a 30-day delayed effectiveness period and a June 1 effective date.

As stated above, if this final rule is not effective by June 1, 2007, the conservation and management objectives of this action will be jeopardized. The analysis indicates that approximately 25 percent of the halibut harvested by the charter sector occurs in June. Therefore, if this rule is not effective during the month of June, approximately 25 percent of the reduction that this rule was designed to achieve will not occur, frustrating the IPHC and NOAA Fisheries' conservation and management objectives in Area 2C and resulting in potential economic harm to the commercial halibut sector. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3).

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: May 30, 2007.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 300 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61, definitions for ''Area 2C'' and ''Head-on length'' are added, in alphabetical order, to read as follows:

§ 300.61 Definitions.

* * * * *

Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58° 11′ 54″ N. lat., 136° 38′ 24″ W. long.) and south and east of a line running 205° true from said light.

* * * * *

Head-on length means a straight line measurement passing over the pectoral fin from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

* * * * *

■ 3. In § 300.65, paragraphs (d) through (k) are redesignated as paragraphs (e) through (l), respectively, and new paragraph (d) is added to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(d) In Commission Regulatory Area 2C, halibut harvest on a charter vessel is limited to no more than two halibut per person per calendar day provided that at least one of the harvested halibut has a head-on length of no more than 32 inches (81.3 cm). If a person sport fishing on a charter vessel in Area 2C retains only one halibut in a calendar day, that halibut may be of any length.

* * * * *

■ 4. In § 300.66, paragraph (m) is added to read as follows:

§ 300.66 Prohibitions.

* * * * *

(m) Possess halibut onboard a charter vessel in Area 2C that has been mutilated or otherwise disfigured in a manner that prevents the determination of size or number of fish, notwithstanding the requirements of the Annual Management Measure 25(2) and (7) (as promulgated in accordance with § 300.62 and relating to Sport Fishing for Halibut). Filleted halibut may be possessed onboard the charter vessel provided that the entire carcass, with the head and tail connected as single piece, is retained onboard until all fillets are offloaded.

[FR Doc. E7–10736 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 106
Monday, June 4, 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 LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0003]

RIN 1218–AC22

Power Presses

AGENCY: Occupational Safety and Health Administration (OSHA), DOL.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Mechanical power press safety is regulated under OSHA's mechanical power presses standard. OSHA adopted the standard in 1971, basing it upon the 1971 edition of American National Standards Institute (ANSI) B11.1, the industry consensus standard for mechanical power presses. This ANSI standard has been updated a number of times since OSHA adopted the 1971 version. The most recent edition was issued in 2001. Hydraulic and pneumatic power presses are not covered by OSHA's current standard. The original standard also did not address the use of presence-sensing-device initiation (PSDI) systems. When a press is equipped with PSDI, the press cycle will not initiate until the PSDI system senses that the danger zone is clear. OSHA updated the mechanical power presses standard on March 14, 1988, (53 FR 8353), to permit the use of PSDI systems. However, it requires an OSHA-approved third party to validate the PSDI system at installation and annually thereafter. Since the adoption of this provision, no third party has sought OSHA's approval. Consequently, PSDI systems are not being used with mechanical power presses. OSHA is seeking comments on whether and how the mechanical power presses standard should be amended, including whether the requirements pertaining to the use of PSDI systems should be revised and whether the scope of the standard should be expanded to cover other types of presses.

DATES: Comments must be submitted by the following dates:

- Hard copy: Submit (postmark or send) comments by regular mail, express delivery, hand delivery, and courier service by August 3, 2007.
- Electronic transmission and facsimile: Submit comments by August 3, 2007.

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

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions on-line for submitting comments.

Fax: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0003, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for this rulemaking (OSHA Docket No. OSHA–2007–0003). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov*. For further information on submitting comments, plus additional information on the rulemaking process, see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT:

Press Inquiries: Kevin Ropp, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.

General and Technical Information: David M. Wallis, OSHA Directorate of Standards and Guidance, Office of Engineering Safety, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2277.

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I. Background

A. OSHA's Existing Mechanical Power Presses Standard

OSHA promulgated § 1910.217, the standard for mechanical power presses, in 1971. The standard was based on the 1971 edition of American National Standards Institute (ANSI) B11.1, the industry consensus standard on mechanical power presses. See 39 FR 23732 (June 27, 1974). Hydraulic and pneumatic power presses are not covered by the standard. See § 1910.217(a)(5).

A mechanical power press is a two-part system, with a stationary bed or anvil and a movable upper part, the ram. A die or punch is placed on the ram and the ram descends into a die block, which is attached to the anvil. The punch and die block are known as the die set. A mechanical power press can be either full revolution or part revolution. A full-revolution press cannot be stopped once the cycle begins. A part-revolution press has a brake that can stop the press in mid

cycle. Mechanical power presses are used in a number of industries, including fabricated metal, industrial machinery, and transportation vehicle parts. These industries all require metal parts, which are formed in presses, to create finished products.

If employees are not clear of power presses when their cycles are initiated, serious injuries can occur. The mechanical power presses standard contains numerous provisions for protecting employees who work with and around the presses. In particular, the standard contains requirements for safeguarding the ''point of operation'' of the press, the area of the press between the punches and the die block. These requirements help ensure that employees are clear of this ''danger zone'' when the press is in operation. The standard requires employers to ensure ''the usage of 'point of operation guards' or properly applied and adjusted point of operation devices on every operation performed on a mechanical power press.'' See § 1910.217(c)(1)(i).

Point of operation guards on mechanical power presses prevent entry of hands or fingers into the point of operation. Under the standard, employers can utilize a number of different types of guard systems: die enclosure guards, fixed barrier guards, interlock press barrier guards, and adjustable barrier guards. See § 1910.217(c)(2). Point of operation devices, on the other hand, are systems that protect employees by preventing or stopping the press cycle when hands or other objects are inadvertently placed in the point of operation. Examples of point of operation devices are Type A gates [1] or movable barrier devices, or Type B gates [2] or movable barrier devices, and presence-sensing devices. See § 1910.217(c)(3). A presence-sensing device is basically a light curtain or other sensing device that prevents or stops the slide motion of the press if the operator's hand or other part of the body is within the sensing field of the device during the downstroke of the press slide.

Point of operation devices also include certain systems that limit how a press cycle may be initiated. For example, the standard allows for two-hand initiation devices. See § 1910.217(c)(3)(e). The two-hand devices require the operator to press two buttons simultaneously in order to initiate the press cycle; the buttons must be far enough apart that they cannot be pressed with one hand. In addition, the controls must be a certain distance from the point of operation so that the controller cannot enter the danger zone after activating the press. While the two-hand controls help protect the employees operating the presses, they can be uncomfortable, may increase worker fatigue, and can increase the time between press cycles.

The existing standard also includes requirements for inspecting, maintaining, and modifying mechanical power presses to ensure that they are operating safely. See § 1910.217(e). It requires operators and maintenance personnel to be trained in how to use or inspect power presses safely. See § 1910.217(e)(3) and (f)(2). And, it includes provisions for power press operation to ensure that there is sufficient clearance around the machines for them to operate safely, among other things. See § 1910.217(f)(4). These provisions, along with the point of operation protections above, work to protect employees working with and around mechanical power presses.

In 1988, OSHA added paragraph (h) to § 1910.217 to allow the use of presence-sensing-device initiation on part-revolution mechanical power presses. PSDI systems initiate press cycles when the systems indicate that no objects are within the danger zone. These systems differ from presence sensing point of operation devices in that these systems initiate the press cycles; presence sensing point of operation devices, as stated above, stop or prevent the cycles from occurring if an operator's hand or other body parts are in the danger zone. PSDI systems had been used on mechanical power presses in Europe for decades and on an experimental basis for a 1-year period beginning on August 31, 1976, at one United States facility under a temporary variance (Interlake Stamping Corporation (41 FR 36702)). PSDI systems were also used on non-mechanical power presses and other types of equipment.

When paragraph (h) was added in 1988, OSHA imposed a number of requirements for the use of PSDI systems based upon its analysis of the rulemaking record, which included comments from industry, union, and academic experts. See 53 FR 8322 (March 14, 1988). OSHA required that every PSDI system be initially validated by an OSHA-certified third party and re-validated by a certified third party annually. See § 1910.217(h)(11). The third-party validation was based on existing systems in Sweden and Germany, where the government certified this type of equipment. OSHA believed that national testing laboratories and industry organizations would conduct the third-party validation.

In its 1988 rulemaking, OSHA analyzed the impact of paragraph (h) on employers as part of its economic impact analysis. At that time, OSHA estimated that approximately 73,000 employees would be affected by the requirements. These employees are primarily punch and stamping press operators and job and die setters. OSHA estimated that 40 percent of the former group and 20 percent of the latter were operating mechanical power presses. OSHA estimated that PSDI would increase productivity an average of 24.3 percent per press, resulting in industry savings of about $162 million a year. See 53 FR 8351 (March 14, 1988). OSHA also believed, and continues to believe, that mechanical power presses equipped with PSDI, if properly designed, installed, and used, could reduce the likelihood of accidents.

B. OSHA's Section 610 Review of the PSDI Requirements

OSHA is required by Section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) and Executive Order 12866 to conduct periodic reviews of rules (''Section 610 Reviews''). The purpose of these reviews is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of small entities. In doing so, the agency takes into consideration the continued need for the rule, comments and complaints received regarding the rule, the complexity of the rule, whether the rule is duplicative, and changes in technology and economic conditions since the issuance of the rule. The reviews also examine whether the rules are compatible with other regulations, duplicative or inappropriately burdensome in the aggregate, and whether and how they could be made more effective.

OSHA conducted a Section 610 review to determine why PSDI has not been implemented, and to identify how the standard could be changed to facilitate PSDI use in a manner that protects worker safety. In its August 28, 2002, **Federal Register** notice (67 FR 55181) informing the public about the

[1] A Type A gate is a movable barrier device designed to be held in position during the entire press cycle (stroke) so that the operator cannot easily open the movable barrier during the cycle. It is designed to prevent reentry into the point of operation in the event of a failure of the press or its related control equipment when there may be a repeat cycle of the press.

[2] A Type B gate is a movable barrier device designed for use on part-revolution presses so that it is held closed during the closing portion of the cycle (stroke).

review and soliciting comments, OSHA presented four options for revising the standard:

Option 1—Update all of § 1910.217 to be consistent with ANSI B11.1–2001 or something similar.

Option 2—Revise the third-party validation requirements.

Option 3—Eliminate all requirements for third-party validation and possibly replace them with a self-certification requirement; leave the other PSDI requirements intact.

Option 4—Replace OSHA's current PSDI requirements with the PSDI requirements in the new ANSI B11.1.

The Agency published its final report on the review in May 2004 and notified the public of its availability on June 8, 2004 (69 FR 31927). The review includes information on the main industry categories using mechanical power presses and estimates of injury trends. The review states that there were 194,891 presses of all types in use in 1996. Mechanical power presses are used mainly in the following manufacturing industry categories: fabricated metal, industrial machinery, electrical machinery, transportation vehicle parts, and precision instruments. The review also included information about injuries caused by mechanical power presses. It found that there were 774 mechanical power press accidents reported to OSHA from 1995–2000 under 29 CFR 1910.217(g), which requires employers to report to OSHA all point of operation injuries. It also cited BLS data that approximately 6,000 injuries per year occurred on nonprinting presses (including mechanical power presses and other types of presses) from 1992 to 1999.

Based on analyses and information obtained during the Section 610 review, OSHA committed to pursuing Option 1, to update all of § 1910.217 to be consistent with ANSI B11.1–2001 or something similar [Ex. OSHA–2007–0003–0002]. Option 1 addressed concerns that the mechanical power presses standard as a whole is out-of-date and could be made safer. While PSDI system technology has not changed since paragraph (h) was adopted in 1988, the technology used to control and guard mechanical power presses has changed considerably since § 1910.217 was adopted. For instance, some mechanical power presses now use operational modes not addressed in § 1910.217 (such as computer controls), which introduce hazards also not addressed by the standard. Five of the nine commenters who responded to OSHA's August 28, 2002, **Federal Register** notice recommended that OSHA replace the entire mechanical power press standard with ANSI B11.1–2001. They argued that PSDI is an integral part of that ANSI standard, which has no validation requirement. Furthermore, they argued that an update is overdue, would create a range of benefits, and would lead to implementation of PSDI [Ex. OSHA–2007–0003–0002]. OSHA agrees with these commenters and believes that such an update would result in improved safety and health protections for operators of mechanical power presses as well as for other employees in the machine area.

II. Request for Data, Information, and Comments

The Agency is considering a broad range of issues in its development of a proposed update to the mechanical power presses standard. The issues to be considered go beyond those of the current mechanical power presses standard and include broadening the scope of the standard to include other types of presses, equipment, and processes not previously addressed.

OSHA invites comments on the questions below. The questions are grouped into six broad categories: The scope of the standard; industry consensus standards related to mechanical power presses; technical issues; training requirements; reporting requirements; and employer responsibilities. However, commenters are encouraged to address any aspect of power presses, including pneumatic, hydraulic, and other presses, which would assist the Agency in its consideration of what action is appropriate. The Agency is particularly interested in ways to incorporate flexibility into its standard to make it more protective as well as easier to comply with. Please provide a detailed response to the questions, as well as any supporting information or data, to better assist the Agency in its consideration of these matters.

A. The Scope of the Power Press Standard

1. As stated above, the current OSHA standard covers only mechanical power presses. OSHA is considering changing the scope of the standard to include other types of power presses, such as hydraulic presses and pneumatic presses. Do the existing general machine guarding requirements in § 1910.212 adequately protect employees operating non-mechanical power presses, and do they provide adequate flexibility to employers who use such presses? Should OSHA regulate all power presses under one standard or under multiple standards? Should OSHA address non-mechanical power presses in this rulemaking action to update § 1910.217? Are there general requirements that should apply broadly to all types of power presses?

2. If OSHA does broaden the scope of the standard to include other types of presses, what other types of power presses should OSHA specifically include? Why?

3. The current OSHA standard specifically excludes press brakes, hydraulic and pneumatic power presses, bulldozers, hot bending and hot metal presses, forging presses and hammers, riveting machines, and similar types of fastener applicators. The ANSI B11.1–2001 standard excludes these as well; however, it also excludes cold headers and formers, eyelet machines, high-energy-rate presses, iron workers and detail punches, metal shears, powdered metal presses, press welders, turret and plate-punching machines, wire termination machines, and welding machines. If OSHA updates the standard to be consistent with the provisions of ANSI B11.1–2001 or its equivalent, should OSHA exclude all of the machines that are excluded in ANSI B11.1–2001? Why? Should OSHA exclude any other machines that are not specifically excluded in ANSI B11.1–2001? Why?

4. Since it has been more than 30 years since OSHA's adoption of its mechanical power press standard, OSHA realizes that changes in technology may have affected the way industry sectors operate. Are there mechanical power presses in use today that—due to their unique characteristics—are not covered by OSHA's current standard? Please supply OSHA with information about these presses. Does the current standard cover any equipment that is no longer in use? Would adoption of ANSI B11.1–2001 or something similar render equipment currently in use obsolete? Is there equipment that is currently in use that should be grandfathered into a revised OSHA standard that would otherwise restrict the use of such equipment? Why?

B. Consensus Standards Related to Mechanical Power Presses

5. As stated above, OSHA intends to update the mechanical power press standard to be consistent with ANSI B11.1–2001 or something similar. Are there any obstacles to complying with a new standard that is based on ANSI B11.1–2001 or its equivalent?

6. Are there provisions in the current ANSI standard that should not be the basis for provisions in the revised OSHA standard? Should OSHA include

any provisions that are not covered by the ANSI standard? If so, what are the provisions?

7. Should the Agency include information from the appendices or the explanatory information columns contained in the ANSI B11.1 standard in the revised OSHA standard? If so, what information in particular should OSHA consider?

8. Are there other consensus standards, international standards, or other references OSHA should consider in updating its mechanical power presses standard? If so, which ones should OSHA consider in drafting a proposed rule?

9. Some of the technical definitions and requirements in the ANSI standard, including those for the reliability and classes of control systems, are not contained within the standard itself but are instead found in technical reports to the ANSI B11.1 committee. Should these reports serve as one of the bases for a revised OSHA standard? If so, what specific information from these reports should OSHA consider?

C. Technical Issues

10. During the Section 610 review, OSHA found that there has been some decline in mechanical power press use in the United States in the last 20 years. Please provide any information you have on current mechanical power press use.

11. Are there other developments in the use of mechanical power presses that are relevant for OSHA's development of a proposal? For example, the Section 610 review indicated that computer-controlled presses are increasingly common. How has the increased use of computer-controlled presses—as well as other technological developments—affected safety and productivity in the workplace?

12. The current OSHA standard permits any person to reconstruct or modify a mechanical power press as long as the reconstruction or modification is performed in accordance with § 1910.217(b). The ANSI B11.1–2001 standard permits only suppliers to reconstruct or modify a mechanical power press, as in ANSI B11.1–2001 paragraphs 4.1 through 4.1.3 [Ex. OSHA–2007–0003–0003]. Should OSHA similarly limit press reconstruction and modification to the supplier of the equipment? Why? Should a revised OSHA standard address the qualifications of persons who reconstruct or modify mechanical power press equipment?

13. OSHA's current standard requires third-party validation for PSDI such that a single failure or single operating error may not cause injury to personnel from a point-of-operation hazard. Appendix A, Certification/Validation Requirements. Should OSHA retain some form of third-party validation, but remove this aspect of the validation criteria?

14. If the Agency does not require third-party validation, would the certification requirements found in the following paragraphs be necessary: § 1910.217(h)(5)(i) (adjusting brake monitoring during installation certification); (h)(9)(ii)(B) (certification of alternatives to photo-electric light curtains); and (h)(11)(i)(B), (h)(11)(ii), (h)(11)(iii), (h)(11)(v) (safety system certification/validation)? Why or why not?

15. OSHA's current PSDI provisions include requirements for brakes and clutches that are not found in the ANSI B11.1–2001 standard. See § 1910.217(h)(2). Should OSHA retain these or similar requirements in a revised standard? Why? Should OSHA remove the provisions entirely? Why? Would removing these provisions adversely impact employee safety or are these provisions unnecessary given the PSDI systems currently available?

16. OSHA's current PSDI standard includes provisions for flywheels and bearings that are not included in the ANSI B11.1–2001 standard. See § 1910.217(h)(4). Should OSHA retain these requirements or something similar? Why? Would removing these provisions adversely impact employee safety or are these provisions unnecessary given the PSDI systems currently available?

17. OSHA currently limits PSDI systems to normal production operations (and not die-setting or maintenance procedures). See § 1910.217(h)(1)(v). Should OSHA continue this limitation? Why?

18. Are there any guarding methods or safety equipment in use today not covered by OSHA's current standard? Please supply OSHA with information about them. Does the current standard cover any guarding method or safety equipment no longer in use?

19. Are there any guarding methods or safety equipment in use today that the current ANSI standard does not address? Does the current ANSI standard cover any guarding method or safety equipment no longer in use?

20. OSHA's current standard has no specific provisions covering computer-controlled mechanical power presses. To what extent are employers using computer-controlled mechanical power presses? Are these types of presses becoming more common? What procedures, guarding methods, and safety considerations are used when using these types of presses? Are there any special hazards or concerns when using computer-controlled mechanical power presses of which the Agency should be aware?

21. OSHA's current mechanical power press standard has no specific provisions covering servo-actuated presses. To what extent are employers using servo-actuated presses? Are these types of presses becoming more common? What procedures, guarding methods, and safety considerations are used when using these types of presses? Are there any special hazards or concerns when using servo-actuated presses of which the Agency should be aware?

D. Cost Issues

22. What has been the experience of PSDI systems on mechanical power presses and other machines internationally, particularly in Europe? What additional costs have been involved in integrating them into manufacturing operations? What have been the benefits in terms of safety and productivity?

23. What has been the experience of PSDI systems with regard to other types of machines in the United States (i.e., those not covered by the mechanical power press rule)?

24. Are there estimates of the cost savings of using PSDI systems more widely? Are there mechanical power presses where PSDI would provide few or no cost savings?

25. OSHA's Section 610 review of the mechanical power press rule indicated that in many cases mechanical power presses are being replaced with hydraulic presses. How widespread is this trend and what are the reasons for it? How much of this is related to underlying technological and economic trends?

E. Training Requirements

26. OSHA's current standard at § 1910.217(f) requires employers to train employees on safe methods of work. However, the standard does not spell out specific training or retraining requirements. Should OSHA change its existing performance-oriented approach with specific training and retraining provisions? Why?

27. The ANSI B11.1–2001 standard includes more detailed training requirements than the OSHA standard [Ex. OSHA–2007–0003–0003]. Should OSHA adopt ANSI's approach to training? Why?

28. Are there any training or retraining requirements that are not

found in the OSHA or ANSI standards that OSHA should include in the updated standard? If so, what are they and why should OSHA include them? Are there any training or retraining requirements that are found in the ANSI standard that OSHA should not include in the updated standard? If so, what are they and why should OSHA not include them in the updated standard?

29. OSHA's current standard does not specify how often training should occur. Should OSHA specifically require annual or semiannual training? Should retraining only be required when employees are observed improperly operating equipment, or are there other times when employees should be retrained?

30. When OSHA adopted the PSDI provisions, it also added specific training requirements for employers using PSDI systems. See § 1910.217(h)(13). Are those requirements sufficient to ensure operators are effectively trained in PSDI operation? Should OSHA expand or reduce the training requirements for PSDI systems?

31. The current standard requires at § 1910.217(h)(13)(ii) that employers certify employee training for PSDI. Should OSHA retain this requirement, or require other training documentation? Why or why not?

F. Reporting and Recordkeeping Requirements

32. The current standard requires at § 1910.217(h)(9)(ii)(B) that employers notify OSHA 3 months before the operation of any alternative system to photo-electric light curtains. The notification must include ''the name of the system to be installed, the manufacturer and the OSHA-recognized third-party validation organization immediately.'' Should OSHA retain this requirement or a similar requirement in a revised standard?

33. Paragraph § 1910.217(g) requires employers to report to OSHA within 30 days any point of operation injury to operators or other employees. Do employers also use this information for their own purposes? If so, how? Should OSHA eliminate this requirement? Why or why not?

34. Under paragraph (e)(1)(i), employers must maintain a certification record of periodic and regular inspections of power presses. This certification must contain: The date of the inspection; the signature of the person who performed the inspection; and the serial number or other identifier of the power press inspected. Similarly, paragraph (e)(2)(ii) requires employers to maintain a record of required inspections, tests, and maintenance on the clutch/brake mechanism, antirepeat feature and single stroke mechanism; these inspections and tests must occur at least once a week. As with the certification required by paragraph (e)(1)(i), the record must contain: The date of the inspection, test or maintenance; the signature of the person performing the inspection, test, or maintenance; and the serial number or other identifier of the press. Should OSHA include these requirements in a revised standard? Why? Should OSHA require employers to maintain any additional information in the records, such as the types of repairs made, or is there information that should not be specifically required? Is a signature of the person performing the inspection, test, or maintenance necessary or would the name suffice for the record?

35. Currently, ANSI B11.1–2001 specifies that an inspection program be established with ''regular'' inspection of presses, but does not specify the time frames for such inspections [Ex. OSHA–2007–0003–0003]. Also, ANSI B11.1–2001 does not specify what information employers should maintain in inspection records [Ex. OSHA–2007–0003–0003]. Should OSHA adopt ANSI's performance-oriented approach in a revised standard? Why? If OSHA were to adopt provisions similar to the ANSI provisions, how could the Agency determine whether an employer's inspections were conducted at a reasonable frequency?

36. OSHA's current standard specifies that each employer inspect and test each press at least once a week to determine the condition of the clutch/brake mechanism, antirepeat feature and single stroke mechanism. Should OSHA expand or reduce the time interval between these inspections and tests? Should any other elements be inspected or tested this frequently? Do any of these elements need less frequent inspection or testing?

37. ANSI B11.1–2001 permits users to determine the content of inspections and testing [Ex. OSHA–2007–0003–0003]. Should OSHA adopt this type of performance-based approach in the revised standard? How would OSHA enforce such a requirement? Would adopting ANSI's approach lead to more press failures? Why?

III. Public Participation

Submission of Comments and Access to Docket

You may submit comments in response to this document (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments and other material must identify the Agency name and the OSHA docket number for this rulemaking (OSHA Docket No. OSHA–2007–0003). You may supplement electronic submissions by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic comments by name, date, and docket number so OSHA can attach them to your comments.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

IV. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary

of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC, this 29th day of May 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E7–10655 Filed 6–1–07; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Chapter XVII

Freedom of Information Act Regulations

AGENCY: Office of the Director of National Intelligence.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation will provide the public the guidelines under which the Office of the Director of National Intelligence will implement the Freedom of Information Act, 5 U.S.C. 552.

DATES: Submit comments on or before July 5, 2007.

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

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

Mail: Chief FOIA Officer c/o Director of Intelligence Staff, Office of the Director of National Intelligence, Washington, DC 20511.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Hackett, (703) 482–1707.

SUPPLEMENTARY INFORMATION: The Office of the Director of National Intelligence (ODNI) was created by the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, 118 Stat. 3638. The first Director of National Intelligence, Ambassador John D. Negroponte, was sworn into Office on April 21, 2005, and the ODNI began operations on April 22, 2005. Because the majority of documents held by the ODNI at its inception were previously maintained by the Central Intelligence Agency (CIA), and because the ODNI did not have a FOIA staff upon stand-up, the CIA agreed to handle the administrative aspects of the ODNI's FOIA processing. Through this arrangement, the ODNI makes all legal decisions regarding the handling of FOIA requests for ODNI records and the CIA assists with the administrative tasks associated with processing FOIA requests, including the intake and tracking of requests, as well as drafting correspondence to requesters. The ODNI has gradually built up its FOIA program and is now proposing its own FOIA regulations. The proposed regulations address all aspects of FOIA processing, including how and where to submit FOIA requests, fees for record services, procedures for handling business information, requests for expedited processing and the right to appeal denials of information.

Therefore, as discussed in the preamble, and under the authority of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3638, the ODNI proposes to establish 32 CFR Chapter XVII and add part 1700 to read as follows:

CHAPTER XVII—OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

PART 1700—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

1700.1 Authority and purpose.
1700.2 Definitions.
1700.3 Contact for general information and requests.
1700.4 Suggestions and complaints.
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1700.6 Requirements as to form and content.
1700.7 Fees for records services.
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1700.10 Payment of fees, notification of decision, and right of appeal.
1700.11 Procedures for business information.
1700.12 Procedures for information concerning other persons.
1700.13 Allocation of resources.
1700.14 Requests for expedited processing.
1700.15 Right of appeal and appeal procedures.
1700.16 Action by appeals authority.

Authority: 5 U.S.C. 552, 50 U.S.C. 401–442; Pub L. 108–458, 188 Stat. 3638.

§ 1700.1 Authority and purpose.

(a) *Authority:* This part is issued under the authority of and in order to implement the Freedom of Information Act, as amended, 5 U.S.C. 552; the National Security Act of 1947, as amended, 50 U.S.C. 401–442; and the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3638.

(b) *Purpose in general.* This part prescribes procedures for:

(1) ODNI administration of the FOIA;

(2) Requesting records pursuant to the FOIA; and

(3) Filing an administrative appeal of an initial adverse decision under the FOIA.

§ 1700.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Days* means calendar days when ODNI is operating and specifically excludes Saturdays, Sundays, and legal public holidays;

(b) *Control* means actual possession and ownership or the authority of ODNI pursuant to federal statute or privilege to regulate official or public access to a particular record or records. It does not establish an obligation to create any record or data compilation, although ODNI reserves the right to offer production of a compilation as an alternative to production of records;

(c) *Direct costs* means those expenditures which ODNI actually incurs in the processing of a FOIA request; it does not include overhead factors such as space;

(d) *Pages* means paper copies of standard office size or the dollar value equivalent in other media;

(e) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(f) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;

(g) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;

(h) *Employee* or *staff member* means any employee, detailee, assignee, employee of a contracting organization or independent contractor of the ODNI or any of its component organizations, unless otherwise excepted;

(i) *Expression of interest* means a written or electronic communication submitted by any person requesting information on or concerning the FOIA program, the availability of documents from ODNI, or both;

(j) *Fees* means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the ODNI in determining the proper fee category and the ODNI may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial:* A request in which the disclosure sought is primarily in the commercial interest of the requester and

which furthers such commercial, trade, income or profit interests;

(2) *Non-commercial educational or scientific institution:* A request from an accredited United States educational institution at any academic level or institution engaged in research concerning the social, biological, or physical sciences or an instructor or researcher or member of such institutions; it also means that the information will be used in a specific scholarly or analytical work, will contribute to the advancement of public knowledge, and will be disseminated to the general public;

(3) *Representative of the news media:* Any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(4) *All other:* A request from an individual not within paragraphs (j)(1), (2), or (3) of this section;

(k) *Freedom of Information Act,* ''FOIA,'' or ''the Act'' means the statute as codified at 5 U.S.C. 552;

(l) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the ODNI, has a subject matter or physical interest in the documents or information at issue;

(m) *ODNI* means the Office of the Director of National Intelligence and its component organizations. It does not include members of the Intelligence Community as defined by the National Security Intelligence Reform Act of 2004, section 1073, or other federal entities subsequently designated in accordance with this authority, unless specifically designated as included in this Part or in the notice of a system of records;

(n) *Originator* means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

(o) *Potential requester* means a person, organization, or other entity who submits an expression of interest;

(p) *Reasonably described record* means a description of a record by unique identification number or descriptive terms that permits an ODNI staff member familiar with the subject matter area to locate documents with reasonable effort given existing indices and finding aids;

(q) *Records* means all documents, irrespective of physical or electronic form, under the control of ODNI pursuant to federal law or in connection with the transaction of public business at the time ODNI accepts an expression of interest as a formal request or initiates a search, whichever is later, and appropriate for preservation by the ODNI as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the ODNI or because of the informational value of the data contained therein; it does not include:

(1) Commercially available materials or materials made available in electronic or other public reading rooms, except to the extent that such materials are incorporated into any form of analysis or otherwise distributed or published by ODNI;

(2) Personal records maintained by ODNI staff that have not been created, used, disseminated or maintained in a manner inconsistent with their characterization as private;

(3) Objects or items, such as equipment, machinery or material, whatever the historical or evidentiary value; and

(4) Anything that is not a tangible reduction of information to accessible electronic or paper media, such as an individual's memory or oral communications.

(r) *Responsive records* means those records that ODNI has determined to be within the scope of a formal request.

§ 1700.3 Contact for general information and requests.

For general information on this Part, to inquire about the FOIA program at ODNI, or to file a FOIA request (or expression of interest), please direct communication in writing to the Office of the Director of National Intelligence, Chief FOIA Officer c/o Director, Information Management Office, Washington, DC 20511 by mail or by facsimile at (703) 482–2144. For general information or status information on pending cases only, call the ODNI FOIA Customer Service Center at (703) 482–1707. Collect calls cannot be accepted.

§ 1700.4 Suggestions and complaints.

ODNI welcomes suggestions or complaints with regard to its administration of the FOIA. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. ODNI will not respond to all communications but will take such actions as determined feasible and appropriate.

§ 1700.5 Preliminary information.

Members of the public shall address all communications to the point of contact specified in § 1700.3 and clearly delineate the communication as a request under the FOIA. ODNI staff who receive a FOIA request shall expeditiously forward the request to the Director, Information Management Office. Requests and appeals (as well as referrals and consultations) received from FOIA requesters who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

§ 1700.6 Requirements as to form and content.

(a) *Required information.* No particular form is required. A request must reasonably describe the record or records of interest and be submitted in accordance with this regulation. Documents must be described sufficiently to enable a staff member familiar with the subject to locate the documents with a reasonable amount of effort. In most cases, documents must be locatable through the indexing of ODNI systems. Extremely broad or vague requests, or requests requiring research in order to ascertain meaning may require further clarification before they are accepted as formal requests.

(b) *Additional information for fee determination.* A requester must provide sufficient personally identifying information to allow staff to determine the appropriate fee category and to contact the requester easily. A requester must agree to pay all applicable fees or fees not to exceed a certain amount or must request a fee waiver in connection with a request.

(c) *Otherwise.* Communications that do not meet the above requirements will be considered an expression of interest.

ODNI staff should attempt to help a potential requester define a request properly. Although staff will take reasonable measures to clarify vague or broad requests, ODNI is not required to clarify an expression of interest that does not meet the requirements of a formal request.

§ 1700.7 Fees for records services.

(a) *In general.* Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if a subsequent search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the FOIA.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate when ODNI determines:

(1) As a matter of administrative discretion, the interest of the United States Government would be served, or

(2) It is in the public interest to provide responsive records because the disclosure is likely to contribute *significantly* to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Director of the Intelligence Staff, or his functional equivalent, through the ODNI Chief FOIA Officer. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the requirements of this regulation and the Act. See § 1700.15 for further details on appeals.

(d) *Time for fee waiver requests and appeals.* Appeals should be resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to an agency decision regarding the request, except when processing has been initiated, in which case the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, ODNI will request a payment commitment when staff estimate that fees will exceed $100.00, not including charges associated with the first 100 pages of production and two hours of search (when applicable). ODNI will hold in abeyance for 45 days requests requiring such agreement and will thereafter deem the request closed. A request deemed closed may be reopened upon receipt of an appropriate fee commitment or a requester may limit the scope of his or her request.

(f) *Advance payment.* The ODNI may require an advance payment of up to 100 percent of the estimated fees when projected fees exceed $250.00, not including charges associated with the first 100 pages of production and two hours of search (when applicable), or when the requester previously failed to pay fees in a timely fashion, for fees of any amount. ODNI will hold in abeyance for 45 days those requests where advance payment has been requested.

(g) *Schedule of fees.* (1) *In general.* The schedule of fees for services performed in responding to requests for records is as follows:

PERSONNEL SEARCH AND REVIEW

Clerical/Technical	Quarter hour	$5.00
Professional/Supervisory	Quarter hour	10.00
Manager/Senior Professional	Quarter hour	18.00

COMPUTER SEARCH AND PRODUCTION

Search (on-line)	Flat rate	10.00
Search (off-line)	Flat rate	30.00
Other activity	Per minute	10.00
Tapes (mainframe cassette)	Each	9.00
Tapes (mainframe cartridge)	Each	9.00
Tapes (mainframe reel)	Each	20.00
Tapes (PC 9mm)	Each	25.00
Diskette (3.5″)	Each	4.00
CD (bulk recorded)	Each	10.00
CD (recordable)	Each	20.00
Telecommunications	Per minute	.50
Paper (mainframe printer)	Per page	.10
Paper (PC b&w laser printer)	Per page	.10
Paper (PC color printer)	Per page	1.00

PAPER PRODUCTION

Photocopy (standard or legal)	Per page	.10
Microfiche.	Per frame	.20
Pre-printed (if available)	Per 100 pages	5.00
Published (if available)	Per item	NTIS

(2) *Application of schedule.* Personnel search time includes time expended in manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to ODNI of a particular item is less than the above schedule (e.g., a large production run of a document resulting in a cost less than $5.00 per hundred pages), then the actual lesser cost will be charged. Items published and available at the National Technical Information Service (NTIS) are also available from ODNI pursuant to this part at the NTIS price as authorized by statute.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), ODNI will charge actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this regulation.

(h) *Limitations on collection of fees.* (1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to ODNI of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be $10.00.

(2) [Reserved]

(i) *Fee categories.* There are four categories of FOIA requesters for fee purposes: Commercial use requesters, educational and non-commercial scientific institution requesters, representatives of the news media requesters, and all other requesters. The categories are defined in § 1700.2 and applicable fees will be assessed as follows:

(1) Commercial use requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) Educational and non-commercial scientific institution requesters, and representatives of the news media requesters: Only charges for reproduction beyond the first 100 pages;

(3) All other requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time which will be furnished without charge.

(j) *Associated requests.* If it appears a requester or a group of requesters acting in concert have requested portions of an apparently unitary request for the purpose of avoiding the assessment of fees, ODNI may aggregate any such requests and charge accordingly. Requests from multiple requesters will not be aggregated without clear evidence. ODNI will not aggregate multiple unrelated requests.

§ 1700.8 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of § 1700.3 through § 1700.7 shall be accepted as formal requests and processed under the FOIA and these regulations. A request will not be considered received until it reaches the Information Management Office. Ordinarily upon its receipt a request will be date-stamped as received. It is this date that establishes when your request is received for administrative purposes, not any earlier date such as the date of the letter or its postmark date. For the quickest possible handling, both the request letter and the envelope should be marked ''Freedom of Information Act Request.''

(b) *Electronic Reading Room.* ODNI maintains an online FOIA Reading Room on the ODNI Web site which contains the information that the FOIA requires be routinely made available for public inspection and copying as well as other information determined to be of general public interest.

(c) *Confirming the existence of certain documents.* In processing a request, ODNI shall decline to confirm or deny the existence of responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 and its amending orders, reveals intelligence sources and methods protected pursuant to 50 U.S.C. 403–1(i)(1), or would be an invasion of the personal privacy of third parties. In such circumstances, ODNI, in its final written response, shall so inform the requester and advise of his or her right to file an administrative appeal.

(d) *Time for response.* Whenever the statutory time limits for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and the component determines to extend the time limits on that basis, ODNI will inform the requester in writing and advise the requester of the right to narrow the scope of his or her request or agree to an alternative time frame for processing.

(e) *Multitrack processing.* ODNI 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, including through limits based on the number of pages involved. ODNI may provide requesters in its slower track with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of its faster track.

§ 1700.9 Action on the request.

(a) *Initial action for access.* ODNI staff identified to search for records pursuant to a FOIA request shall search all relevant record systems within their cognizance as of the date the search is commenced. A staff member tasked to conduct a search shall:

(1) Determine whether records exists;

(2) Determine whether and to what extent any FOIA exemptions apply;

(3) Make recommendations for withholding records or portions of records that originated in the staff member's organization and for which there is a legal basis for denial or make a recommendation in accordance with § 1700.8(c). In making recommendations, ODNI staff shall be guided by the procedures specified in § 1700.11 regarding confidential commercial information and § 1700.12 regarding third party information; and

(4) Forward to the Director, Information Management Office, all records responsive to the request.

(b) *Referrals and consultations.* ODNI records containing information originated by other ODNI components shall be forwarded to those entities for action in accordance with paragraph (a) of this section and returned. Records originated by other federal agencies or ODNI records containing other federal agency information shall be forwarded to such agencies for processing and direct response to the requester or for consultation and return to the ODNI. ODNI will notify the requester if it makes a referral for direct response.

(c) *Release of information.* When the Director, Information Management Office (or Appeals Authority) makes a final determination to release records, the records will be forwarded to the requester in an appropriate format promptly upon compliance with any preliminary procedural requirements, including payment of fees. If any portion of a record is withheld initially or upon appeal, the Director, Information Management Office (or Appeals Authority) will provide a written response that shall include, at a minimum:

(1) The basis for the withholding, citing the specific statutory exemption or exemptions invoked under the FOIA with respect to each portion withheld, unless documents are withheld in accordance with § 1700.8(c);

(2) When the withholding is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order;

(3) When the denial is based on 5 U.S.C. 552(b)(3), the statute relied upon; and

(4) Notice to the requester of the right to judicial review.

§ 1700.10 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this Part do not accrue to ODNI and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), ODNI will promptly inform the requester in writing of those records or portions of records that will be released and those that will be denied.

(1) For documents to be released, ODNI will provide paper copies or documents on electronic media, if requested and available;

(2) For documents not released or partially released, ODNI shall explain the reasons for any denial and give notice of a right of administrative appeal. For partial releases, redactions will be made to ensure requesters can see the placement and general length of redactions with the applicable exemption or exemptions clearly with respect to each redaction.

§ 1700.11 Procedures for business information.

(a) *In general.* Business information obtained by ODNI from a submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information in which a legal entity has a recognized property interest;

(2) *Confidential commercial information* means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm; and

(3) *Submitter* means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), State governments, and foreign governments.

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to Exemption 4 of the FOIA. Such designations shall expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request*—(1) *Notice to submitters.* ODNI shall provide a submitter with prompt written notice of receipt of a FOIA request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) ODNI staff believe that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last 10 years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* Communication to a submitter of commercial information shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven days of the notice described in paragraph (c)(1) of this section, all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Affirm that the information has not been disclosed to the public;

(B) Explain why the information is a trade secret or confidential commercial information;

(C) Explain in detail how disclosure of the information will result in substantial competitive harm;

(D) Affirm that the submitter will provide ODNI and the Department of Justice with such litigation support as requested; and

(E) Be certified by an officer authorized to legally bind the submitter.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) ODNI shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Director, Information Management Office, decides to disclose a document over the objection of a submitter, ODNI shall provide the submitter a written notice that shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date that is seven days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the ODNI shall also notify the requester and, if the ODNI notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates legal action seeking to compel disclosure of information asserted to be within the scope of this section, ODNI shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by ODNI and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if ODNI determines that:

(i) The information should not be disclosed, pursuant to Exemption 4 and/or any other exemption of the FOIA;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the ODNI will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1700.12 Procedures for information concerning other persons.

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the FOIA if the proposed release would constitute a clearly unwarranted invasion of personal privacy, or, if the information was compiled for law enforcement purposes, it could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. 552(b)(6) and (b)(7)(C). For purposes of this section, the following definitions apply:

(1) *Personal information* means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

(2) *Public interest* means the public interest in understanding the operations and activities of the United States Government and not simply any matter

that might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to Exemptions 6 and 7(C) of the FOIA, ODNI will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third party is encouraged to provide a signed affidavit or declaration from the third party consenting to disclosure of the information. However, any such statements shall be narrowly construed and the Director, Information Management Office, in the exercise of that officer's discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1700.13 Allocation of resources.

(a) *In general.* ODNI shall devote such personnel and other resources to the responsibilities imposed by the FOIA as may be appropriate and reasonable considering:

(1) The totality of resources available;

(2) The demands imposed on ODNI in fulfillment of its statutory responsibilities or otherwise by law;

(3) The demand imposed upon ODNI component organizations by the ODNI or otherwise by law;

(4) The information review and release demands imposed by Congress or other governmental authority; and

(5) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities.* ODNI and its components shall exercise due diligence in their responsibilities under FOIA and must allocate a reasonable level of resources to requests under the Act on a strictly ''first-in, first-out'' basis and utilizing two or more processing queues to ensure that complex and simple requests receive equitable attention. The ODNI Chief FOIA Officer is responsible for management of the ODNI-wide program defined by this Part and for establishing priorities for cases consistent with established law. The Director, Information Management Office, shall provide policy and resource direction as necessary.

§ 1700.14 Requests for expedited processing.

(a) *In general.* All requests will be handled in the order received on a strictly ''first-in, first-out'' basis. Exceptions to this rule will only be made in accordance with the following procedures.

(b) *Procedure.* Requests for expedited processing will be approved only when a requester establishes compelling need for records to the satisfaction of the Director, Information Management Office, and it appears to him or her that substantive records relevant to the stated needs may exist and be deemed releasable. A requester may make a request with a certification of ''compelling need'' and the Director, Information Management Office, will decide whether to grant expedited processing and will notify the requester of his or her decision. The certification shall set forth with specificity the relevant facts upon which the requester relies and will attest that the statement is true and accurate. A ''compelling need'' is deemed to exist:

(1) When failure to obtain 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

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

§ 1700.15 Right to appeal and appeal procedures.

(a) *Right to appeal.* Individuals who disagree with a decision not to produce a document or parts of a document, to deny a fee category request, to deny a request for a fee waiver or fee reduction, to deny expedited processing, or a decision regarding a fee estimate or a determination that no records exist, should submit a written request for review to the *Chief FOIA Officer c/o Director, Information Management Office*, Office of the Director of National Intelligence, Washington, DC 20511. The words ''FOIA APPEAL'' should be written on the letter and the envelope. The appeal must be signed by the individual or his legal counsel.

(b) *Requirements as to time and form.* Appeals of adverse decisions must be received within 45 days of the date of the ODNI's initial decision. Requesters should include a statement of the reasons supporting the request for reversal of the initial decision.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two years or is the subject of pending litigation in the Federal courts.

§ 1700.16 Action by appeals authority.

(a) The Director of the Intelligence Staff, after consultation with any ODNI component organization involved in the initial decision as well as with the Office of General Counsel, will make a final determination on the appeal. Appeals of denials of requests for expedited processing shall be acted on expeditiously.

(b) The Director, Information Management Office, will ordinarily be the initial deciding official on FOIA requests to the ODNI. However, in the event the Director of the Intelligence Staff makes an initial decision that is later appealed, the Principal Deputy Director for National Intelligence will decide the appeal in accordance with the procedures in this section.

Dated: May 17, 2007.

David Shedd,

Acting Director of the Intelligence Staff.

[FR Doc. E7–10420 Filed 6–1–07; 8:45 am]

BILLING CODE 3910–A7–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2007–28103]

Federal Motor Vehicle Safety Standards for School Bus Passenger Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of public meeting, request for comments.

SUMMARY: NHTSA is having a public meeting to bring together a roundtable of State and local government policymakers, school bus and seat manufacturers, pupil transportation associations, and public interest groups to discuss the issue of seat belts on large school buses. The discussion on how best to provide safety during a crash, by compartmentalization or through the use of seat belts, has been ongoing for many years. This public meeting is an opportunity for an exchange among interested parties, as well as the public, on the safety, policy and economic issues related to the use of seat belts on school buses. The date, time, location, and framework for this public meeting are announced in this notice.

DATES: *Public Meeting:* The public meeting will be held on July 11, 2007, from 8:30 a.m. to 4:30 p.m. at L'Enfant

Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC.

Comments: Written comments may be submitted to the agency and must be received no later than September 10, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Harriett Fitzgerald, Office of Crashworthiness Standards, NHTSA, telephone 202–366–3269, e-mail *Harriett.Fitzgerald@dot.gov,* or Mr. John Hinch, Director, Office of Human Vehicle Performance Research, NHTSA, telephone 202–366–5195, e-mail *John.Hinch@dot.gov.* Both officials may also be reached at 1200 New Jersey Ave., SE., Washington, DC 20590.

ADDRESSES: *Public meeting:* The public meeting will be held at L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024, telephone: 202–484–1000.

Written comments: Written comments on this meeting and topic must refer to the docket number of this notice and be submitted 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: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. DOT, 1200 New Jersey Ave., SE., West Building, Room W12–140, Washington, DC 20590. Hand Delivery: 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may call Docket Management at 202–366–9317 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

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 discussion under the heading ''How do I prepare and submit comments?'' at the end of this notice. Please see also the discussion there of confidential business information.

SUPPLEMENTARY INFORMATION:

Background

In the School Bus Safety Amendments of 1974, Congress indicated that school transportation should be held to the highest level of safety, since such transportation involves the Nation's most precious resource—children who represent our future.

During the mid 1970's, to address the safety of school bus passengers in a crash, NHTSA established Federal Motor Vehicle Safety Standards (FMVSS's) to increase the strength of school buses and to improve occupant protection. Three standards addressing rollover protection, body joint strength, and passenger seating and crash protection are unique to school buses. Another six standards have additional requirements that specifically provide for the protection of school bus passengers. Still other standards, such as brakes, tires, fuel system integrity and other safety related systems, ensure that school buses meet rigorous requirements for safety when it comes to avoiding a crash in the first place, or enhancing survivability in the event of a crash.

Under existing regulation, the primary means of occupant protection for large school buses is a safety concept known as compartmentalization. Compartmentalization protects occupants by using strong, closely spaced seats equipped with high, absorbing seat backs. Compartmentalization provides passive protection, meaning that the protection is there when needed without the need for passengers to take any action such as buckling a seat belt. This system has proven very effective at preventing serious injuries and fatalities for school aged passengers.

Current data collected by NHTSA show that every year, approximately 482,000 public school buses transporting 25.5 million students to and from school and school-related activities [1] travel an estimated 4.3 billion miles.[2] The school bus occupant fatality rate of 0.2 fatalities per 100 million vehicle miles traveled (VMT) is much lower than the overall rate for motor vehicles, which is 1.5 per 100 million VMT. An average of 21 school age passengers die in school transportation-related crashes each year: 6 school bus passengers and 15 pedestrians. NHTSA estimates that there are approximately 8,000 crash related injuries in the school buses each year. Approximately half of both the crashes and fatalities occur in frontal collisions.[3]

Seat Belts on School Buses

NHTSA published the final rule establishing FMVSS No. 222, ''School bus seating and crash protection,'' on January 28, 1976 (41 FR 4016). This regulation became effective for all newly manufactured school buses on and after April 1, 1977. In the rulemaking leading to the 1976 final rule, four notices of proposed rulemaking (NPRM) were published.[4] Throughout the course of that rulemaking, the issue of requiring seat belts and/or belt anchorages on large school buses was considered. Although the agency ultimately decided not to require safety belts or anchorage systems because compartmentalization provided very effective safety protection for school children, the final rule did not prohibit State and local jurisdictions from installing seat belts. Providing seat belts on buses will not, by itself, improve safety for school bus passengers. If seat belt systems are to be effective, States and local jurisdictions would need to ensure that they are worn properly by all passengers.

Since the implementation of their respective State laws, New York (1987), New Jersey (1994) and Florida (2001) have required lap belts, and California (2005) has required lap and shoulder belts, on all newly purchased school buses. NHTSA does not maintain a record of local school districts that also may require seat belts on buses. However, a 1994 University of South Florida (USF) study [5] found that many districts might require such systems even though it was not mandatory in their State at the time of the study. At the time of the USF study, only New York required seat belts in all school buses.

In 1987, the National Transportation Safety Board (NTSB) reported on a study of forty-three post-standard school bus crashes investigated by the Safety Board.[6] NTSB concluded that most fatalities and injuries in school bus crashes occurred because the occupant seating positions were directly in line with the crash forces, and that seat belts would not have prevented those injuries and fatalities. In 1999, NTSB reported on six school bus accidents it investigated in which passenger fatalities or serious injuries occurred away from the area of vehicle impact.[7] NTSB again found

[1] School Transportation News, Buyers Guide 2005.

[2] School Bus Fleet 2005 Fact Book.

[3] DOT HS 810 626 Traffic Safety Facts 2005, School Transportation-Related Crashes. U.S. Department of Transportation, National Highway Traffic Safety Administration.

[4] February 22, 1973 (38 FR 4776), July 30, 1974 (39 FR 27586), April 23, 1975 (40 FR 17855) and October 8, 1975 (40 FR 47141).

[5] ''To Belt or Not To Belt, Experiences of School Districts that Operate Large School Buses Equipped with Seat Belts,'' Final Report, August 1994, Center for Urban Transportation Research, College of Engineering, University of South Florida.

[6] Safety Study—Crashworthiness of Large Post standard School Buses; National Transportation. Safety Board Report No. NTSB/SS–86/03, Washington, DC, 1987.

[7] Highway Special Investigation Report—Bus Crashworthiness Issues; National Transportation. Safety Board Report No. NTSB/SIR–99/04, Washington, DC, 1999.

compartmentalization to be an effective means of protecting passengers in school bus crashes. However, because many of those passengers injured in the six crashes were believed to have been thrown from their compartments, NTSB believed other means of occupant protection should be examined. A 1989 National Academy of Sciences (NAS) study [8] concluded that the overall potential benefits of requiring seat belts on large school buses were insufficient to justify a Federal mandate for installation. The NAS also stated that funds used to purchase and maintain seat belts might be better spent on other school bus safety programs with the potential to save more lives and reduce more injuries.

In laboratory simulations of a severe frontal impact crash, NHTSA determined that adding lap belts on large school buses would have little, if any, benefit in reducing serious-to-fatal injuries in severe frontal crashes, and could raise the potential risk for head injury.[9] But at the same time, lap belts have been on large school buses for over 30 years without any documented serious injuries resulting from the use of the seat belt restraint systems. NHTSA's laboratory simulations also showed that the use of combination lap/shoulder belts, if properly worn, could provide some safety benefit to both large and small school bus occupants regardless of their size. However, incorporation of lap/shoulder belts can significantly reduce the seating capacity of school buses.

Upon completion of the laboratory simulations, NHTSA issued a press release stating that as a result of research findings, the agency was considering the following changes to the existing Federal safety standards:

- Increasing the seat back height from 508 mm (20 inches) to 610 mm (24 inches) to reduce the potential for passenger override [10] in the event of a crash.
- Requiring school buses with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less to have lap/shoulder restraints. (Currently, seats on these buses must be equipped with lap belts only.)
- Developing standardized test procedures for voluntarily installed lap/shoulder belts.

Subsequently, the agency has developed performance requirements to support a notice of proposed rulemaking that would upgrade the school buses Federal safety standards accordingly.

School Transportation Safety Risks

In July 2002, NAS published Special Report 269, ''The Relative Risks of School Travel: A National Perspective and Guidance for Local Community Risk Assessment, National Research Council.'' [11] The study analyzed the safety of various transportation modes used by school children to get to and from school and school-related activities. The report concluded that each year there are approximately 800 school-aged children killed in motor vehicle crashes during normal school drive time hours in the various modes of transportation.[12] About 2 percent were school bus-related, and 11 percent were children walking or bicycling; the majority of the fatalities were children in passenger cars, especially those with teen drivers. The report stated that the risk factors associated with these modes are complex and highly interrelated. Changes in any one characteristic of school travel can lead to dramatic changes in the overall risk to the student population. For example, anything that would reduce the number of school bus riders (including reduced seating capacity) could lead to more students seeking a less safe alternative form of transportation for getting to and from school. Thus, it is important for school transportation decisions to take into account all potential aspects of changes to requirements to school transportation.

Public Meeting

There is continuing public interest and discussion of on whether seat belts should be required on large school buses. NHTSA is having this public meeting to discuss the safety, policy and economic issues associated with the use of seat belts in large school buses. The meeting will bring together State and local government policy makers, industry associations, school bus and equipment manufacturers, consumer advocates, and school transportation providers.

The meeting will be open to the public, but participation in the panels will be by invitation only. Time will be designated for open floor discussion by the general audience. Meeting participants and the public are also invited to submit comments on this issue to the docket.

The sections below describe the panels for the roundtable meeting. *State and Local Policy:* State and local policy perspectives regarding seat belts on school buses will be discussed. Panelists will address the requirements for providing school transportation, their considerations in determining whether or not to require seat belts, and the challenges faced in implementing the use of belts on school buses. Panelists will discuss studies or surveys that contributed to their decisions regarding whether or not to require belts on large school buses. Also, the type of seat belt system (lap or lap shoulder) selected for use, if applicable, how that selection was made, the effects of reduced seating capacity in lap/shoulder belt-equipped school buses and any adverse effects resulting from the need to provide transportation for the same number of students after the installation of belt systems will be discussed.

Seat Belt Systems for Buses: Information related to the type of seat belt system designs that are currently being offered in large school buses, and technologies with seats or seat belts will be presented in this panel. Discussion during this panel will also focus on costs of buses with and without belts, sales, the performance specification for seat belts used on buses, experience with manufacturing of belts for buses, and lessons learned from installation of belts on buses. Manufacturers' perspective regarding retrofitting existing school buses with new seat belts will also be discussed.

Economics of Belts on Buses: This panel will focus on the economic impact that implementation of seat belt requirements for school buses have on States and local school districts. Discussion will include the purchase and maintenance costs associated with the seat belts in large school buses, consequences or implications of increased costs for belt-equipped buses, and how school districts handle the effects caused by the increased cost. Discussion will also include the service life cycle of school buses, any changes resulting from incorporating seat belts, and whether there are State laws/regulations that mandate a maximum life cycle for either the belts or buses.

Seat Belt Usage—Experience, Education and Enforcement: For schools and States that use seat belts on school buses, the final panel will discuss their experiences in training and

[8] Special Report 222: Improving School Bus Safety, National Research Council, Washington, DC, 1989.

[9] School Bus Safety: Crashworthiness Research, National Highway Traffic Safety Administration, April 2002.

[10] Override means an occupants head or torso translates forward beyond the forward seat back providing compartmentalization.

[11] Special Report 269: The Relative Risks of School Travel: A National Perspective and Guidance for Local Community Risk Assessment, National Research Council, Washington, DC, September 2002.

[12] These 800 fatalities were not necessarily transportation to and from school as the destination of the trip was not recorded.

educating children, parents, and drivers, including the impact on emergency evacuation training and procedures. Experience in actual belt usage and enforcement will also be included. Finally, it has often been argued that not requiring seat belt use on school buses sends a mixed message about the importance of using seat belts and establishing a habit of buckling up. Studies or other data to support this will be discussed.

Procedural Matters

The meeting will be open to the public with advanced registration for seating on a space-available basis. Individuals wishing to register to assure a seat in the public seating area should provide their name, affiliation, phone number and e-mail address to Ms. Fitzgerald using the contact information at the beginning of this notice. Should it be necessary to cancel the meeting due to an emergency or some other reason, NHTSA will take all available means to notify registered participants by e-mail or telephone.

The meeting will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact Ms. Fitzgerald by June 30, 2007.

A transcript of the meeting and other information received by NHTSA at the meeting will be placed in the docket for this notice at a later date.

Tentative Agenda

8:30–9:15 a.m. Welcome and Opening Remarks
9:15–9:45 a.m. Safety of School Buses ~ NHTSA overview
9:45–10 a.m. Break
10–11:15 a.m. Panel I. State and Local Policy
11:15–12 p.m. Panel II. Seat Belt Systems for Buses
12–12:30 p.m. Roundtable discussion and questions from floor
12:30–1:30 p.m. Lunch on your own
1:30–2 p.m. Panel III. Economics of Belts on Buses
2–2:15 p.m. Roundtable discussion
2:15–2:30 p.m. Break
2:30–3:30 p.m. Panel IV. Seat Belt Usage—Experience, Education and Enforcement
3:30–3:45 p.m. Roundtable discussion
3:45–4:15 p.m. Open discussion and questions from the floor
4:15–4:30 p.m. Closing Remarks—Administrator Nason

How can I submit comments on this subject?

It is not necessary to attend or to speak at the public meeting to be able to comment on the issues. NHTSA invites readers to submit written comments which the agency will consider in its deliberations on seat belts on school buses.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

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.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, 1200 New Jersey Ave. SE., West Building, Room W12–140, Washington, DC 20590, or submit them electronically, in the manner described at the beginning of this notice.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

How can I read the comments submitted by other people?

You may read the comments by visiting Docket Management in person at 1200 New Jersey Ave., SE., West Building, Room W12–140, Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*). On that page, click on ''Simple Search.'' On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm/*) type in the five-digit docket number shown at the beginning of this notice. Click on ''Search.'' On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Nicole R. Nason,

Administrator.

[FR Doc. E7–10568 Filed 6–1–07; 8:45 am]

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Notices

Federal Register

Vol. 72, No. 106

Monday, June 4, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[FDMS Docket No. FSIS–2007–0006]

International Standard-Setting Activities

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended, and the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809. This notice also provides a list of other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. This notice, which covers the time periods from June 1, 2006, to May 31, 2007, and June 1, 2007, to May 31, 2008, seeks comments on standards under consideration and recommendations for new standards.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, and then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2007–0006 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- *Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

All submissions must include the Agency name and docket number FSIS–2007–0006. Please state that your comments refer to Codex and, if your comments relate to specific Codex committees, please identify those committees in your comments and submit a copy of your comments to the delegate from that particular committee. All comments submitted in response to this proposal will be posted to the regulations.gov Web site. The comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2007_Notices_Index/index.asp*.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, PhD, United States Manager for Codex, U.S. Department of Agriculture, Office of the Under Secretary for Food Safety, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; (202) 205–7760. For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in Attachment 2 to this notice.) Documents pertaining to Codex are accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.* The U.S. Codex Office also maintains a Web site at *http://www.fsis.usda.gov/Regulations_&_Policies/Codex_Alimentarius/index.asp.*

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Trade Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT). U.S. membership in the WTO was approved and the Uruguay Round Agreements Act was signed into law by the President on December 8, 1994. The Uruguay Round Agreements became effective, with respect to the United States, on January 1, 1995. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be ''responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization.'' The main organizations are Codex, the World Organisation for Animal Health, and the International Plant Protection Convention. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of SPS standard-setting activities of each international standard-setting organization. The Secretary of Agriculture has delegated to the Administrator, Food Safety and Inspection Service (FSIS), the responsibility to inform the public of the SPS standard-setting activities of Codex. The FSIS Administrator has, in turn, assigned the responsibility for informing the public of the SPS standard-setting activities of Codex to the U.S. Codex Office, FSIS.

Codex was created in 1962 by two U.N. organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers, ensure fair trade practices in the food trade, and promote coordination of food standards work undertaken by international governmental and non-governmental organizations. In the United States, the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human

Services (HHS); and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

As the agency responsible for informing the public of the SPS standard-setting activities of Codex, FSIS publishes this notice in the **Federal Register** annually. Attachment 1 (Sanitary and Phytosanitary Activities of Codex) sets forth the following information:

1. the SPS standards under consideration or planned for consideration; and
2. for each SPS standard specified:
a. a description of the consideration or planned consideration of the standard;
b. whether the United States is participating or plans to participate in the consideration of the standard;
c. the agenda for United States participation, if any; and
d. the agency responsible for representing the United States with respect to the standard.

To obtain copies of those standards listed in Attachment 1 that are under consideration by Codex, please contact the Codex delegate or the U.S. Codex Office. This notice also solicits public comment on those standards that are currently under consideration or planned for consideration and recommendations for new standards. The delegate, in conjunction with the responsible agency, will take the comments received into account in participating in the consideration of the standards and in proposing matters to be considered by Codex.

The United States delegate will facilitate public participation in the United States Government's activities relating to Codex Alimentarius. The United States delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in the activities of the Codex committees and will disseminate information regarding United States delegation activities to interested parties. This information will include the status of each agenda item; the United States Government's position or preliminary position on the agenda items; and the time and place of planning meetings and debriefing meetings following Codex committee sessions. In addition, the U.S. Codex Office makes much of the same information available through its Web page, *http://www.fsis.usda.gov/Regulations_&_Policies/Codex_Alimentarius/index.asp.* Please visit the web page or notify the appropriate U.S. delegate or the Office of U.S. Codex Alimentarius, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, if you would like to access or receive information about specific committees.

The information provided in Attachment 1 describes the status of Codex standard-setting activities by the Codex Committees for the time periods from June 1, 2006, to May 31, 2007, and June 1, 2007, to May 31, 2008. Attachment 2 provides the list of U.S. Codex Officials (includes U.S. delegates and alternate delegates). A list of forthcoming Codex sessions may be found at: *http://www.codexalimentarius.net/web/current.jsp?lang=en.*

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2007_Notices_Index/index.asp.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on: May 23, 2007.

F. Edward Scarbrough,

United States Manager for Codex.

Attachment 1

Sanitary and Phytosanitary Activities of Codex Alimentarius Commission and Executive Committee

The Codex Alimentarius Commission will hold its Thirtieth Session July 2–7, 2007, in Rome, Italy. At that time, it will consider procedural matters, and the standards, codes of practice, and related matters brought to its attention by the general subject committees, commodity committees, *ad hoc* Task Forces and member delegations. It will also consider options to implement recommendations from the review of Codex committee structure and mandates of Codex committees and task forces, as well as budgetary and strategic planning issues. At this Session, the Commission will elect a Chair and three Vice Chairs.

Prior to the Commission meeting, the Executive Committee will have met at its Fifty-ninth Session on June 26–30, 2007. It is composed of the chairperson, vice-chairpersons, and seven members elected from the Commission, one from each of the following geographic regions: Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America, and South-West Pacific. Additionally, regional coordinators from the six regional committees serve as members of the Executive Committee. It will consider the Codex Strategic Plan 2008–1013; review the Codex committee structure and mandate of Codex committees and task forces; review matters arising from reports of Codex Committees, proposals for new work, and standards management issues; and review the Trust Fund for the Participation of Developing Countries and Countries in Transition in the Work of the Codex Alimentarius.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs in Foods determines priorities for the consideration of residues of veterinary drugs in foods

and recommends Maximum Residue Limits (MRLs) for veterinary drugs. A veterinary drug is defined as any substance applied or administered to a food producing animal, such as meat or dairy animals, poultry, fish or bees, for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

A Codex Maximum Limit for Veterinary Drugs (MRLVD) is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is adopted by the Codex Alimentarius Commission to be permitted or recognized as acceptable in or on a food. An MRLVD is based on the Acceptable Daily Intake (ADI) and indicates the amount of residue in food that is considered to be without appreciable toxicological hazard. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical analytical methods are available.

Acceptable Daily Intake (ADI): An estimate by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, that can be ingested daily over a lifetime without appreciable health risk (standard man = 60 kg).

The Committee will meet in the United States on September 3–7, 2007. The Committee will continue work on the following:

The Committee worked on:

- Draft MRLs for Flumequine, Melengestrol acetate, Colistin, Ractopamine, Erithromycin, Triclabendazole.
- Proposed Draft Guidelines for the Design and Implementation of National Regulatory Food Safety Assurance Programmes Associated with the Use of Veterinary Drugs in Food Producing Animals.
- Risk Analysis Principles Applied by the Codex Committee on Residues of Veterinary Drugs in Foods.
- Risk Assessment Policy for the Setting of MRLs in Food.
- Priority List of Veterinary Drugs Requiring Evaluation or Reevaluation.
- Compendium of Methods of Analysis Identified as Suitable to Support Codex MRLs.
- Discussion Paper on Risk Management Topics and Options for the CCRVDF.
- Report of the Working Group on Residues of Veterinary Drugs without ADI/MRL.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Contaminants in Foods

The Codex Committee on Contaminants in Foods (CCCF) was established by the 29th Session of the Commission when it decided to split the former Codex Committee on Additives and Contaminants into two committees. The CCCF establishes or endorses permitted maximum levels for contaminants and naturally occurring toxicants in food and feed, prepares priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA), considers methods of analysis and sampling for the determination of contaminants and naturally occurring toxicants in food and feed, considers and elaborates standards or codes of practice for related subjects, and considers other matters assigned to it by the Commission in relation to contaminants and naturally occurring toxicants in food and feed. The Committee held its first session in Beijing, China, on April 16–20, 2007. The relevant document is ALINORM 07/30/41. The following items will be considered by the 30th Session of the Commission on July 2–7, 2007.

To be considered at Step 8:

- Proposed Draft Maximum Levels for Tin in Canned Foods (other than beverages) and in Canned Beverages.

To be considered at Step 5/8:

- Proposed Draft Code of Practice for the Prevention and Control of Ochratoxin A Contamination in Wine.

To be considered at Step 5:

- Proposed Draft Maximum Level for 3–MCPD in Liquid Condiments Containing Acid-HVP (excluding naturally fermented soya sauce).
- Proposed Draft Code of Practice for the Reduction of Chloropropanols During the Production of Acid-Hydrolysed Vegetable Proteins (HVPs) and Products That Contain Acid-HVPs.

To be considered for New Work:

- Elaboration of a Code of Practice on the Prevention and Reduction of Aflatoxin Contamination in Dried Figs.

The Committee is continuing to work on:

- Consideration of the Codex General Standard for Contaminants and Toxins in Foods.
- Proposed Draft Levels for Total Aflatoxins in Almonds, Hazelnuts and Pistachios ''For further processing'' and ''Ready-to-eat''.
- Proposed Draft Sampling Plan for Aflatoxin Contamination in Almonds, Brazil Nuts, Hazelnuts and Pistachios.
- Discussion Paper on Maximum Levels for Total Aflatoxins in ''Ready-to-eat'' Almonds, Hazelnuts and Pistachios.
- Discussion Paper on Aflatoxin Contamination in Brazil Nuts.
- Discussion Paper on Ochratoxin A in Coffee.
- Discussion Paper on Ochratoxin A in Cocoa.
- Proposed Draft Code of Practice for the Reduction of Acrylamide in Food.
- Proposed Draft Code of Practice for the Reduction of Contamination of Foods with PAH from Smoking and Direct Drying.

General Issues:

- Priority List of Contaminants and Naturally Occurring Toxicants Proposed for Evaluation by JECFA.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Additives

The Codex Committee on Food Additives was re-established by the 29th Session of the Commission, which split the former Codex Committee on Additives and Contaminants into two committees. The Committee is to establish or endorse permitted maximum levels for individual food additives, prepare a priority list of food additives for risk assessment by JECFA, assign functional classes to individual food additives, recommend specifications of identity and purity for food additives for adoption by the Commission, consider methods of analysis for the determination of additives in food, and to consider and elaborate standard codes for related subjects such as the labeling of food additives when sold as such. The Committee met in Beijing, China, on April 24–28, 2007. The relevant document is ALINORM 7/30/12. The following items will be considered by the 30th Session of the Commission in July 2007.

The Committee worked on:

- Revision to the Procedural Manual: Terms of Reference.
- Revision to the Procedural Manual: Risk Analysis Principles Applied by the Codex Committee on Food Additives and Contaminants.
- Revision to the Procedural Manual: Format for Codex Commodity Standards.
- Revision to the Procedural Manual: Relations between Commodity

Committees and General Committees: Food Additives.

• Endorsement and/or Revision of Maximum Levels for Food Additives and Processing Aids in Codex Standards.

• Inclusion of Food Additive Provisions of Commodity Standards into the Codex General Standard for Food Additives.

• General Standard for Food Additives: Draft Food Additive Provisions (in Tables 1, 2 and 3).

• Revisions to the General Standard for Food Additives' Food Category System: Project Document.

• Guidelines for the Use of Flavourings.

• Inventory of Processing Aids.

• International Numbering System and Harmonization of Terms Used by Codex and JECFA.

• Revision of the Class Names and International Numbering System for Food Additives.

• Specifications for the Identity and Purity of Food Additives.

• Priority List of Food Additives Proposed for Evaluation by JECFA.

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues recommends to the Codex Alimentarius Commission establishment of maximum limits for pesticide residues for specific food items or in groups of food. A Codex Maximum Residue Limit for Pesticide (MRLP) is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. Foods derived from commodities that comply with the respective MRLPs are intended to be toxicologically acceptable, that is, consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI*, should indicate that foods complying with Codex MRLPs are safe for human consumption.

Codex MRLPs are primarily intended to apply in international trade and are derived from reviews conducted by the Joint Meeting on Pesticide Residues (JMPR).

(a) Review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices (GAP). Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices.

(b) Toxicological assessments of the pesticide and its residue.

The following items will be considered by the Commission at its 30th Session in July 2007. The relevant document is ALINORM 07/30/24.

To be considered at Step 8:

• Draft and Draft Revised Maximum Residue Limits.

To be considered at Step 5/8:

• Proposed Draft Maximum Residue Limits.

To be considered at Step 5:

• Proposed Draft and Proposed Draft Revised Maximum Residue Limits.

To be considered for Revocation:

• Codex CLX–Ds.

To be considered for New Work:

• Priority List of Pesticides for review by JMPR.

The committee is continuing work on:

• Draft and Proposed Draft MRLs.

• Revision of the List of Recommended Methods on Analysis for Pesticide Residues.

• Revision of the Codex Priority List of Pesticides for review by JMPR.

• Discussion paper on the how Codex MRLs are used at the national level.

• Discussion paper on the establishment of MRLs for Processed or Ready-to-Eat Foods.

• Extended Revision of the Codex Classification of foods and animal feeds.

*Acceptable Daily Intake (ADI) of a chemical is the daily intake which, during an entire lifetime, appears to be without appreciable risk to the health of the consumer on the basis of all the known facts at the time of the evaluation of the chemical by the Joint FAO/WHO Meeting on Pesticide Residues. It is expressed in milligrams of the chemical per kilogram of body weight.

Responsible Agencies: EPA; USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling:

(a) Defines the criteria appropriate to Codex Methods of Analysis and Sampling;

(b) Serves as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories;

(c) Specifies, on the basis of final recommendations submitted to it by the other bodies referred to in (b) above, Reference Methods of Analysis and Sampling appropriate to Codex Standards which are generally applicable to a number of foods;

(d) Considers, amends, if necessary, and endorses, as appropriate, methods of analysis and sampling proposed by Codex (Commodity) Committees, except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives do not fall within the terms of reference of this Committee;

(e) Elaborates sampling plans and procedures, as may be required;

(f) Considers specific sampling and analysis problems submitted to it by the Commission or any of its Committees; and

(g) Defines procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The 28th Session of the Committee met in Budapest, Hungary, on March 5–9, 2007. The relevant document is ALINORM 07/30/23. For endorsement at the 30th Commission in 2007:

• Proposed Amendment to the Principles for the Establishment of Codex Sampling Procedures (Procedural Manual).

• Endorsement of methods of analysis in Draft Standards and existing standards.

• Reference to IUPA/ISO/AOAC Protocols (amendment to references).

The Committee will continue to work on:

• Draft Guidelines for Evaluating Acceptable Methods of Analysis.

• Draft Guidelines for Settling of Disputes on Analytical (Test) Results.

• Proposed Draft Guideline on *Analytical Terminology.*

• Conversion of methods for trace elements into criteria.

• Criteria for methods of analysis for foods derived from biotechnology.

• Guidance on measurement uncertainty and uncertainty of sampling.

• Discussion paper on role and terms of reference of CCMAS.

• Discussion paper on the reliability of analytical data.

Responsible Agencies: HHS/FDA; USDA/GIPSA.

U.S. Participation: Yes.

Codex Committee on Food Import and Export Inspection and Certification Systems

The Codex Committee on Food Import and Export Inspection and Certification

Systems is charged with developing principles and guidelines for food import and export inspection and certification systems to protect consumers and to facilitate trade. Additionally, the Committee develops principles and guidelines for the application of measures by competent authorities to provide assurance that foods comply with essential requirements, especially statutory health requirements. This encompasses work on equivalence of food inspection systems, including equivalence agreements, processes and procedures to ensure that sanitary measures are implemented; guidelines on food import control systems; and guidelines on food product certification and information exchange. The development of guidelines for the appropriate utilization of quality assurance systems to ensure that foodstuffs conform to requirements and to facilitate trade also are included in the Committee's terms of reference. The Committee met November 6–10, 2006. The reference document is ALINORM 07/30/30. The following will be considered for adoption by the Commission at its 30th Session in July 2007.

To be considered at step 5/8:

• Proposed Draft Guidelines for Generic Official Certificate Formats and the Design, Production, Issuance and use of Certificates.

The committee is continuing work on:

• Proposed Draft Appendix to the *Guidelines on the Judgment of Equivalence of Sanitary Measures Associated with Food Inspection and Certification.*

• Discussion paper on the reply to the question raised by the 22nd Session of the Codex Committee on General Principles regarding the revision of the Codex Code of Ethics for International Trade of Foods.

• Discussion Paper on the consistency of the draft *Model Export Certificate for Milk and Milk Products* with the proposed draft *Guidelines for Generic Official Certificate Formats and the Design, Production, Issuance and Use of Certificates.*

• Discussion Paper identifying areas for guidance for national food inspection systems.

• Discussion Paper on the development of *Guidelines for the Conduct of Foreign Audit Team Inspections.*

• Discussion Paper on the need of guidance on traceability/product tracing.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on General Principles

The Codex Committee on General Principles deals with procedure and general matters as are referred to it by the Codex Alimentarius Commission. The 24th Session was held on April 2–6, 2006, in Paris, France. The relevant document is ALINORM 07/30/33. Matters to be considered for adoption by the 29th Commission in July 2007:

• Proposed Draft Working Principles for Risk Analysis for Food Safety (Guidance to National Governments) for adoption at Step 5/8.

• Amendments to the Codex *Procedural Manual* clarifying the roles of Members elected to the Codex Executive Committee on a geographic basis and Regional Coordinators as members of the Executive Committee.

• Amendments to the Codex *Procedural Manual* dealing with the revision and amendment of Codex standards.

• Amendments to the *General Principles of the Codex Alimentarius.*

• Amendments to the *Principles Concerning the Participation of International Non-Governmental Organizations in the Work of Codex.*

• Risk Analysis Principles Applied by the Committee on Pesticide Residues for inclusion in the *Procedural Manual.*

• Risk Management Methodologies, including Risk Assessment Policies in the Codex Committee on Residues of Veterinary Drugs in Foods for inclusion in the Procedural Manual.

• Amendment to the *Principles for the Establishment or Selection of Codex Sampling Procedures (Codex Procedural Manual).*

• Procedure for Consideration of the Entry and Review of Food Additive Provisions in the General Standard for Food Additives for inclusion in the *Procedural Manual.*

The Committee continued work on:

• Code of Ethics for International Trade in Food (returned to Step 3).

• Consideration of the structure, content and presentation of the *Procedural Manual.*

• New definitions of risk analysis terms related to food safety.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Labelling

The Codex Committee on Food Labelling is responsible for drafting provisions on labelling issues assigned by the Codex Alimentarius Commission. The reference document is ALINORM 07/30/22. The Committee held its 35th Session in Ottawa, Canada, on April 30-May 4, 2007. It considered the following items:

• Matters Referred by FAO and WHO: Draft Action Plan for Implementation of the Global Strategy on Diet, Physical Activity and Health.

• Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods Proposed Revised Sections: Annex 2—Table 3 (Other substances); Table 1 (Natural Sodium Nitrate).

• Draft Amendment to the General Standard (Draft Recommendations for the Labelling of Foods obtained through certain techniques of GM/GE): Definitions.

• Report of the Working Group on Labelling of Foods and Food Ingredients Obtained through Certain Techniques of Genetic Modification/Genetic Engineering.

• Proposed Draft Amendment to the General Standard for the Labelling of Prepackaged Foods: Quantitative Declaration of Ingredients.

• Proposed Draft Amendment to the Guidelines for Organically Produced Foods (Addition of Ethylene).

• Proposed Draft Definition of Advertising in relation to nutrition and health claims.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Hygiene

The Codex Committee on Food Hygiene has four primary responsibilities. First, to draft basic provisions on food hygiene applicable to all food. These provisions normally take the form of Codes of Hygienic Practice for a specific commodity (e.g. bottled water) or group of commodities (e.g., milk and milk products). Second, to suggest and prioritize areas where there is a need for microbiological risk assessment at the international level and to consider microbiological risk management matters in relation to food hygiene and in relation to the risk assessment activities of FAO and WHO. Third, to consider, amend if necessary, and endorse food hygiene provisions that are incorporated into specific Codex commodity standards by the Codex commodity committees. Fourth, to provide such other general guidance to the Commission on matters relating to food hygiene as may be necessary. The 38th Session of the Committee met in Houston, TX, on December 4–8, 2006. The relevant document is ALNORM 07/30/13. The following items will be considered by the Commission at its 30th Session in July 2007.

To be considered at Step 8:

• Draft Guidelines on the Application of the General Principles of Food

Hygiene to the Control of *Listeria monocytogenes* in Ready-to-Eat Foods.

• Draft Code of Hygienic Practice for Eggs and Egg Products.

• Draft Principles and Guidelines for the Conduct of Microbiological Risk Management.

New Work:

• Proposed Draft Guidelines for the Control of *Campylobacter* and *Salmonella* spp. in Broiler (Young Bird) Chicken Meat.

• CCHF Risk Analysis Policies.

The committee will continue to work on:

• Proposed Draft Guidelines for Validation of Food Hygienic Control Measures.

• Proposed Draft Code of Hygienic Practice for Powdered Formulae for Infants and Children.

• Endorsement of Hygiene Provisions in Codex Standards and Codes of Practice.

• Annex: Application of Food Safety Metrics in Risk Management Decision Making.

• Annex: Application of Food Safety Metrics in Risk Management Decision Making—Pasteurized Liquid Whole Egg.

• Microbiological Criteria for *Listeria monocytogenes* in Ready-to-Eat Foods.

Responsible Agencies: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Fresh Fruits and Vegetables

The Codex Committee on Fresh Fruits and Vegetables is responsible for elaborating world-wide standards and codes of practice for fresh fruits and vegetables. The Committee met in Mexico City, Mexico, on September 25–29, 2006. The relevant document is ALINORM 07/30/35. The following items will be considered by the Commission at its 30th Session in July 2007.

To be considered at Step 8:

• Draft Codex Standard for Table Grapes including proposed draft Sections 2.1.2—Maturity Requirements and 3.1—Minimum Bunch Weight (at Step 5/8).

To be considered at Step 5:

• Proposed draft Codex Standard for Bitter Cassava.

• Proposed draft Guidelines for the Inspection and Certification of Fresh Fruits and Vegetables for Conformity to Quality Standards.

The Committee continues to work on:

• Draft Codex Standard for Tomatoes—Section 3 Provisions concerning sizing.

• Proposed Draft Standard for Apples.

• Standard Layout for Codex Standards for Fresh Fruits and Vegetables.

• Priority List for the Standardization of Fresh Fruits and Vegetables.

Responsible Agencies: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) is responsible for studying nutritional issues referred by the Codex Alimentarius Commission. The Committee also drafts general provisions, as appropriate, on nutritional aspects of all foods and develops standards, guidelines, or related texts for foods for special dietary uses. The Committee met October 30–November 3, 2006. The relevant document is ALINORM 07/30/26. The following items will be considered by the 30th Session of the Commission in July 2007.

To be adopted at Step 8:

• Draft Revised Codex Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants.

To be adopted at Step 5:

• Draft Revised Advisory List of Nutrient Compounds for Use in Foods for Special Dietary Uses Intended for Infants and Young Children.

New Work:

• Application of Risk Analysis to the Work of the CCNFSDU.

The Committee continues work on:

• Draft Revised Standard for Gluten-Free Foods.

• Guidelines for Use of Nutrition Claims—Draft Table of Conditions for Nutrient Content Claims (Part B containing Provisions on Dietary Fibre).

• Proposed Draft Recommendations on the Scientific Basis of Health Claims.

• Discussion Paper on Proposals for Additional or Revised Nutrient Reference Values (NRVs).

Responsible Agencies: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Fish and Fishery Products

The Fish and Fishery Products Committee is responsible for elaborating standards for fresh, frozen and otherwise processed fish, crustaceans and molluscs. The Committee met on September 18–22, 2006. The relevant document is ALINORM 07/30/18. The following items will be considered by the Commission at its 30th Session in July 2007.

To be considered at Step 5/8:

• Proposed Draft Code of Practice for Fish and Fishery Products (Quick Frozen Coated Products, Salted Fish).

To be considered at Step 5:

• Proposed Draft Amendment to the Standard for Canned Sardines and Sardine-Type Products.

• Proposed Draft Code of Practice for Fish and Fishery Products (Live and Raw Bivalve Molluscs, Lobsters and Crabs).

• Proposed Draft Standard for Live and Raw Bivalve Molluscs.

New work:

• Revision of the Procedure for the Inclusion of Additional Species in Standards for Fish and Fishery Products.

• Proposed Draft Standard for Fish Sauce.

• Amendment to the Standard for Quick Frozen Fish Sticks (Fish Fingers), Fish Portions and Fish Fillets—Breaded or in Batter (Nitrogen Factors).

• Proposed Draft Standard for Fresh/Live and Frozen Abalone.

The Committee continues work on the following:

• Proposed Draft Code of Practice for fish and fishery products (other sections).

• Draft Standard for Sturgeon Caviar.

• Proposed Draft Standard for Smoked Fish.

• Proposed Draft Standard for Quick Frozen Scallop Adductor Muscle Meat.

• Proposed Draft Code of Practice for the Processing of Scallop Meat.

Responsible Agencies: HHS/FDA; USDC/NOAA/NMFS.

U.S. Participation: Yes.

Codex Committee on Milk and Milk Products

The Codex Committee on Milk and Milk Products is responsible for establishing international codes and standards for milk and milk products. The Committee will hold its 8th Session in 2008 in New Zealand. The Committee is working on:

• Proposed Draft Model Export Certificate for Milk and Milk Products.

• Proposed Draft Amendment to the Codex Standard for Fermented Milks pertaining to Fermented Milk Drinks.

• Proposed Draft Standard for Processed Cheese.

• Amendment to the List of Additives of the Codex Standard for Creams and Prepared Creams.

• Food Additive Listings for the Codex Standard for Fermented Milks (flavoured fermented milks).

• Methods of Analysis and Sampling for Milk and Milk Products Standards.

• Discussion paper on sampling plans for milk products in presence of significant measurement error.

Responsible Agencies: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Fats and Oils

The Codex Committee on Fats and Oils is responsible for elaborating standards for fats and oils of animal, vegetable, and marine origin. The Committee met February 19–23, 2007. The relevant document is ALINORM 07/30/17. To be considered by the Commission at Step 8:

• Draft Standard for Fat Spreads and Blended Spreads.

New Work:

• Proposed Draft Amendments to the Standard for Named Vegetable Oils: inclusion of palm kernel olein and palm kernel stearin.

The Committee continues work on:

• Draft List of Acceptable Previous Cargoes.

• Proposed Draft List of Acceptable Previous Cargoes.

• Proposed Draft Amendments to the Standard for Named Vegetable Oils: Rice Bran Oil.

• Proposed Draft Amendments to the Standard for Named Vegetable Oils.

• Unbleached palm oil: total carotenoids.

• Proposed Draft Amendment to the Standard for Olive Oils and Olive Pomace Oils: linolenic acid.

Responsible Agencies: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Processed Fruits and Vegetables

The Codex Committee on Processed Fruits and Vegetables is responsible for elaborating standards for Processed Fruits and Vegetables. The Committee met on October 16–21, 2006. The relevant document is ALINORM 07/30/27. The following items will be considered by the Commission at its 30th Session in July 2007.

To be considered at Step 8:

• Draft Codex Standard for Pickled Fruits and Vegetables.

• Draft Codex Standard for Processed Tomato Concentrates.

• Draft Codex Standard for Preserved (Canned) Tomatoes.

• Draft Codex Standards for Certain Canned Citrus Fruits.

To be considered at Step 5:

• Proposed Draft Codex Standard for Jams, Jellies, and Marmalades.

• Proposed Draft Codex Standard for Certain Canned Vegetables.

The Committee continues to work on:

• Annexes to the Proposed Draft Standard for Canned Vegetables and the Guidelines for Packing Media for Canned Vegetables.

• Standard Layout for Processed Fruits and Vegetables, Methods of Analysis for Processed Fruits and Vegetables.

• Priority List for the Standardization of Processed Fruits and Vegetables.

Responsible Agencies: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Certain Codex Commodity Committees

Several Codex Alimentarius Commodity Committees have adjourned *sine die.* The following Committees fall into this category:

• *Cocoa Products and Chocolate.*

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

• *Meat Hygiene.*

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

• *Natural Mineral Water.*

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

• *Sugars.*

Responsible Agencies: USDA/ARS; HHS/FDA.

U.S. Participation: Yes.

• *Vegetable Proteins.*

Responsible Agencies: USDA/ARS; HHS/FDA.

U.S. Participation: Yes.

• *Cereals, Pulses and Legumes.*

Responsible Agencies: HHS/FDA; USDA/GIPSA.

U.S. Participation: Yes.

Ad hoc Intergovernmental Task Force on Antimicrobial Resistance.

The *ad hoc* Intergovernmental Task Force on Antimicrobial Resistance was created by the 29th Session of the Commission. The Task Force, hosted by the Republic of Korea, would have a time-frame of four sessions starting with its first meeting scheduled for October 2007. Its objective is to develop science-based guidance to assess the risks to human health associated with the presence in food and feed, including aquaculture, of antimicrobial resistant microorganisms and antimicrobial resistance genes and to develop appropriate risk management advice based on that assessment to reduce such risk. A Circular Letter was issued requesting proposals for new work for the Committee to discuss at its first session.

Ad Hoc Intergovernmental Task Force on Foods Derived from Biotechnology

The Commission established this task force to develop standards, guidelines, or recommendations, as appropriate, for foods derived from biotechnology or traits introduced into foods by biotechnology, on the basis of scientific evidence, risk analysis and having regard, where appropriate, to other legitimate factors relevant to the health of consumers and the promotion of fair trade practices. The Task Force, established by the 23rd Session of the Codex Alimentarius Commission for a four year period of time, completed its work, but was re-established at the 27th Session of the Commission. The relevant document is ALINORM 07/30/34. The Committee will hold its 7th Session in Japan on November 26–30, 2007. The Task Force will discuss the following items:

• Proposed Draft Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Animals.

• Proposed Draft Annex to the Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants: Food Safety Assessment of Foods Derived from Recombinant DNA-Plants Modified for Nutritional or Health Benefits.

• Proposed Draft Annex to the Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants on Low-Level Presence of Recombinant-DNA Plant Material.

Responsible Agencies: HHS/FDA; USDA/APHIS.

U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on the Processing and Handling of Quick Frozen Foods

The *Ad hoc* Intergovernmental Task Force on the Processing and Handling of Quick Frozen Foods was created by the 29th Session of the Commission to resolve all outstanding issues including the quality and safety provisions of the *Code of Practice for the Processing and Handling of Quick Frozen Foods.* The Task Force, hosted by Thailand, was given two years to finalize the Code. Thailand and the United States prepared a Circular Letter requesting comments on a revised Code. The resulting document prepared from these comments will serve as the basis for discussion at the Session of the Task Force that will take place in early 2008.

FAO/WHO Regional Coordinating Committees

The Codex Alimentarius Commission is made up of an Executive Committee, as well as approximately 30 subsidiary bodies. Included in these subsidiary bodies are coordinating committees for groups of countries located in proximity to each other who share common concerns. There are currently six Regional Coordinating Committees:

• Coordinating Committee for Africa.

• Coordinating Committee for Asia.

• Coordinating Committee for Europe.

• Coordinating Committee for Latin America and the Caribbean.

• Coordinating Committee for the Near East.

• Coordinating Committee for North America and the South-West Pacific.

The United States participates as an active member of the Coordinating Committee for North America and the South-West Pacific, and is informed of the other coordinating committees through meeting documents, final reports, and representation at meetings. Each regional committee:

• Defines the problems and needs of the region concerning food standards and food control;

• Promotes within the committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulates the strengthening of food control infrastructures;

• Recommends to the Commission the development of world-wide standards for products of interest to the region, including products considered by the committee to have an international market potential in the future; and

• Serves a general coordinating role for the region and performs such other functions as may be entrusted to it by the Commission.

Codex Coordinating Committee for North America and the South-West Pacific

The Coordinating Committee is responsible for defining problems and needs concerning food standards and food control of all Codex member countries of the region. Items on the agenda for the next meeting may include:

• Draft new Strategic Plan for NASWP.

• Report of the Electronic Working Group on Objective 6 of the Strategic Plan for CCNASWP.

• Discussion Paper on the Development of a Standard for Kava.

• Discussion Paper on the Development of a Standard for Nonu (Noni) Products.

• Progress Report: Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards.

• Evaluation of the effectiveness of the Trust Fund for the participation of developing countries in Codex.

• Nomination of regional coordinator.

Responsible agency: USDA/FSIS.

U.S. Participation: Yes.

Attachment 2

U.S. Codex Alimentarius Officials Codex Committee Chairpersons

Codex Committee on Food Hygiene

Dr. Karen Hulebak, Chief Scientist, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 3130, South Building, Washington, DC 20250–3700, Phone: (202) 720–5735, Fax: (202) 720–2980, E-mail: *karen.hulebak@fsis.usda.gov.*

Codex Committee on Processed Fruits and Vegetables

Mr. Terry Bane, Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, AMS, Room 0709, South Building, Stop 9247, 1400 Independence Avenue, SW., Washington, DC 20250–0247, Phone: (202) 720–4693, Fax: (202) 690–1087, E-mail: *terry.bane@usda.gov.*

Codex Committee on Residues of Veterinary Drugs in Foods

Dr. Stephen F. Sundlof, Director, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place (HFV–1), Rockville, MD 20855, Phone: (301) 827–2950, Fax: (301) 827–8401, E-mail: *ssundlof@cvm.fda.gov.*

Codex Committee on Cereals, Pulses and Legumes (adjourned sine die)

Mr. Steven N. Tanner, Director, Technical Services Division, Grain Inspection, Packers & Stockyards Administration, U.S. Department of Agriculture, 10383 N. Executive Hills Boulevard, Kansas City, MO 64153–1394, Phone: (816) 891–0401, Fax: (816) 891–0478, E-mail: *Stephen.n.tanner@gipsa.usda.gov.*

Listing of U.S. Delegates and Alternates Worldwide General Subject Codex Committees

Codex Committee on Residues of Veterinary Drugs in Foods (Host Government—United States)

U.S. Delegate

Steven D. Vaughn, D.V.M., Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine, FDA, 7500 Standish Place, Rockville, MD 20855, Phone: (301) 827–1796, Fax: (301) 594–2297, E-mail: *SVaughn@cvm.fda.gov.*

Alternate Delegate

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Codex Committee on Food Additives (Host Government—China)

U.S. Delegate

Dennis M. Keefe, PhD, Office of Premarket Approval, Center for Food Safety and Applied Nutrition, FDA (HFS–200), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (202) 418–3113, Fax: (202) 418–3131, E-mail: *dennis.keefe@fda.hhs.gov.*

Alternate Delegate

Susan E. Carberry, PhD, Supervisory Chemist, Division of Petition Review, Office of Food Additive Safety (HFS–265), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (301) 436–1269, Fax: (301) 436–2972, E-mail: *Susan.Carberry@fda.hhs.gov.*

Codex Committee on Contaminants in Foods (Host Government—the Netherlands)

U.S. Delegate

Nega Beru, PhD, Director, Office of Plant and Dairy Foods, (HFS–300), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (301) 436–1700, Fax: (301) 436–2651, E-mail: *Nega.Beru@fda.hhs.gov.*

Alternate Delegate

Kerry Dearfield, PhD, Scientific Advisor for Risk Assessment, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 380, Aerospace Center, Washington, DC 20250, Phone: (202) 690–6451, Fax: (202) 690–6337, E-mail: *Kerry.Dearfield@fsis.usda.gov.*

Codex Committee on Pesticide Residues (Host Government—China)

U.S. Delegate

Lois Rossi, Director of Registration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Phone: (703) 305–5035, Fax: (703) 305–5147, E-mail: *rossi.lois@epa.gov.*

Alternate Delegate

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Codex Committee on Methods of Analysis and Sampling (Host Government—Hungary)

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Codex Committee on General Principles (Host Government—France)

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Codex Committee on Food Labeling (Host Government—Canada)

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Codex Committee on Nutrition and Food for Special Dietary Uses (Host Government—Germany)

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Worldwide Commodity Codex Committees Codex Committee on Fresh Fruits and Vegetables (Host Government—Mexico)

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Codex Committee on Fish and Fishery Products (Host Government—Norway)

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Codex Committee on Cereals, Pulses and Legumes (Host Government—United States)

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Codex Committee on Milk and Milk Products (Host Government—New Zealand)

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Codex Committee on Cocoa Products and Chocolate (Host Government—Switzerland)

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Codex Committee on Sugars (Host Government—United Kingdom)

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Codex Committee on Processed Fruits and Vegetables (Host Government—United States)

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Codex Committee on Vegetable Proteins (Host Government—Canada)

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Codex Committee on Natural Mineral Waters (Host Government—Switzerland)

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Ad Hoc Intergovernmental Task Forces

Ad Hoc Intergovernmental Task Force on Foods Derived From Modern Biotechnology (Host Government—Japan)

U.S. Delegate

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Ad Hoc Intergovernmental Task Force on Antimicrobial Resistance (Host Government—Republic of Korea)

Delegate

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Ad Hoc Intergovernmental Task Force on Quick Frozen Foods (Host Government—Thailand)

Delegate

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There are six regional coordinating committees:

Coordinating Committee for Africa.
Coordinating Committee for Asia.
Coordinating Committee for Europe.
Coordinating Committee for Latin America and the Caribbean.
Coordinating Committee for the Near East.
Coordinating Committee for North America and the South-West Pacific.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–820]

Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that coated free sheet paper (CFS) from Indonesia is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to requests from interested parties, we are postponing for 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

EFFECTIVE DATE: June 4, 2007.

FOR FURTHER INFORMATION CONTACT: Brian Smith, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1766.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2006, the Department initiated an antidumping duty investigation of CFS from Indonesia. **SEE INITIATION OF ANTIDUMPING DUTY INVESTIGATIONS: COATED FREE SHEET PAPER FROM INDONESIA, THE PEOPLE'S REPUBLIC OF CHINA, AND THE REPUBLIC OF KOREA**, 71 FR 68537 (Nov. 27, 2006) (Initiation Notice). The petitioner in this investigation is NewPage Corporation.

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Initiation Notice*, 71 FR at 68538; *see also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19,1997). On December 18, 2006, the two largest known producers/exporters of CFS from Indonesia, PT. Pabrik Kertas Tjiwi Kimia Tbk. (TK) and PT. Pindo Deli Pulp and Paper Mills (PD), submitted timely comments, in which they requested that the Department exclude cast–coated CFS from the scope of the investigation.

On December 22, 2006, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of CFS from Indonesia, the People's Republic of China (PRC), and the Republic of Korea (Korea) are materially injuring the U.S. industry and the ITC notified the Department of its findings. *See Coated Free Sheet Paper from China, Indonesia, and Korea Investigation Nos. 701–TA–444–446 and 731–TA–1107–1109 (Preliminary)*, 71 FR 78464 (Dec. 29, 2006).

Also on December 22, 2006, we selected PD and TK as the mandatory respondents in this proceeding. See Memorandum from James Maeder, Office Director, to Stephen J. Claeys, Deputy Assistant Secretary, entitled: ''Antidumping Duty Investigation of Coated Free Sheet Paper from Indonesia - Selection of Respondents,'' dated December 22, 2006. We subsequently issued the antidumping questionnaire to these companies on December 22, 2006.

On January 12, 2007, the Department requested that PD and TK file their December 18, 2006, scope comments on the administrative record of the companion LTFV and countervailing duty (CVD) investigations of CFS from the PRC and Korea. *See* Memorandum from Alice Gibbons to The File, dated January 12, 2007. PD and TK did so on the same date.

On January 17, 2007, the petitioner made a country–wide allegation that sales of CFS in the home market were made below the cost of production (COP) during the period of investigation (POI).

On January 19, 2007, the petitioner objected to the respondents' request to exclude cast–coated paper from the scope of the investigation. For further discussion, see the ''Scope Comments'' section of this notice, below.

On January 26, 2007, PD and TK submitted a consolidated response to section A of the questionnaire (*i.e.*, the section involving general information). In this submission, PD and TK indicated that, not only are they affiliated with each other, but they are also affiliated with a third company that produces CFS in Indonesia, PT. Indah Kiat Pulp and Paper Tbk (IK). Based on an analysis of this information, as well as additional information obtained during the course of this proceeding (*see* below), we find that it is appropriate to treat these three companies as a single entity, hereinafter referred to as PD/TK. Nonetheless, we did not require PD/TK to report sales and cost data related to IK's POI sales of CFS because: 1) these sales were made only in the home market; 2) the quantity of the sales was insignificant; and 3) these sales would not be the most similar matches to products sold in the United States by PD or TK. For further discussion, see the ''Collapsing IK, PD, and TK'' section of this notice, below.

On February 2, 2007, the Department initiated a country–wide sales–below-cost investigation to determine whether PD/TK's sales of CFS in the home market were made at prices below the COP during the POI. *See* the Memorandum from The Team to James Maeder, Office Director, Office 2, Office of AD/CVD Operations, entitled, ''The Petitioner's Allegation of Country–Wide Sales Below the Cost of Production'' (*Below–Cost Allegation*), dated February 2, 2007. On February 5, 2007, the Department instructed PD/TK to respond to section D of the questionnaire with respect to its home market sales of CFS in order to acquire the necessary information to determine whether such sales were made at prices below the companies' COP.

On February 16, 2007, the Department requested that PD/TK provide additional information with respect to its affiliation with IK.

On February 20 and 23, 2007, respectively, PD/TK responded to sections B and C of the questionnaire (*i.e.*, the sections involving sales to the home and U.S. markets), as well as the Department's February 16, 2007, supplemental questionnaire.

On March 2, 2007, the petitioner made a timely request pursuant to 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination in this investigation.

On March 19, 2007, pursuant to section 733(c)(1)(A) of the Act, the Department postponed the preliminary determination until no later than May 29, 2007. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations of Coated Free Sheet Paper from the People's Republic of China, Indonesia, and the Republic of Korea*, 72 FR 12757 (Mar. 19, 2007).

From March through May 2007, the Department requested additional information from PD/TK regarding its responses to sections A through D of the questionnaire. PD/TK provided this information during the same months.

On May 15, 2007, PD/TK requested that in the event of an affirmative preliminary determination in this investigation, the Department: 1) postpone its final determination by 60 days in accordance with 19 CFR 351.210(2)(ii) and 735(a)(2)(A) of the Act; and 2) extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. For further discussion, see the ''Postponement of Final Determination and Extension of Provisional Measures'' section of this notice, below.

Period of Investigation

The POI is October 1, 2005, to September 30, 2006. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

Scope of Investigation

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not–more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface–colored, surface–decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double–side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms ''wood free'' or ''art'' paper may also be used to describe the imported product.

Excluded from the scope are: (1) coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On December 18, 2006, PD/TK submitted timely scope comments in this proceeding, as well as in the companion CVD investigation on CFS from Indonesia. On January 12, 2007, the Department requested that PD/TK also file these comments on the administrative records of the companion LTFV and CVD investigations of CFS from the PRC and Korea. *See* Memorandum from Alice Gibbons to The File, dated January 12, 2007. PD/TK did so on the same date, and at this time it also re–filed its comments on the instant administrative record. On January 19, 2007, the petitioner responded to these comments.

In its comments, PD/TK requested that the Department exclude from the scope of its investigations cast–coated free sheet paper. The Department analyzed this request, together with the comments from the petitioner, and determined that it is not appropriate to exclude cast–coated free sheet paper from the scope of these investigations. The Department's analysis is set forth in a memorandum dated March 22, 2007. For further discussion, see the Memorandum from Barbara Tillman, Office Director, Office 6, Office of AD/CVD Operations, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled, ''Request to Exclude Cast–Coated Free Sheet Paper from the Antidumping Duty and Countervailing Duty Investigations on Coated Free Sheet Paper.''

Collapsing of IK, PD, and TK

On January 26, 2007, PD and TK submitted a consolidated questionnaire response, based on a claim that they are producers of subject merchandise in Indonesia that are affiliated via common ownership and membership in the companies' Boards of Directors. In this response, PD and TK claimed that they are also affiliated with an additional producer of CFS in Indonesia, IK, by reason of a common parent company, as well as certain common Board members.

In supplemental submissions made on February 23, March 19, and May 9, 2007, PD, TK, and IK provided additional information regarding their relationship during the POI. After an analysis of this information, we preliminarily determine that, in accordance with 19 CFR 351.401(f), it is appropriate to collapse these entities for purposes of this investigation because: 1) these entities are affiliated pursuant to section 771(33)(F) of the Act because they are under control of a common parent company, PT. Purinusa Ekapersada (Purinusa), which owns a majority of the shares in each company; 2) IK, PD, and TK have the facilities to produce identical or similar products, such that substantial retooling would not be required to restructure manufacturing priorities; and 3) we find that there exists a significant potential for manipulation of price or production if IK, PD, and TK do not receive the same antidumping duty rate. With respect to the significant potential for manipulation, we find, in accordance with 19 CFR 351.401(f)(2), that: 1) there is common ownership through the shared parent, Purinusa; 2) IK, PD, and TK share members on their Boards of Directors and other employees; and 3) these companies have intertwined operations. For further discussion, see the Memorandum from The Team to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled, ''Treatment of Data Reported by Affiliated Parties in the Antidumping Duty Investigation of Coated Free Sheet

Paper from Indonesia,'' dated May 29, 2007.

In each of the submissions noted above, PD/TK requested that the Department not require it to report sales or cost data related to IK's sales of CFS during the POI. After analyzing the information on the record of this investigation, we granted PD/TK's request because: 1) IK's sales of CFS were made only in the home market; 2) the quantity of these sales was insignificant; and 3) these sales would not be the most similar matches to U.S. products sold by PD and TK during the POI. *Id.*

Fair Value Comparisons

To determine whether sales of CFS from Indonesia to the United States made by PD/TK were made at LTFV, we compared the export price (EP) to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted–average EP to the weighted–average NV of the foreign like product where there were sales made in the ordinary course of trade for PD/TK's EP sales. *See* discussion below.

Export Price

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).

During the POI, a portion of PD/TK's U.S. sales were made either: 1) directly to unaffiliated customers in the United States; or 2) to unaffiliated customers in the United States via an affiliated trading company located in Malaysia, but shipped directly from the producer. In accordance with section 772(a) of the Act, we have applied the EP methodology for these sales because they were produced by the respondent and exported from Indonesia to the first unaffiliated purchaser in the United States prior to importation.

Regarding the second channel of distribution noted above, PD/TK claimed that it was affiliated with the trading company because PD/TK: 1) was involved in an agreement legally binding the trading company to buy all products it sells from PD/TK and its affiliates; and 2) exercised almost total control of the trading company's day–to-day operations, including establishing all prices and sales agreements with the U.S. customers. We have analyzed the information on the record with respect to this affiliation claim and preliminarily find that the trading company is affiliated with PD/TK pursuant to section 771(33)(G) of the Act given that it is, in essence, an agent relationship in which PD/TK controls the trading company. Evidence on the record indicates that, among other things, PD/TK establishes all prices and sales agreements with the U.S. customer, the affiliated trading company does not inventory subject merchandise, and the merchandise is shipped directly from the respondent to the U.S. customer. *See Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo–Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394 (May 5, 1997). We intend to examine the trading company's involvement in the sales process and affiliation claim further at verification.

In its response, PD/TK reported that certain of the EP transactions noted above also involved an additional trading company, unaffiliated with the respondent, which is located in a third country. PD/TK maintains that this trading company was not involved in making sales of subject merchandise, and its only role in the transactions in question was to invoice PD/TK's affiliated trading company. Based on these assertions, PD/TK claims that it is not appropriate to: 1) treat the unaffiliated trading company as the U.S. customer; or 2) make an adjustment to the starting price for the amount paid to this unaffiliated party. We have analyzed the information on the record with respect to these sales and, consistent with the Department's practice, we preliminarily find that the transaction with the unaffiliated trading company is not the relevant sale, given that: 1) the respondent does not negotiate the sales price with the unaffiliated trading company; 2) the role of the unaffiliated trading company in the sales process is unclear; and 3) PD/TK knows that the next party in the sales process is a party we find to be affiliated with the respondent. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Carbon Steel Flat Products From Korea*, 67 FR 62124 (Oct. 3, 2002). Moreover, we also preliminarily find that the evidence on the record of this proceeding is insufficient to establish that the amounts paid to the trading company are unrelated to sales of subject merchandise. As a result, we have made an adjustment to the starting price for the amount paid to the trading company. We, however, intend to examine the trading company's role in the sales process further at verification.

Regarding the remainder of PD/TK's U.S. sales, PD/TK claimed that it made these sales through an affiliated U.S. importer. According to PD/TK, the U.S. importer was affiliated by reason of an exclusive distributor arrangement with PD/TK and PD/TK's affiliates during the POI. After analyzing the data on the record with respect to this affiliation claim, we preliminarily find that the U.S. importer is not affiliated with PD/TK because: 1) there is no written agreement between PD/TK and this company establishing the exclusive nature of the relationship; and 2) the U.S. importer is not precluded from selling merchandise produced by other manufacturers. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 67 FR 55800 (Aug. 30, 2002), and accompanying Issues and Decision Memorandum at *Comment 1c*. We will examine PD/TK's claim further at verification.

We based EP on the packed price to unaffiliated purchasers in the United States. We adjusted the starting price by the amount paid to the unaffiliated trading company noted above. In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for foreign inland freight from plant to the port of exportation, foreign inland insurance, foreign brokerage and handling, U.S. brokerage and handling, international freight, and marine insurance.

Normal Value

A. Home Market Viability and Comparison Market Selection

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared PD/TK's 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. Based on this comparison, we determined that PD/TK had a viable home market during the POI. Consequently, we based NV on home market sales.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the

same level of trade (LOT) as the EP or constructed export price (CEP). Pursuant to 19 CFR 351.412(c)(1), the NV LOT is that of the starting–price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. LOT is also the level of the starting–price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision). S*ee 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).

In this investigation, we obtained information from PD/TK regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution.

PD/TK reported that it made EP sales in the U.S. market through the following channels of distribution: 1) sales through an affiliated Malaysian trading company; 2) direct sales to U.S. customers; and 3) sales to financiers. PD/TK stated that its U.S. sales were made at the same LOT, regardless of distribution channel. We examined the selling activities performed for all three channels and found that PD/TK performed the following selling functions for each: sales forecasting, strategic/economic planning, personnel training/exchange, order input/processing, providing direct sales personnel, packing, and freight and delivery services. Regarding sales through the PD/TK's affiliated Malaysian trading company, we find that, in addition to the selling functions performed by PD/TK on these sales, the trading company further performed the following selling functions: order input/processing and payment of commissions. These selling activities can be generally grouped into three core selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; and 3) warranty and technical support. Accordingly, based on the core selling functions, we find that PD/TK performed sales and marketing, freight and delivery services, and warranty and technical services for U.S. sales. Although PD/TK's affiliated Malaysian trading company performed additional sales and marketing functions for PD/TK's sales through it that were not performed for PD/TK's direct sales or sales to financiers, we did not find these differences to be material selling function distinctions significant enough to warrant a separate LOT in the U.S. market. Therefore, we preliminarily determine that there is one LOT in the U.S. market because PD/TK performed essentially the same selling functions for all U.S. sales.

With respect to the home market, PD/TK made sales through a single channel of distribution (*i.e.*, sales to unaffiliated customers through an affiliated reseller). We examined the selling activities performed for this channel and found that PD/TK performed the following selling functions: sales forecasting, strategic/economic planning, personnel training/exchange, packing, inventory maintenance, order input/processing, providing direct sales personnel, providing technical assistance, providing after–sales services, and freight and delivery services. In addition, PD/TK's affiliated reseller performed the following additional sales functions: sales forecasting, strategic/economic planning, personnel training/exchange, advertising, sales promotion, distributor/dealer training, inventory maintenance, order input/processing, providing direct sales personnel, sales/marketing support, market research, providing technical assistance, and providing after–sales services. Accordingly, based on the core selling functions, we find that PD/TK and its affiliated reseller performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services in the home market. Because all sales in the home market are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market.

Finally, we compared the EP LOT to the home market LOT and found that the home market selling functions differ from the U.S. selling functions with respect to: 1) inventory maintenance and warehousing performed in the home market that are not performed on sales to the United States; and 2) the additional layer of selling functions performed in the home market by PD/TK's affiliated reseller that are not performed on certain sales to the United States. However, given that PD/TK sold at only one LOT in the home market, and there is no additional information on the record that would allow for an LOT adjustment, no LOT adjustment is possible for PD/TK.

C. Cost of Production Analysis

Based on our analysis of the petitioner's allegation, we found that there were reasonable grounds to believe or suspect that PD/TK's sales of CFS in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales–below-cost investigation to determine whether PD/TK's sales were made at prices below their respective COPs. *See* the *Below–Cost Allegation* for further discussion.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondent's COP based on the sum of its costs of materials and conversion for the foreign like product, plus amounts for general and administrative (G&A) expenses and financial expenses (*see* the ''Test of Comparison Market Sales Prices'' section below for the treatment of home market selling expenses).

The Department relied on PD/TK's producer–specific COP data submitted by PD/TK in its May 1, 2007, supplemental section D questionnaire response for the COP calculation, except for the following instances where the information was not appropriately quantified or valued:

1. We applied the major input rule under section 773(f)(3) of the Act to pulp purchases from PD/TK's affiliated supplier, PT Lontar Papyrus Pulp and Pater Industry (Lontar). As a result, we adjusted the reported cost of PD/TK to the higher of transfer price, market price or COP. Regarding Lontar's COP, we currently have outstanding requests for information concerning affiliated log purchases by Lontar and will consider this information for the final determination.
2. We eliminated the inter–company profit arising from the affiliated pulp transactions between IK and PD/TK. We currently have outstanding requests for information concerning affiliated log purchases by IK used in the production

of pulp and will consider this information for the final determination.
3. While TK requested a startup adjustment for new production lines, TK did not provide supporting documentation or a proposed adjustment amount for a startup adjustment. Thus, we did not allow a startup adjustment for the preliminary determination.
4. PD offset its financial expense by including miscellaneous income. Miscellaneous income is not an element of financial expense; therefore, we have excluded the offset.
5. PD/TK did not exclude packing costs from the cost of goods sold used as the denominator in the calculation of G&A and financial expense rates. Thus, we applied the G&A and financial expense rates to the product–specific total cost of manufacturing plus the product–specific packing expense. Because product–specific packing expenses were not available for certain products produced by PD prior to the POI, we used PD's weighted–average packing expenses for these products.

Our revisions to PD/TK's COP data are discussed in the Memorandum from Ji Oh, Accountant, to Neal Halper, Director, Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - PT. Pabrik Kertas Tjiwi Kimia Tbk. and PT. Pindo Deli Pulp and Paper Mills,'' dated May 29, 2007.

2. Test of Comparison Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether the sale prices were below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we do not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than COP, we determine that such sales have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examine below–cost sales occurring during the entire POI. In such cases, because we compare prices to POI–average costs, we also determine that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of PD/TK's sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no home market sales within the 20 percent difference in merchandise adjustment, we compared EP to CV, in accordance with section 773(a)(4) of the Act. *See* the ''Calculation of Normal Value Based on Constructed Value'' section below.

D. Calculation of Normal Value Based on Comparison Market Prices

We based NV for PD/TK on delivered prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for inland freight expenses and inland insurance expenses, under section 773(a)(6)(B)(ii) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made circumstance–of-sale adjustments for imputed credit expenses, bank charges, courier expenses, and commissions. Regarding commissions, PD/TK incurred commissions only in relation to U.S. sales. Therefore, pursuant to 19 CFR 351.410(e), we offset U.S. commissions by the lesser of the commission amount or home market indirect selling expenses.

Furthermore, 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. Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for sales of CFS for which we could not determine the NV based on comparison market sales, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the ''Cost of Production Analysis'' section, above. We based SG&A, interest expense, and profit on the actual amounts incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

For comparison with EP sales, we made adjustments to CV for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) and 773(a)(8) of the Act and 19 CFR 351.410. Specifically, we deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

All Others Rate

Because there is only one respondent in this investigation for which the Department has calculated a company–specific rate, consistent with our practice, its rate serves as the ''all others'' rate. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30755 (June 8, 1999); and *Final Affirmative Countervailing Duty Determination: Pure Magnesium From Israel*, 66 FR 49351, 49353 (Sept. 27, 2001).

Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination for PD/TK.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of CFS from Indonesia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing CBP to

require a cash deposit or the posting of a bond equal to the weighted–average dumping margins, as indicated in the chart below. These suspension–of-liquidation instructions will remain in effect until further notice.

The weighted–average dumping margins are as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
PT. Pabrik Kertas Tjiwi Kimia Tbk, PT. Pindo Deli Pulp and Paper Mills, and PT. Indah Kiat Pulp and Paper Tbk (collectively, PD/TK)	10.85
All Others	10.85

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of CFS from Indonesia are materially injuring, or threaten material injury to, the U.S. industry. Because we have postponed the deadline for our final determination to 135 days from the date of the publication of this preliminary determination (*see* below), the ITC will make its final determination within 45 days of our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the 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 the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on May 15, 2007, PD/TK requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, PD/TK requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: May 29, 2007.

David Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–10704 Filed 6–1–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–906]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 4, 2007.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that coated free sheet paper (''CFS'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''Act''). The estimated dumping margins are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–4162 or 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2006, the Department received petitions concerning imports of CFS from the PRC, Indonesia, and the Republic of Korea (''Korea'') filed in proper form by NewPage Corporation (''petitioner'') on behalf of the domestic industry. The Department initiated antidumping duty investigations of CFS from the above–mentioned countries on November 20, 2006. *See Initiation of Antidumping Duty Investigations: Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea*, 71 FR 68537 (November 27, 2006) (''*Initiation Notice*''). On December 22, 2006, the International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of CFS from the PRC, Indonesia, and Korea are materially injuring the U.S. industry. *See Coated Free Sheet Paper From China, Indonesia, and Korea, Investigation Nos. 701–TA–444–446 and 731–TA–1107–1109 (Preliminary)*, 71 FR 78464 (December 29, 2006).

On November 29, 2006, the Department requested quantity and value (''Q&V'') information from 14

companies identified in the petition as potential producers or exporters of CFS from the PRC. *See* Exhibit 5, Volume I, of the October 31, 2006 Petition for the Imposition of Antidumping and Countervailing Duties.

On December 27, 2006, the Department received Q&V responses from four interested parties. Additionally, on January 3, 2007, the Department received an untimely Q&V response from UPM–Kymmene (Changshu) Paper Industry Co., Ltd. (''UPM''), which we rejected. *See* letter to UPM concerning ''Return of Untimely Submission of Quantity and Value Information'' dated January 11, 2007.

On December 27, 2006, the Department received a separate–rate application from Yanzhou Tianzhang Paper Industry Co. Ltd. (''Yanzhou Tianzhang''), a producer and exporter not named in the petition. Additionally, on January 26, 2007, the Department received a separate–rate application from UPM, which we rejected. *See* letter to UPM concerning ''Submissions by UPM–Kymmene (Changshu) Paper Industry Co., Ltd.'' dated February 8, 2007.[1]

On January 10, 2007, the Department selected Gold East Paper (Jiangsu) Co. Ltd, (''GE''), and Shandong Chenming Paper Holdings Limited (''Chenming'') as mandatory respondents. *See* memorandum regarding ''Selection of Respondents for the Antidumping Investigation of Coated Free Sheet Paper from the People's Republic of China,'' dated January 10, 2007 (''Respondent Selection Memorandum'').

On January 11, 2007, we issued the Department's antidumping questionnaire to the mandatory respondents. GE and Chenming submitted timely responses to the Department's questionnaire during February and March 2007. The Department issued supplemental questionnaires to, and received responses from, GE and Chenming from February to May 2007. The petitioner submitted comments to the Department regarding GE's and Chenming's questionnaire and supplemental questionnaire responses from February to April 2007.

On January 24, 2007, the Department released a memorandum in which it listed potential surrogate countries and invited interested parties to comment on surrogate country and factor value selection. No party responded to the Department's invitation to comment on surrogate country selection. However, from March to May, 2007, both the petitioner and the respondents submitted surrogate values, including surrogate financial statements, for use in this investigation. All of the submitted surrogate data are from India.

On February 15, 2007, the respondent in the antidumping duty investigation of CFS from Korea submitted comments to the Department regarding the appropriate model matching criteria. The Department received no rebuttal comments on model matching.

On March 1, 2007, the petitioner made a timely request, pursuant to 19 CFR 351.205(e), for a fifty-day postponement of the preliminary determination in this investigation. On March 19, 2007, pursuant to section 733(c)(1)(A) of the Act, the Department postponed the preliminary determination until no later than May 29, 2007. *See Postponement of Preliminary Determinations in the Antidumping Duty Investigations of Coated Free Sheet Paper from the People's Republic of China, Indonesia, and the Republic of Korea*, 72 FR 12757 (March 19, 2007). On May 11, 2007, the petitioner, the respondents, and the Bureau of Fair Trade, Ministry of Commerce, People's Republic of China (''BOFT''), submitted comments to the Department regarding issues they would like addressed in the preliminary determination. In addition, on May 11, 2007, UPM filed a submission with the Department in which it requested that the Department reconsider its decision not to accept the company's untimely Q&V response. For the reasons given in the Department's January 11, and February 8, 2007 letters to UPM, the Department has not reversed its earlier decision to reject UPM's separate–rate application and untimely Q&V response.

Also, on May 11, 2007, GE requested that, in the event of an affirmative preliminary determination in this investigation, the Department: (1) postpone its final determination by 60 days in accordance with 19 CFR 351.210(2)(ii) and 735(a)(2)(A) of the Act; and (2) extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. Finally, on May 18, 2007, the petitioner responded to the BOFT's May 11, 2007 comments.

Period of Investigation

The period of investigation (''POI'') is April 1, 2006, through September 30, 2006. This period comprises the two fiscal quarters immediately prior to the month in which the petition was filed (October 31, 2006). *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not–more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface–colored, surface–decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double–side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms ''wood free'' or ''art'' paper may also be used to describe the imported product.

Excluded from the scope are: (1) Coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber. Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

The Department set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice. *See Initiation Notice*, 71 FR at 68538; *see also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

On January 12, 2007, the respondents in the antidumping duty investigation of CFS from Indonesia submitted timely comments on the record of this proceeding, in which they requested that the Department exclude cast–coated CFS from the scope of the investigation. On January 19, 2007, the petitioner responded to these comments. The

[1] *See also* the submissions to the Department from UPM dated January 29, 2007, February 1, 2007, and February 5, 2007, and from the petitioner dated February 2, 2007.

Department has analyzed these comments and rebuttal comments and determined that it is not appropriate to exclude cast–coated CFS from the scope of the CFS investigations. *See* memorandum regarding ''Request to Exclude Cast–Coated Free Sheet Paper from the Antidumping Duty and Countervailing Duty Investigations on Coated Free Sheet Paper,'' dated March 22, 2007, on file in the Central Records Unit (''CRU'') of the main Department building.

Non–Market-Economy (''NME'') Treatment

The Department considers the PRC to be an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (''TRBs'') From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001–2002 Administrative Review*, 68 FR 70488 (December 18, 2003).

In its May 11, 2007 comments, the BOFT argues that recent findings by the Department in the countervailing duty (''CVD'') investigation of CFS from the PRC require the Department to treat the PRC as a market–economy country. Absent revocation of the PRC's NME status, the BOFT argues that those recent findings require the Department to immediately modify its NME methodology by instituting: (1) a presumption that all PRC exporters are independent from government control and entitled to separate rates; and (2) a provision for granting market economy treatment to certain respondents. Additionally, the BOFT requests that, in the instant investigation, the Department: (1) exercise its discretion, under the statute, and base normal value (''NV'') on home market or third country prices (given that home market values were used in the companion CVD investigation); and (2) adopt measures to avoid imposing both antidumping and countervailing duties to compensate for the same unfair trade practice (''double–remedy'').

In its May 11, 2007, comments Chenming also argues that the Department must adjust its antidumping duty calculation to avoid a ''double remedy.''

The petitioner urges the Department to reject the BOFT's and Chenming's arguments. According to the petitioner, the Department should reject the BOFT's proposal for treating the PRC as a market economy country because the proposal was submitted too late to be considered in this investigation and does not address the statutory and regulatory criteria for granting market economy or market–oriented industry status. With respect to the double–remedy, the petitioner makes the following points: (1) adjusting the dumping margin for domestic subsidies is contrary to the statute; (2) the BOFT has not supported its assertion that domestic subsidies reduce export prices; (3) the NME methodology was designed to calculate NV in antidumping cases, not provide a remedy for subsidization; (4) the BOFT's presumption that surrogate values result in a subsidy–free restatement of the NME producer's costs misconstrues the operation and purpose of surrogate values (surrogate values do not exactly replicate the NME producer's costs); (5) during its accession to the World Trade Organization (''WTO''), the PRC agreed to be bound by the disciplines in the WTO Agreement on Subsidies and Countervailing Measures and the WTO Agreement on the Implementation of Article VI (the ''Antidumping Agreement''), neither of which include provisions about adjustments to be made for domestic subsidies; and (6) there is no basis for adjusting PRC companies' dumping margins for domestic subsidies when no other U.S. trading partner is granted such an adjustment (in fact, the Government Accountability Office stated that granting special concessions to the PRC to correct an alleged double remedy would be ''wholly inappropriate.'').

The Department has not revoked its determination that the PRC is a NME country, nor has it altered in this determination its NME methodology as requested by the BOFT. With respect to market–economy treatment of certain entities, we note that on May 25, 2007, the Department published a notice in the **Federal Register** requesting comments on whether it should consider granting market–economy treatment to individual respondents in antidumping proceedings involving China, the conditions under which individual firms should be granted market–economy treatment, and how such treatment might affect our antidumping calculation for such qualifying respondents. *See Antidumping Methodologies in Proceedings Involving Certain Non–Market Economies: Market–Oriented Enterprise*, 72 FR 29302 (May 25, 2007). The Department will address market–economy treatment of individual respondents after considering the comments submitted within that process. We further note that the question of whether a double remedy has been or could be applied, or whether the Department has the authority to adjust for such a situation, involves complex factual, methodological and legal issues that will require additional time to analyze. In this regard, we note that the comments we have received to date do not address with sufficient specificity the analytical and computational methods by which one might attempt to determine the existence and extent of any alleged double remedy. Therefore, the Department cannot at this time determine whether an adjustment is necessary nor, if so, calculate an appropriate adjustment. However, the Department will analyze comments regarding the double remedy that are submitted by interested parties during the course of this investigation, and may seek additional information on the topic. Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base NV on the value of the NME producer's factors of production. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries that are at a level of economic development comparable to that of the PRC. *See* memorandum regarding ''Antidumping Duty Investigation of Coated Free Sheet Paper from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated January 22, 2007 (''Policy Memorandum''). From among these economically comparable countries, the Department has preliminarily selected India as the surrogate country for this investigation because it determined that: (1) India is a significant producer of merchandise comparable to the subject merchandise and (2) reliable Indian data for valuing

the factors of production are readily available. See memorandum regarding ''Coated Free Sheet Paper from the People's Republic of China: Selection of Surrogate Country'' dated May 2, 2007.

Treating GE and Certain Other Companies as a Single Entity

Based on record evidence, the Department has preliminarily determined that GE, Gold Huasheng Paper Co., Ltd. (''GHS''), a paper producer capable of producing subject merchandise, and China Union (Macao Commercial Offshore) Company Limited (''CU''), a company that plays a role in GE's operations involving subject merchandise, are affiliated pursuant to section 771(33)(F) and (G) of the Act (affiliation by virtue of control). Moreover, the Department has preliminarily determined that it is appropriate to treat GE, GHS, and CU as a single entity for antidumping duty purposes. GE and GHS produce similar merchandise and would not require substantial retooling to restructure manufacturing priorities.[2] Additionally, after considering the following criteria, the Department determined that there exists a significant potential for the manipulation of price or production: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the Board of Directors of an affiliated firm; and (3) whether the companies' operations are intertwined. *See* 19 CFR 351.401(f). Thus, the Department has preliminarily collapsed GE, GHS, and CU (collectively ''GE''). For details regarding this decision, see memorandum regarding ''Whether to Collapse Gold East Paper (Jiangsu) Co., Ltd. with Gold Huasheng Paper Co., Ltd. and China Union (Macao Commercial Offshore) Company Limited,'' dated concurrently with this notice.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. GE, Chenming, and Yanzhou Tianzhang provided company–specific information to demonstrate that they operate independently of *de jure* and *de facto* government control, and therefore are entitled to a separate rate.

The Department's separate–rate test is not concerned, in general, with macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut–to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Information submitted by GE, Chenming, and Yanzhou Tianzhang indicates that there are no restrictive stipulations associated with their exporter and/or business licenses; and there are legislative enactments decentralizing control of the companies. Therefore, the Department has preliminarily found a *de jure* absence of government control over these companies' export activities. *See* memorandum regarding ''Separate Rates'' dated concurrently with this notice (''Separate Rates Memorandum'').

Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or are subject to the approval of, a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department considers an analysis of *de facto* control to be critical in determining whether a respondent is, in fact, subject to a degree of governmental control that would preclude the Department from assigning the respondent a separate rate.

GE, Chenming, and Yanzhou Tianzhang have each provided information indicating that they: (1) set export prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) have autonomy from the government regarding the selection of management; and (4) retain proceeds from sales and make independent decisions regarding the disposition of profits or financing of losses. Therefore, the Department has preliminarily found a *de facto* absence of government control over these companies' export activities.

[2] While CU is not a producer of CFS, we note that where companies are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has found it appropriate to treat those companies as a single entity. The CIT upheld the Department's decision to include export decisions in its analysis of whether there was a significant potential for manipulation. *See Hontex Enterprises v. United States*, 248 F. Supp. 2d 1323, 1343 (CIT 2003).

Based on the foregoing,[3] the Department has preliminarily granted the two mandatory respondents, and Yanzhou Tianzhang, separate, company–specific dumping margins. *See* Separate Rates Memorandum. The Department calculated company–specific dumping margins for GE, and Chenming and assigned Yanzhou Tianzhang a dumping margin equal to the weighted–average of the dumping margins calculated for GE and Chenming.

The PRC–Wide Entity

Although all PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.[4] Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports during the POI of subject merchandise from the PRC. We have treated the non–responsive PRC producers/exporters as part of the PRC–wide entity because they did not qualify for a separate rate.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

As noted above, the PRC–wide entity withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC–wide dumping margin on facts available. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); *see also ''Statement of Administrative Action*,'' accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) (''*SAA*''). Because the PRC–wide entity did not respond to the Department's request for information, the Department has concluded that it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available (''AFA''), information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 21, 2000) and accompanying *Issues and Decision Memorandum*, at ''Facts Available'' section. Because the dumping margin derived from the petition is higher than the calculated weighted–average margins for the mandatory respondents, we examined whether it was appropriate to base the PRC–wide dumping margin on the secondary information in the petition.

When the Department relies on secondary information, rather than information obtained in the course of an investigation, section 776(c) of the Act requires it to, to the extent practicable, corroborate that information from independent sources reasonably at its disposal.[5] The *SAA* also states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See SAA at 870.

The *SAA* also clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

To corroborate the petition margin, we compared the range of control number–specific dumping margins calculated for the preliminary determination to the dumping margin alleged in the petition. Based on this comparison, we have preliminarily corroborated the 99.65 percent dumping from the petition. See memorandum regarding ''Corroboration of the PRC–Wide Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of Coated Free Sheet Paper from the People's Republic of China,'' dated concurrently with this notice. This PRC–wide dumping margin applies to all entries of the merchandise under investigation except for entries of subject merchandise from GE, Chenming, and Yanzhou Tianzhang.

[3] Record information submitted regarding GHS and CU, companies which the Department collapsed with GE, also supports granting the collapsed entity a separate rate. *See* Separate Rates Memorandum.

[4] The Department received only four timely responses to the requests for Q&V information that it sent to the 14 potential exporters identified in the petition.

[5] Secondary information is described in the *SAA* as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See SAA* at 870.

Fair Value Comparisons

To determine whether GE or Chenming sold CFS to the United States at LTFV, we compared the weighted–average export price (''EP'') or constructed export price (''CEP''), as appropriate, of the CFS to the NV of the CFS, as described in the ''U.S. Price,'' and ''NV'' sections of this notice.

U.S. Price

EP

In accordance with section 772(a) of the Act, we based the U.S. price for certain sales on EP because the first sale to an unaffiliated purchaser was made prior to importation, and the use of CEP was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: rebates, foreign movement expenses, marine insurance, international freight, and foreign and U.S. brokerage and handling expenses.

We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi (''RMB''). If market–economy service providers, who were paid in a market economy currency, provided movement services for over 33 percent of subject merchandise shipments, by volume, we based the movement expenses on the actual price charged by the service provider. If market–economy service providers, who were paid in a market economy currency, provided movement services for less than 33 percent of subject merchandise shipments, by volume, we calculated the movement expenses by weight–averaging surrogate values with the actual price charged by the service provider. *See Antidumping Methodologies: Market Economy Inputs, Expected Non–Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) (''*Notice for Antidumping Methodologies*''). For details regarding our EP calculation, see analysis memoranda for GE and Chenming dated concurrently with this notice.

CEP

In accordance with section 772(b) of the Act, we based the U.S. price for certain sales on CEP because these sales were made by GE's and Chenming's U.S. affiliates. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: early payment discounts, billing adjustments, rebates, foreign movement expenses, international freight, marine insurance, and U.S. movement expenses, including brokerage and handling. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: credit expenses, warranty expenses, other direct selling expenses, and indirect selling expenses. In addition, pursuant to section 772(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values, actual expenses, or an average of the two as explained above in the ''EP'' section of this notice.

NV

In accordance with section 773(c) of the Act, we constructed NV from the factors of production employed by the respondents to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the value of the factors of production, general expenses, profit, and packing costs. We valued the factors of production using prices and financial statements from the surrogate country, India, or, where appropriate, the market economy prices paid for the factor (*see* further discussion below). In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non–export average values, contemporaneous with, or closest in time to, the POI, product–specific, and tax–exclusive. *See e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004) (''*Shrimp from Vietnam*''). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing by multiplying the amount of the factor consumed in producing subject merchandise by the average unit value of the factor. We derived the average unit value of the factor from Indian import statistics. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using, where appropriate, the Indian Wholesale Price Index (''WPI'') as published in the International Financial Statistics of the International Monetary Fund.

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, South Korea, and Thailand because, in other proceedings, the Department found that these countries maintain broadly available, non–industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 11670 (March 15, 2002); *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004).[6] Therefore, we have not used prices from these countries either in calculating the Indian import–based surrogate values or in calculating market–economy input values. In instances where a market–economy input was obtained solely from suppliers located in these countries, we used Indian import–based surrogate values to value the input. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying *Issues and Decision Memorandum* at Comment 1.

[6] We note that legislative history directs the Department not to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100-576 at 590 (1988). Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination.

During the POI, GE and Chenming purchased all or a portion of certain inputs from a market economy supplier and paid for the inputs in a market economy currency. The Department has instituted a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.[7] In these cases, unless case–specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted–average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight–average the weighted–average market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, unless case–specific facts provide adequate grounds to rebut the presumption. When a firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33 percent threshold. *See Notice for Antidumping Methodologies*. Accordingly, we valued GE's and Chenming's inputs using the market economy prices paid for the inputs where the total volume of the input purchased from all market economy sources during the POI exceeded 33 percent of the total volume of the input purchased from all sources during that period. Alternatively, when the volume of GE's or Chenming's purchases of an input from market economy suppliers during the POI was below 33 percent of the company's total volume of purchases of the input during the POI, we weight–averaged the weighted–average market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, as appropriate. Where appropriate, we increased the market economy prices of inputs by freight and brokerage and handling expenses. *See* GE's Factor Value Memorandum and Chenming's Factor Value Memorandum.

We valued raw materials and packing materials using Indian Import Statistics, except as noted below.

We valued diesel fuel and purchased electricity using rates from *Key World Energy Statistics 2005*, and *Key World Energy Statistics 2003*, respectively, published by the International Energy Agency. Because these data were not contemporaneous with the POI, we inflated the values using the WPI. *See* Factor Value Memoranda.

We valued natural gas using a value obtained from the Gas Authority of India Ltd.'s website, a supplier of natural gas in India. *See http://www.gailonline.com/gailnewsite/index.html*. The value relates to the period January through June 2002. Therefore, we inflated the value using the appropriate WPI inflator. In addition, we added transportation charges to the value. See Surrogate Value Memorandum and *Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 27991 (May 15, 2006), and accompanying *Issues and Decision Memorandum* at Comment 2.

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression–based wage rate, which relies on 2004 data. This wage rate can currently be found on the Department's website on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, *http://ia.ita.doc.gov/wages/index.html*. The source of these wage–rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by GE and Chenming. *See* Factor Value Memoranda.

We valued water using data from the Maharashtra Industrial Development Corporation (www.midcindia.org) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the ''inside industrial areas'' usage category and 193 for the ''outside industrial areas'' usage category. Because the value was not contemporaneous with the POI, we inflated the rate using the WPI. *See* Factor Value Memoranda.

We valued truck freight expenses using a per kilometer per kilogram average rate from data obtained from the web site of an Indian transportation company, InFreight Technologies India Limited. *See http://www.infreight.com/*. This average rate was used by the Department in the antidumping duty administrative review of *Saccharin from the People's Republic of China; Preliminary Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 25247 (May 4, 2007). Because this value is not contemporaneous with the POI, we inflated the rate using the WPI. *See* Factor Value Memoranda.

We used two sources to calculate the surrogate value for domestic brokerage and handling expenses. We averaged publicly available brokerage and handling data reported by Essar Steel in the antidumping duty administrative review of hot–rolled carbon steel flat products from India with publicly available brokerage and handling data reported by Agro Dutch Industries Limited (''Agro Dutch'') in the antidumping duty administrative review of certain preserved mushrooms from India. *See Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2022 (January 12, 2006) (Essar Steel's February 28, 2005, submission); *see also Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005) (Agro Dutch's May 24, 2005, submission). *See* Factor Value Memoranda.

We valued marine insurance using a price quote from *http://www.rjgconsultants.com/insurance.html*, a market–economy provider of marine insurance. *See* GE's Factor Value Memorandum.

We valued factory overhead, selling, general, and administrative (SG&A) expenses, and profit, using the audited financial statements from the following Indian companies: Seshasayee Paper and Boards Ltd., JK Paper, Ltd., and Ballarpur Industries Ltd.. *See* Factor Value Memoranda. We selected the above–referenced financial statements from among the financial statements placed on the record by interested

[7] Notwithstanding the determination the Department reached in *Shrimp from Vietnam*, at Comment 8, the Department will examine if and when the inputs were used in the production process when case-specific conditions demand it. Unless there are case-specific reasons to examine other criteria, the Department will base its decision on whether to accept market economy input purchases to value the input on the relative share of market economy purchases during the period of investigation or review to total purchases during that period.

parties because these companies produce subject merchandise and, like the respondents, do so by producing wood free paper and coating it.

Because the financial statements that we are using as surrogates do not separately report manufacturing and non–manufacturing labor costs, the petitioner proposes allocating the line item for labor costs on these financial statements between manufacturing labor costs and SG&A labor costs. Specifically, the petitioner suggests allocating the line item for labor costs using data from an annual survey of the Indian paper and paper products industry which identifies wages paid to all employees and wages paid to workers (defined as persons employed in any manufacturing process).

Generally, the Department does not adjust the data used to calculate financial ratios because it is concerned that such adjustments may introduce unintended distortions into the data. *See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying *Issues and Decision Memorandum* at Comment 12. Thus, for the preliminary determination, we have not adjusted labor costs in the surrogate financial statements. Nevertheless, the Department intends to revisit this issue for the final determination.

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information with which to value factors of production in the final determination within 40 days after the date of publication of the preliminary determination.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*. This change in practice is described in *Policy Bulletin 05.1*, available at *http://ia.ita.doc.gov/. Policy Bulletin 05.1*, states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin 05.1, ''Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non–Market Economy Countries.''

Preliminary Determination

The weighted–average dumping margins are as follows:

Exporter & Producer	Weighted–Average Margin
GE's Collapsed Entity:	
(Gold East Paper (Jiangsu) Co. Ltd.-Gold Hua Sheng Paper (Suzhou Industry Park) Co. Ltd.-China Union (Macao Commercial Offshore) Company Ltd.)	23.19 %
Shandong Chenming Paper Holdings Ltd.	48.07 %
Yanzhou Tianzhang Paper Industry Co. Ltd.	30.22 %
PRC–Wide Rate	99.65 %

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of CFS from the PRC as described in the ''Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption from GE's collapsed entity (*i.e.*, GE, GHS, and CU), Chenming, Yanzhou Tianzhang, and the PRC–wide entity on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of CFS, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

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, U.S. Department

of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on May 11, 2007, GE requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, GE requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 29, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–10705 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–856]

Coated Free Sheet Paper from the Republic of Korea: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (''the Department'') preliminarily determines that coated free sheet paper (''CFS paper'') from the Republic of Korea (''Korea'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to requests from interested parties, we are postponing for 60 days the final determination and extending the provisional measure from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

EFFECTIVE DATE: June 4, 2007.

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood (Kyesung Paper Co., Ltd.), Dennis McClure (EN Paper Mfg. Co., Ltd.), Stephanie Moore (Moorim Paper Co., Ltd. and Moorim SP Co., Ltd.), or Joy Zhang (Hankuk Paper Mfg. Co., Ltd. and Hansol Paper Co., Ltd.), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3836, (202) 482–5973, (202) 482–3692, or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2006, the Department initiated an antidumping duty investigation of CFS from Korea. *See Initiation of Antidumping Duty Investigations: Coated Free Sheet Paper From Indonesia, the People's Republic of China, and the Republic of Korea*, 71 FR 68537 (November 27, 2006) (''*Initiation Notice*''). The petitioner in this investigation is NewPage Corporation.

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Initiation Notice*, 71 FR at 68538; *see also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). On January 12, 2007, the Indonesian Respondents submitted scope comments. *See Scope Comments* section, below.

On December 11, 2006, the petitioner submitted comments on model–matching criteria. On December 18, 2006, respondents Hansol Paper Co., Ltd. (''Hansol''), Moorim Paper Co., Ltd. and Moorim SP Co., Ltd. (''Moorim'') (formerly Shinmoorim Paper Mfg. Co., Ltd.), and EN Paper Mfg. Co., Ltd. (''EN Paper'') (formerly Shinho Paper Co., Ltd.) submitted comments on model–matching criteria. On February 15, 2007, Hansol submitted additional comments on model–matching criteria. *See Model Match* section, below.

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of CFS paper in Korea and determined that it was not practicable to examine each known exporter/producer of the subject merchandise, as provided in section 777A(c)(1) of the Act. Thus, we selected to investigate EN Paper, Moorim, and Hansol. These three exporters/producers accounted for the largest volume of subject merchandise exported to the United States during the period of investigation (''POI''). See section 777A(c)(2)(i)(B) of the Act; *See* Memorandum from the Team, through Office Director Melissa Skinner, to Deputy Assistant Secretary Stephen J. Claeys, entitled ''Regarding Selection of Respondents,'' dated December 21, 2006. We subsequently issued the antidumping questionnaire[1] to these companies on December 22, 2006.

On December 22, 2006, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of CFS paper from China, Indonesia and Korea are materially injuring the U.S. industry and the ITC notified the Department of its findings. *See Coated Free Sheet Paper from China, Indonesia, and Korea, Investigation Nos. 701–TA–444–446 (Preliminary) and 731–TA–1107–1109 (Preliminary)*, 71 FR 78464 (December 29, 2006).

On December 28, 2006, counsel to petitioner met with the Department to discuss the Department's December 21, 2006, respondent selection memorandum and petitioner's December 22, 2006, submission requesting the Department to select an

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

additional respondent. *See* Memorandum from Joy Zhang to The File, entitled ''Ex Parte Meeting with Counsel to Petitioner,'' dated December 28, 2006.

On January 5, 2007, the Department reexamined the availability of its resources and determined it was practicable to investigate one additional mandatory respondent, Kyesung Paper Co., Ltd. (''Kyesung''). *See* Memorandum from Program Manager James Terpstra, through Office Director Melissa Skinner, to Deputy Assistant Secretary Stephen J. Claeys, entitled ''Response to Comments from Interested Parties Regarding Respondent Selection,'' dated January 5, 2007. We subsequently issued the antidumping questionnaire to Kyesung.

On February 15, 2007, David Spooner, the Assistant Secretary for Import Administration, met with officials from the Korean Embassy to discuss the Department's selection of respondents. *See* Memorandum from Katja Kravetsky to The File, entitled ''Ex Parte Meeting,'' dated February 15, 2007.

On March 15, 2007, the Department selected Hankuk as a mandatory respondent. *See* Memorandum from James Terpstra, Program Manager to The File, dated March 15, 2007. On March 20, 2007, petitioner provided comments on the Department's decision to calculate a dumping margin for Hankuk as a mandatory respondent in this investigation.

On January 10, 2007, the petitioner filed a country–wide allegation of sales of CFS paper at prices below the cost of production (''COP''). We found that the petitioner had provided a reasonable basis to believe or suspect that Korean producers were selling CFS paper in Korea at prices below the COP. See section 773(b)(2)(A)(i) of the Act. We initiated a country–wide sales–below-cost investigation on January 26, 2007, and requested that all Korean respondents respond to section D of the Department's questionnaire. *See* Memorandum from the Team, through James Terpstra, Program Manager to Office Director Melissa Skinner, entitled ''Regarding Petitioner's Allegation of Country–Wide Sales Below the Cost of Production,'' dated January 26, 2007 (''Cost Allegation Memorandum'').[2]

On January 26, 2007, the Department received the Section A responses from EN Paper, Moorim, and Hansol. On February 9, 2007, the Department received a Section A voluntary response from Hankuk Paper Mfg. Co., Ltd. (''Hankuk''). On February 13, 2007, the Department received the Section A response from Kyesung. We received the Sections B and C responses from Hansol and Moorim on February 15, 2007. On February 16, 2007, we received the Sections B and C response from EN Paper. On March 2, 2007, we received a Sections B and C voluntary response from Hankuk. On March 5, 2007, we also received Kyesung's Sections B and C response and Section D responses from all respondents as well as Hankuk.

On February 27, 2007, the Department received comments from the petitioner on Sections A through C responses for EN Paper and Hansol. On March 6, 2007, the petitioner commented on Moorim's Sections A through C response. On March 12, 2007, the petitioner commented on Kyesung's Sections A through C response. On March 15, 2007, Kyesung replied to the petitioner's March 12, 2007, comments.

After reviewing the Sections A through D responses from each respondent, the Department issued supplemental questionnaires to the above companies. The petitioner submitted additional comments on each of the supplemental questionnaire responses. The Department issued additional supplemental questions, after reviewing each supplemental response.

The Department received requests from Hansol and Moorim to exclude certain sales, on January 26 and February 2, 2007, respectively. The petitioner submitted letters objecting to any exclusion of home market sales on January 29 and February 5, 2007. On February 2, 2007, the Department requested additional information in order to thoroughly evaluate Hansol's request to exclude certain sales. On February 8, 2007, the Department requested additional information from Moorim. On February 9 and 14, 2007, respectively, Hansol and Moorim submitted responses to the Department's request for additional information. On February 14, 2007, the petitioner submitted additional comments concerning Hansol's request to exclude certain sales. On March 2, 2007, the Department sent letters to Hansol and Moorim denying the request to exclude certain sales.

On February 23, 2007, the petitioner requested the Department extend the deadline for filing targeted dumping allegations. On March 2, 2007, the petitioner requested the Department postpone the preliminary determination by 50 days. On March 2, 2007, the Department explained to the petitioner that the deadline to file a targeted dumping allegation would be 30 days from any revised deadline for the preliminary determination. *See* Memorandum from James Terpstra to The File, entitled ''Extension of the Deadline to File a Targeted Dumping Allegation in the Antidumping Duty Investigation on Coated Free Sheet Paper from Korea,'' dated March 2, 2007. On March 12, 2007, the Department postponed the preliminary determination by 50 days. *See Postponement of Preliminary Determinations in the Antidumping Duty Investigations of Coated Free Sheet Paper from the People's Republic of China, Indonesia, and the Republic of Korea*, 72 FR 12757 (March 19, 2007).

The petitioner filed targeted dumping allegations against Moorim, Hankuk, and Hansol, on April 26, 2007. *See* section 777A(d)(1)(B) of the Act. On May 14 and 15, 2007, respectively, the Department received comments from Hansol and Moorim objecting to the targeted dumping allegations. On May 18, 2007, the petitioner filed rebuttal comments. Although petitioner's allegations were timely, the Department did not have sufficient time to fully analyze them for purposes of this preliminary determination. In addition, the Department has requested more information from petitioner with respect to its targeted dumping allegations. *See* Letter from Melissa Skinner to Petitioner, dated May 22, 2007. We intend to fully consider this issue for purposes of our final determination.

On May 9, 2007, EN Paper and the Korea Paper Manufacturers' Association requested the Department postpone the final determination and extend the provisional measures. *See Postponement of Final Determination and Extension of Provisional Measures* section, below.

On May 11, 2007, the petitioner submitted pre–preliminary comments on Hankuk, Hansol, and Moorim.

Period of Investigation

The POI is October 1, 2005, to September 30, 2006. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

Scope of Investigation

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not–more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder,

[2] A public version of this memorandum is available in the Central Records Unit (''CRU''), located in room B-099 of the main Department building.

and with no other coating. Coated free sheet paper may be surface–colored, surface–decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double–side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms ''wood free'' or ''art'' paper may also be used to describe the imported product.

Excluded from the scope are: (1) coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

In our *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On December 18, 2006, PT. Pabrik Kertas Tjiwi Kimia Tbk. and PT. Pindo Deli Pulp and Paper Mills (''PD/TK'') submitted timely scope comments in the companion antidumping (''AD'') and countervailing duty (''CVD'') investigations on CFS paper from Indonesia. On January 12, 2007, the Department requested that PD/TK also file these comments on the administrative records of the companion AD and CVD investigations of CFS paper from the People's Republic of China and the Republic of Korea. *See* Memorandum from Alice Gibbons to The File, dated January 12, 2007. PD/TK did so on the same date. On January 19, 2007, the petitioner responded to these comments.

In its comments, PD/TK requested that the Department exclude from its investigations cast–coated free sheet paper. The Department analyzed this request, together with the comments from the petitioner, and determined that it is not appropriate to exclude cast–coated free sheet paper from the scope of these investigations. The Department's analysis is set forth in a memorandum dated March 22, 2007. *See* the Memorandum from Barbara Tillman, Director, AD/CVD Operations, Office 6, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled, ''Request to Exclude Cast–Coated Free Sheet Paper from the Antidumping Duty and Countervailing Duty Investigations on Coated Free Sheet Paper.''

Model Match

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Korea during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on seven criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: coating, form, basis weight, brightness, finish, opacity, and sheet size. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

On December 11, 2006, the petitioner filed proposed model–matching criteria to use in the Department's questionnaire. On December 18, 2006, EN Paper, Hansol, and Moorim, separately filed proposed model–matching criteria for use in the questionnaire. On December 22, 2006, the Department issued the questionnaire containing the criteria identified above.

On February 15, 2007, Hansol requested that the Department modify the order of its matching criteria. Hansol suggested that the revised hierarchy should be: coating, form, brightness, finish, basis weight, opacity, and sheet size. We reviewed the responses of each respondent, including the product brochures. We do not find that Hansol's suggested product match is any more reflective of the industry than the hierarchy of physical characteristics in the Department's questionnaire. Therefore, we have not modified the order of the Department's matching criteria. *See* Memorandum from the Team, Office 3, AD/CVD Operations, through James Terpstra, Program Manager, AD/CVD Operations, to Melissa Skinner, Office Director, AD/CVD Operations, entitled, ''Discussion of Model Match Criteria/Hierarchy,'' dated May 29, 2007.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulations further provide that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long–standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i); *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2. Therefore, we used the earlier of shipment date or invoice date as the date of sale in accordance with our practice.

Fair Value Comparisons

To determine whether sales of CFS paper from Korea were made in the United States at less than normal value (''NV''), we compared the export price (''EP'') or constructed export price (''CEP'') to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections below. In accordance with section 777A(d)(1) of the Act, we calculated the weighted–average prices for NV and compared these to the weighted–average of EP (and CEP).

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign

exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. *See* section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we adjusted prices to reflect billing adjustments and increased prices to reflect duty drawback.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight, brokerage, international freight, marine insurance, U.S. customs duties, U.S. warehouse expense and various U.S. movement expenses from arrival to delivery.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, commissions, warranty, and other direct selling expenses). These expenses include certain indirect selling expenses incurred by affiliated U.S. distributors. Furthermore, we have included a portion of EN Paper's and Hansol's indirect selling expenses incurred in Korea on behalf of sales to unaffiliated customers in the United States. *See* ''Preliminary Calculation Memoranda'' for each company, dated May 29, 2007 (''Preliminary Calculation Memoranda'') on file in the CRU. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Normal Value

A. Home Market Viability and Comparison Market Selection

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 respondents' volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(i) of the Act, because each respondent had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

B. Arm's–Length Test

Hankuk, Hansol, Kyesung, and Moorim reported sales of the foreign like product to affiliated customers. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at ''arm's length.'' *See* 19 CFR 351.403(c). To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. We included an amount for warehouse revenue for Moorim. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's–length prices and included such sales in the calculation of NV. *See* 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's–length test, all sales to that affiliated party were excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002), and company–specific ''Preliminary Calculation Memoranda.''

C. Cost of Production Analysis

Based on our analysis of the petitioner's allegation, we found that there were reasonable grounds to believe or suspect that EN Paper's, Kyesung's, Moorim's, Hansol's and Hankuk's sales of CFS paper in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales–below-cost investigation to determine whether these companies had sales that were made at prices below their respective COPs. *See* ''Cost Allegation Memorandum.''

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COP based on the sum of its costs of materials and conversion for the foreign like product, plus amounts for general and administrative (''G&A'') expenses and interest expenses (*see* the *Test of Comparison Market Sales Prices* section below for the treatment of home market selling expenses).

The Department relied on the COP data submitted by EN Paper, Kyesung, Moorim, Hansol and Hankuk, in their respective supplemental section D questionnaire responses for the COP calculation, except for the following instances where the information was not appropriately quantified or valued:

a. We revised the general and administrative (G&A) expense ratio to exclude the credit balance for bad debt allowance. EN Paper did not fully explain what the gain represents or provide supporting documentation, therefore we have disallowed the offset for the preliminary determination. Our revisions to EN Paper's COP data are discussed in the Memorandum from James Balog, Senior Accountant, to Neal Halper, Director, Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - EN Paper Mfg. Co., Ltd.,'' dated May 29, 2007.

b. For Moorim, we revised the G&A expense rate calculations for both Moorim Paper Co., Ltd. and Moorim SP Co., Ltd. to exclude certain income offsets associated with selling activities and include expense and income items related to administrative rental transactions. Our revisions to Moorim 's COP data are discussed in the Memorandum from Angela Strom, Accountant, to Neal Halper, Director, Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Moorim Paper Co., Ltd and Moorim SP Co., Ltd. (collectively ''Moorim''),'' dated May 29, 2007.

c. We revised Hansol's G&A expense rate calculation to include in G&A expenses a loss on the write down of an intangible asset held by the company. Our revisions to Hansol's COP data are discussed in the Memorandum from Heidi K. Schriefer, Senior Accountant, to Neal Halper, Director, Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Hansol Paper Co., Ltd.'' dated May 29, 2007.

d. For products sold during the POI but produced prior to the POI Kyesung used the cost for the most similar control number that was produced during the POI. We noted that the method used to identify the most similar control number did not use the model–match hierarchy laid out by the Department. However, none of the control numbers in question were sold in the United States or used as a

similar match to products sold in the United States.

e. We did not make any adjustments to Hankuk's reported costs for the preliminary determination.

2. Test of Comparison Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses. In addition, we included an amount for warehouse revenue for Moorim.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than COP, we determined that such sales have been made in ''substantial quantities.'' See section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below–cost sales occurring during the entire POI. In such cases, because we compared prices to POI–average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of EN Paper's, Kyesung's, Moorim's, Hansol's, and Hankuk's sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We based home market prices on packed prices to unaffiliated purchasers in Korea. We adjusted the starting price for inland freight, warehouse expense, and warehouse revenue, where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (''COS'') pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit, commissions, warranty directly linked to sales transactions, and other direct selling expenses), where appropriate. *See* 19 CFR 351.410.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or United States where commissions were granted on sales in one market but not in the other, *i.e.*, the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such adjustment to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. In identifying LOTs for EP and comparison market sales (*i.e.*, NV based on home market), 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).

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision).

Hansol and Moorim reported sales made through one LOT corresponding to one channel of distribution in the home market. In the U.S. market, Hansol and Moorim reported one LOT corresponding to three or two channels of distribution for sales through U.S. affiliates (*i.e.*, CEP sales), respectively. In our analysis, we determined that there is one LOT in the home market and one LOT in the U.S. market. We have found that home market sales are at a more advanced LOT. Accordingly, we have made CEP offsets to NV. *See* 773(a)(7)(B) of the Act.

Hankuk and Kyesung reported sales through one LOT corresponding to two or three channels of distribution in the home market, respectively. In the U.S. market, Hankuk and Kyesung reported one LOT corresponding to one or two channels of distribution for sales made directly to the unaffiliated U.S. customers (*i.e.*, EP sales), respectively. In our analysis, we determined that there is one LOT in the home market and one LOT in the U.S. market. We have found that sales to the U.S. and home markets were made at the same LOT, and as a result, no LOT adjustment was warranted.

EN Paper reported sales made through one LOT corresponding to one channel of distribution in the home market. In the U.S. market, EN Paper reported one LOT corresponding to three channels of distribution. EN Paper made sales through its U.S. affiliate (*i.e.*, CEP sales) and directly to the U.S. customer (*i.e.*, EP sales). In our analysis, we determined that there is one LOT in the home market and two LOTs in the U.S. market. We have found that home market sales are at a more advanced LOT than the CEP sales made through its U.S. affiliate. Accordingly, we have made CEP offsets to NV. We have found that sales made directly to the U.S. customer were made at the same LOT, and as a result, no LOT adjustment was warranted.

For a detailed description of our LOT methodology and a summary of company–specific LOT findings for these preliminary results, see our

analysis contained in the ''Preliminary Calculation Memoranda.''

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

All Others Rate

Pursuant to section 735(c)(5)(A) of the Act, the ''all others'' rate is equal to the weighted average of the estimated weighted–average dumping margins of all respondents investigated, excluding zero or *de minimis* margins. EN Paper and Kyesung are the only respondents in this investigation for which the Department has calculated a company–specific rate that is not zero or *de minimis*. Therefore, for purposes of determining the ''all others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted–average dumping margin calculated for EN Paper and Kyesung for the ''all others'' rate, as referenced in the *Suspension of Liquidation* section, below.

Verification

As provided in section 782(i) of the Act, we intend to verify all information upon which we will rely in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of CFS paper from Korea, with the exception of those exported by Hankuk, Hansol, or Moorim, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin, as indicated in the chart below. These suspension–of-liquidation instructions will remain in effect until further notice.

The weighted–average dumping margins are as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
EN Paper Mfg. Co., Ltd.	12.31
Hankuk Paper Mfg. Co., Ltd.	0.00
Hansol Paper Co., Ltd.	0.00
Kyesung Paper Co., Ltd.	30.86
Moorim Paper Co. Ltd. and Moorim SP Co., Ltd.	0.00
All Others	18.45

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of CFS paper from Korea are materially injuring, or threaten material injury to, the U.S. industry. Because we have postponed the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination within 45 days of our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined.

Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the 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 the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on May 9, 2007, EN Paper and the Korea Paper Manufacturers' Association, which accounts for a significant proportion of exports of CFS paper, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, the Korean Paper Manufacturers' Association requested that the Department extend by 60 days the application of the provisional measures. *See* 735(a)(2) of the Act and 19 CFR 351.210(e)(2). In accordance with section 733(d) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting their request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: May 29, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–10706 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–820, A–475–829, A–580–847, A–412–822]

Stainless Steel Bar from France, Italy, South Korea and the United Kingdom; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2007, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on stainless steel bar from France, Italy, South Korea and the United Kingdom pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). The Department conducted expedited (120-day) sunset reviews for these orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the Final Results of Reviews section of this notice.

EFFECTIVE DATE: June 4, 2007.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION: Audrey Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3534 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2007, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on stainless steel bar (''SSB'') from France, Italy, South Korea and the United Kingdom pursuant to section 751(c) of the Act. See Initiation of Five-year (''Sunset'') Reviews, 72 FR 4689 (February 1, 2007). The Department received the Notice of Intent to Participate from Carpenter Technology Corp.; North American Stainless; Crucible Specialty Metals Division of Crucible Materials Corp.; Electralloy; Outokumpu Stainless Bar, Inc.; Universal Stainless &Alloy Products, Inc.; and Valbruna Slater Stainless, Inc. (collectively ''the domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations (''Sunset Regulations''). (Valbruna Slater Stainless, Inc. will remain neutral regarding the continuation of the antidumping duty order against Italy.) The domestic interested parties claimed interested party status under sections 771(9)(C) of the Act, as manufacturers of a domestic–like product in the United States.

We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from respondent interested parties with respect to any of the orders covered by these sunset reviews. As a result, pursuant to section 751(c)(4)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of these orders. The domestic interested parties submitted letters on April 12, 2007, agreeing with the Department's decision to conduct expedited sunset reviews for these orders because we did not receive responses from any respondent interested parties.

Scope of the Orders

For the purposes of these orders, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (i.e., cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (i.e., cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The stainless steel bar subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Stainless Steel Bar from France, Italy, South Korea, and the United Kingdom; Final Results'' (''Decision Memo'') from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 25, 2007, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''May 2007.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on SSB from France, Italy, South Korea, and the United Kingdom would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
France.	
Aubert &Duval, S.A.	71.83
All Others	35.92, as amended
Italy.	
Cogne Acciai Speciali Srl	33.00
All Others	6.60, as amended
South Korea.	
Changwon Specialty Steel Co. Ltd.	13.38
Dongbang Indusrial Co., Ltd	4.75
All Others	11.30
United Kingdom.	

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
Crownridge Stainless Steels, Ltd. (Valkai Ltd.)	125.77
Firth Rixson Special Steels, Ltd.	125.77
All Others	83.85, as amended

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 25, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–10702 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–449–804]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia

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 steel concrete reinforcing bars (rebar) from Latvia. We preliminarily determine that sales of subject merchandise by Joint Stock Company Liepajas Metalurgs (LM) have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) and the NV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 4, 2007.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482–0371; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2001, the Department published an antidumping duty order on rebar from Latvia. *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine*, 66 FR 46777 (September 7, 2001). On September 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order of rebar from Latvia for the fifth period of review which covers September 1, 2005, through August 31, 2006 (POR). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 52061 (September 1, 2006). On September 29, 2006, in accordance with 19 CFR 351.213(b)(1), the petitioner[1] requested an administrative review of LM.

On October 31, 2006, the Department published the initiation of the fifth administrative review of the antidumping duty order on rebar from Latvia. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 63752 (October 31, 2006). On November 9, 2006, LM submitted a letter to the Department in which it certified that it made no sales of subject merchandise to the United States during the POR but acknowledged subject merchandise may have entered the United States during the POR. On November 21, 2006, the petitioner submitted comments regarding LM's claim of no sales. On April 9, 2007, and May 9, 2007, we placed memoranda on the file that provided the results of the Department's query of Customs and Border Protection (CBP) data regarding sales of subject merchandise during the POR. *See* Memorandum to File from Saliha Loucif: Query of U.S. Customs and Border Protection Database for Sales During the Fifth Administrative Review (April 9, 2007) (Data Query Memo) and Memorandum to File from David Layton: Placement of Additional Documents on the Record (May 9, 2007) (Record Memo). On April 9, 2007, and May 9, 2007, we also placed certain documents from the final results of the fourth administrative review of the antidumping order on steel concrete reinforcing bars from Latvia (covering the period September 1, 2004 through August 31, 2005) on the record of the current administrative review. *See* Memorandum to File from Saliha Loucif: Copying of documents from the record of the fourth administrative review in the record of the fifth administrative review (Fourth Review Documents Memo) and Record Memo. After placing the fourth review documents on the record on April 9, 2007, we gave parties until April 21, 2007, to submit comments. LM submitted comments on April 20, 2007. After placing additional documents on the record on May 9, 2007, we gave parties until May 21, 2007, to comment.

Scope of The Order

The product covered by this order is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7214.20.00, 7228.30.8050, 7222.11.0050, 7222.30.0000, 7228.60.6000, 7228.20.1000, or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non–deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Analysis of Responses

On November 9, 2006, the Department received a letter from LM certifying that LM made no sales of subject merchandise to the United States during the period of review. In the same submission, LM also stated that ''{a}lthough it may be possible that LM's U.S. customers may have entered subject merchandise into the United States during the fifth period of review, any such entries would consist entirely of sales of LM merchandise that were subject to the review by the Department in the context of the ongoing fourth review of this antidumping order.''

On November 15, 2006, the petitioner responded to LM's comments, providing public available trade data which confirmed the existence of entries of subject merchandise from Latvia during the POR. In its submission, the petitioner stated that the issue of whether LM made no sales of subject merchandise must be decided by the

[1] The petitioner is the Rebar Trade Action Coalition (RTAC) which comprises Nucor Corporation, Gerdau Ameristeel Corporation, and Commercial Metals Company.

Department through the process of the administrative review and argued that, given the existence of relevant entries in the POR, there is no basis to rescind the review initiated on October 31, 2006.

The Department conducted a CBP entry data query to check for any entries of subject merchandise into the United States during the POR. *See* Data Query Memo and Records Memo. The Department's review of the CBP data query results shows entries during the POR of merchandise produced by LM. However, we found that all such entries were related to sales made during the period covered by the fourth administrative review, which extends from September 1, 2004, through August 31, 2005, and were already examined in the context of the fourth review. We tied these entries in the CBP data to LM's sales database by port of entry, importer and quantity. *See* Memorandum from David Layton, Analysis Memorandum: Preliminary Determination of Cash Deposit and Assessment Rates (May 25, 2007) (Preliminary Analysis Memo). Consequently, as part of our analysis, we considered the relevant data from the fourth review which were placed on the record of the instant review. *See* Fourth Review Documents Memo and Records Memo.

On April 9, 2007, and May 9, 2007, we invited the petitioner and LM to comment on the addition of the relevant data from the fourth review to the record of the instant review. *See* Letters from the Department to the petitioner and LM regarding the addition of documents into the record of the fifth administrative review of rebar from Latvia, April 9, 2007 and May 9, 2007. On April 20, 2007, LM submitted comments restating that it made no sales to the United States during the POR covered by the fifth administrative review. LM noted that in the third and fourth administrative reviews, the Department treated LM's date of contract as the date of sale and thus the date of sale predates the invoice/shipment date. LM argued that due to the application of this date–of-sale methodology, an entry date in the POR of the fifth administrative does not mean that a U.S. sale of subject merchandise was made in that period. LM stated that the information put on the record by the Department on April 9, 2007 confirms that the merchandise entered in the United States in September 2005 was previously subject to analysis in the fourth administrative review. LM maintains that because information on the record indicates that it made no sales during the current POR, the review should be rescinded.

Section 751(a)(2)(A)(ii) of the Tariff Act of 1930, as amended, instructs the Department, when conducting administrative reviews, to determine the dumping margin for each entry. As noted above, because all entries of merchandise produced by LM in the instant review were related to sales that were reviewed in the fourth administrative review, the sales related to those entries have already been included in the calculations of cash deposit and assessment rates in that review. Thus, we have preliminarily determined to apply the assessment rates calculated in the fourth review to the entries in this, the fifth, review. In this case, we have decided to apply the assessment rate that was based upon specific sales made in the fourth review to entries of merchandise made during the instant review because the evidence on the record of this case has provided direct linkage between the fourth review sales and the fifth review entries. Moreover, as there was no assessment of antidumping duties related to the specific sales at issue from the fourth review, there is no issue of double–counting antidumping duties. Finally, as we have not recalculated dumping margins in this review, the cash deposit rate calculated in the fourth review will continue to apply. *See* Preliminary Analysis Memo.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted–average margin exists for the period September 1, 2005, through August 31, 2006:

Producer	Weighted–Average Margin (Percentage)
Joint Stock Company Liepajas Metalurgs ..	5.94

The Department will disclose calculations performed in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, the parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate on all appropriate entries. We calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of the sales for that importer. Where the assessment rate is above *de minimis*, we instruct CBP to assess duties on all entries of subject merchandise by that importer. As explained above, the Department will apply the importer–specific assessment rates calculated in the previous review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, the Department will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements were effective upon publication of the final results of the previous administrative review (*see Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 71 FR 74900 (December 13, 2006)) for all shipments of rebar from Latvia entered, or withdrawn from warehouse, for consumption on or after December 13, 2006, as provided by section 751(a)(1) of the Act, and will continue to be in effect: (1) the cash deposit rate listed above for LM will be 5.94 percent; (2) for previously reviewed or investigated companies not listed above, 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, a prior review, or the less–than-fair–value (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) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 17.21 percent, the ''All Others'' rate established in the LTFV investigation. These cash deposit requirements shall remain in effect until further notice.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities 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 determination is issued and published in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: May 25, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–10703 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, application no. 06–A0002.

SUMMARY: On May 25, 2007, The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to Necole Shannon Global, Inc. (''NSG'').

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2005).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The original NSG Certificate (No. 06–00002) was issued on December 14, 2006 (71 FR 76275, December 20, 2006).

NSG's Export Trade Certificate of Review has been amended to change its name from ''Darah Thomas, doing business as Necole Shannon Global Export Services'' to the new listing ''Necole Shannon Global, Inc.''

The effective date of the amended certificate is February 27, 2007. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 29, 2007.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–10638 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, application no. 99–3A005.

SUMMARY: On May 25, 2007, The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to California Almond Export Association, LLC (''CAEA'').

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2005).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The original CAEA Certificate (No. 99–00005) was issued on December 27, 1999 (65 FR 760, January 6, 2000) and last amended on June 17, 2004 (69 FR 35585, June 25, 2004).

CAEA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Sunny Gem, LLC, Wasco, California; and North Valley Nut, Inc., Chico, California; and

2. Change the listing of the following Member: ''Ryan*Parreira Almond Company, Los Banos, California'' to the new listing ''RPAC, LLC, Los Banos, California''.

The effective date of the amended certificate is February 27, 2007. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 25, 2007.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–10639 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA59

Marine Mammals; File No. 642–1536–03

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that Joseph R. Mobley, University of Hawaii at Manoa,2528 McCarthy Mall, Webster 404, Honolulu, HI 96822, has requested an amendment to scientific research Permit No. 642–1536–02.

DATES: Written, telefaxed, or e-mail comments must be received on or before July 5, 2007.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 642–1536–03.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 642–1536 issued on March 3, 2000 (65 FR 13949) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 642–1536 authorizes the permit holder to conduct aerial and vessel-based research, including surface and underwater photography/videography for identification and sex verification, on North Pacific humpback whales (Megaptera novaeangliae) and several other species of cetaceans in Hawaii waters. The permit holder is also authorized to biopsy sample and suction cup/implantable bioacoustic tag various cetacean species resident to Hawaii. The permit holder now requests authorization to use sound playback on up to 250 humpback whales annually in the waters off W. Maui and possibly other inshore areas among the main Hawaiian Islands. The proposed research would expand upon earlier work that demonstrated the feasibility of using responses of free-ranging humpback whales to biologically meaningful sounds as a means of estimating auditory thresholds for humpback whales. The amendment would be valid for the remainder of the permit.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 29, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–10721 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA24

Marine Mammals; File No. 731–1774

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

ACTION: Notice; Issuance of permit amendment.

SUMMARY: Notice is hereby given that Robin Baird, Ph.D., Cascadia Research, 218 W. 4th Avenue, Olympia, WA 98501, has been issued an amendment to scientific research Permit No. 731–1774.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 12, 2007, notice was published in the **Federal Register** (72 FR 6533) that a request for a scientific research permit amendment to take cetacean species had been submitted by the above-named individual. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 731–1774, issued to Robin Baird, Ph.D. (Cascadia Research) authorizes vessel approaches, aerial over-flights, photo-identification, video and audio recording and suction cup tagging of cetacean species in all U.S. and international waters in the Pacific, including Alaska, Washington, Oregon, California, Hawaii, and other U.S. territories. The objectives of the research are to assess cetacean populations and to study diving and night-time behavior, social organization, and inter-specific interactions. The permit has been amended to authorize satellite tagging with dart tags of the following species of marine mammals: Blainville's (*Mesoplodon densirostris*), Cuvier's (*Ziphius cavirostris*), Longman's (*Indopacetus pacificus*), and Baird's (*Berardius bairdii*) beaked whales, short-finned pilot (*Globicephala macrorhynchus*), non-Southern Resident killer (*Orcinus orca*), pygmy killer (*Feresa attenuata*), melon-headed (*Peponocephala electra*), and false killer (*Pseudorca crassidens*) whales, bottlenose (*Tursiops truncatus*), rough-toothed (*Steno bredanensis*), and Risso's (*Grampus griseus*) dolphins, and dwarf (*Kogia sima*) and pygmy (*Kogia breviceps*) sperm whales. For each species, up to 20 individuals may be dart tagged per year for the duration of the permit. Incidental harassment of non-target animals is already authorized, therefore, no additional harassment takes were requested. Dart tagging would occur concurrently with already permitted activities, primarily in Hawaiian waters, though some species may be tagged opportunistically elsewhere where activities are authorized. No takes by dart tagging or additional incidental takes of ESA listed species were requested. The amended permit expires on August 31, 2010.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Dated: May 29, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–10725 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Climate Change Science Program (CCSP) Product Development Committee (CPDC) for Synthesis and Assessment Product 1.3

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Climate Change Science Program (CCSP) Product Development Committee for Synthesis and Assessment Product 1.3 (CPDC–S&A 1.3) was established by a Decision Memorandum dated November 21, 2006. CPDC–S&A 1.3 is the Federal Advisory Committee charged with responsibility to develop a draft Synthesis and Assessment Product that addresses CCSP Topic 1.3: ''Re-analyses of Historical Climate Data for Key Atmospheric Features: Implications for Attribution of Causes of Observed Change.''

Time and Date: The meeting will be held Monday, June 25, 2007, from 1:30 p.m. to 5:30 p.m.; Tuesday, June 26, 2007, from 8:30 a.m. to 5 p.m.; and Wednesday, June 27, 2007, from 8:30 a.m. to 5 p.m. These times and the agenda topics described below are subject to change. Refer to the Web page *http://www.climate.noaa.gov/ccsp/13.jsp* for the most up-to-date meeting agenda.

Place: The meeting will be held at the NOAA Earth System Research Laboratory, 325 Broadway, Boulder, Colorado 80305, Room GB–124.

Status: The meeting will be open to public participation with a 30-minute public comment period on Monday, June 25 from 2:30 p.m. to 3 p.m. (check Web site to confirm this time). The CPDC–S&A 1.3 expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received by the CPDC–S&A 1.3 Designated Federal Official by June 18, 2007 to provide sufficient time for review. Written comments received after June 18 will be distributed to the CPDC–S&A 1.3, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) Review, recommend and make changes to the reanalysis and attribution chapters of Synthesis and Assessment Product 1.3; and (2) Discussion of plans for completion and submission of the first draft of Synthesis and Assessment Product 1.3.

FOR FURTHER INFORMATION CONTACT: Neil Christerson, Designated Federal Official, CPDC–S&A 1.3 (NOAA Climate Program Office, 1315 East-West Hwy., Suite 12105, Silver Spring, Maryland 20910. Phone: 301–734–1211, Fax: 301–713–0518, E-mail: *Neil.Christerson@noaa.gov* or visit the Web site at *http://www.climate.noaa.gov/ccsp/13.jsp*.)

Terry Bevels,

Deputy Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E7–10663 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

United States Patent Applicant Survey

AGENCY: Patent and Trademark Office, Department of Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the extension of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 3, 2007.

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

E-mail: Susan.Fawcett@uspto.gov. Include ''0651–0052 comment'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan Fawcett.

Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450. *Federal e-Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Gus Mastrogianis, Economist, Office of Corporate Planning, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone 571–272–6292; or by e-mail at *gus.mastrogianis@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

For several years the USPTO has supported an ongoing forecasting program for patent application filings that includes the use of quantitative and qualitative methodologies. Given the importance of accurate application filings forecasts, the USPTO considers more than one type of methodology. As part of this strategy, information from a survey of the inventor community is included when formulating application filings forecasts. In addition to using the survey as part of a comprehensive approach to forecasting, the USPTO is also using this tool in response to Senate Appropriations Report 106–404 (September 8, 2000). This report directed the USPTO to ''develop a workload forecast with advice from a representative sample of industry and the inventor community.'' A patent application filing survey will assist the USPTO in better understanding key factors driving future application filings, such as newly emerging technologies.

The USPTO has developed the United States Patent Applicant Survey as part of the continuing effort to better predict the future growth of patent application filings by understanding applicant intentions. The main purpose of this

survey is to determine the number of application filings that the USPTO can expect to receive over the next three years from patent-generating entities, ranging from large domestic corporations to independent inventors.

In recent years, the rate of patent application filings to the USPTO steadily increased with expanding technological innovations. However, newly emerging technologies, evolving business patenting strategies, patent valuations and costs, and intellectual property legislative changes, among other factors, may significantly impact patent applicants' decisions to file applications at the USPTO. These factors cannot easily be accounted for in other methodologies or sufficient information is not available from databases or other sources and it is necessary for the USPTO to conduct the Patent Applicant Survey to obtain information directly from applicants. The information will allow the agency to anticipate demand and estimate future revenue flow more reliably; to identify input and output triggers and allocate resources to meet and understand customer needs; and to reassess output and capacity goals and re-align organization quality control measures with applicant demand by division.

The Patent Applicant Survey is a mail survey, although respondents have the option to complete the survey electronically. They may also provide their responses verbally over the telephone. A survey packet, containing the survey, a cover letter explaining the purpose of and outlining instructions for completing the survey, and a postage-paid, pre-addressed return envelope will be mailed to all survey groups. The USPTO plans to survey four groups of respondents: Large domestic corporations (including those with 500+ employees), small and medium-size businesses, universities and non-profit research organizations, and independent inventors. The USPTO does not plan to survey foreign entities and will rely on the European Patent Office (EPO) and the Japan Patent Office (JPO) to provide forecasts of application filings by foreign entities. Due to variances in filing and the varying needs of the different patent applicant populations, the USPTO has developed two versions of the survey: One for the large domestic corporations and small and medium-size businesses and one for universities, non-profit research organizations, and independent inventors.

Since the initial survey, administered in late 2002, the USPTO has redesigned the survey to eliminate difficulties and coordinate analysis more easily with parallel surveys conducted concurrently by the European and Japan Patent Offices.

The surveys do not have USPTO form numbers associated with them and once they are approved, they will carry the OMB Control Number and the expiration date.

II. Method of Collection

By mail or electronically over the Internet when respondents elect the on-line option to complete the survey.

III. Data

OMB Number: 0651–0052.

Form Number(s): None

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits and not-for-profit institutions.

Estimated Number of Respondents: 400 responses per year. Of this total, the USPTO expects that 267 surveys will be completed using the on-line option.

Estimated Time Per Response: The USPTO estimates that it will take approximately 30 minutes (0.50 hours) for all of the patent applicant populations to provide their responses, with the exception of the independent inventors. The USPTO estimates that it will take independent inventors approximately 15 minutes (0.25 hours) to provide their responses. These estimates include the time to gather the necessary information, complete the survey, and submit it to the USPTO. The USPTO believes that it will take the same amount of time to complete the surveys whether they are completed on paper and mailed to the USPTO or completed and submitted electronically.

Estimated Total Annual Respondent Burden Hours: 140 hours.

Estimated Total Annual Respondent Cost Burden: $4,340. The USPTO estimates that 31% of the respondents completing these surveys will be lawyers, about 9% will be legal assistants, and 60% of respondents will have diverse occupations. Using an estimated U.S. hourly rate of $54 for lawyers, a legal assistant rate of $24, and a rate of $20 for the majority of the respondents, the USPTO believes that the average hourly rate for those completing these surveys will be $31 per hour. Therefore, the USPTO estimates that the salary costs for the respondents completing these surveys will be $4,340.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Large Domestic Corporations	30	27	14
Large Domestic Corporations (electronic surveys)	30	53	27
Small and Medium-Size Businesses	30	18	9
Small and Medium-Size Businesses (electronic surveys)	30	37	19
Universities and Non-Profit Research Organizations	30	5	3
Universities and Non-Profit Research Organizations (electronic surveys)	30	10	5
Independent Inventors	15	83	21
Independent Inventors (electronic surveys)	15	167	42
Total		400	140

Estimated Total Annual Non-hour Respondent Cost Burden: $0. There are no capital start-up, maintenance, or recordkeeping costs or filing fees associated with this information collection. The USPTO provides postage-paid, pre-addressed return envelopes for the completed mail surveys so there are no postage costs associated with this information collection.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 29, 2007

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7–10672 Filed 6–1–07; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 21 June 2007, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, May 29, 2007.

Thomas Luebke, AIA

Secretary.

[FR Doc. 07–2738 Filed 6–1–07; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the February 12, 2007 **Federal Register** (72 FR 6534), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval of information collection requirements in regulations codified at 16 CFR part 1019, which establish procedures for export of noncomplying products. No comments were received. The Commission now announces that it is submitting to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information.

These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act that require persons and firms to notify the Commission before exporting any product that fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required by law to transmit the information relating to the proposed exportation to the government of the country of intended destination. OMB previously approved the collection of information under control number 3041–0003. OMB's most recent extension of approval will expire on August 31, 2007.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

Title of information collection: Procedures for export of noncomplying products, 16 CFR part 1019.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of noncomplying goods exported.

General description of respondents: Exporters of products that fail to comply with standards or regulations enforced under provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, or the Flammable Fabrics Act.

Estimated Number of respondents: 35 firms per year.

Estimated number of notifications for all respondents: 75 per year.

Estimated number of hours per response: 1.

Estimated number of hours for all respondents: 75 per year.

Estimated cost of collection for all respondents: $3,400.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 5, 2007 to the (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov,* or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Comments may also be sent via facsimile at (301) 504–0127.

Copies of this request for approval of information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov.*

Dated: May 29, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–10619 Filed 6–1–07; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Safety Standard for Multi-Purpose Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the March 1, 2007 **Federal Register** (72 FR 9310), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Multi-Purpose Lighters. 16 CFR part 1212. No comments were received in response to the notice. The Commission now announces that it is submitting to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information for a period of three years from the date of approval.

Section 14(a) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a

consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms ''establish and maintain'' records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for multi-purpose lighters. These regulations require manufacturers and importers to submit a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and other information before the introduction of each model of lighter into commerce. These regulations also require manufacturers, importers, and private labelers of multi-purpose lighters to establish and maintain records to demonstrate successful completion of all required tests to support the certificates of compliance that they issue. 16 CFR part 1212, subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of multi-purpose lighters to protect consumers from risks of accidental deaths and burn injuries associated with those lighters. More specifically, the Commission uses this information to determine whether lighters comply with the standard by resisting operation by young children. The Commission also uses this information to obtain corrective actions if multipurpose lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

OMB approved the collection of information in the certification regulations for multi-purpose lighters under control number 3041–0130. OMB's current approval will expire on July 31, 2007. The Commission is requesting an extension of approval for these collection of information requirements.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

Title of information collection: Safety Standard for Multi-Purpose Lighters. 16 CFR part 1212.

Type of request: Extension of approval.

General description of respondents: Manufacturers and importers of multi-purpose lighters.

Estimated number of respondents: 16.

Estimated number of models tested per respondent per year: 2.

Estimated average number of hours per respondent per model: 50 hours per year.

Estimated number of hours for all respondents: 1,600 per year.

Estimated cost of collection for all respondents: $71,212 per year.

Comments: Comments on this request for reinstatement of approval of information collection requirements should be submitted by July 5, 2007 to (1) The Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov,* or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Comments may also be sent via facsimile at (301) 504–0127.

Copies of this request for approval of information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov.*

Dated: May 29, 2007.

Todd A. Stevenson,

Secretary, Consumer Products Safety Commission.

[FR Doc. E7–10620 Filed 6–1–07; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the March 1, 2007 **Federal Register** (72 FR 9311), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval of information collection requirements in the Standard for the Flammability of Mattresses and Mattress Pads. 16 CFR part 1632. Comments were received from Barbara Lafferty and Clifford Nopp opposing a new standard for the flammability (open flame) of mattress sets under 16 CFR part 1633. Gabe Owens submitted comments stating that part 1632 should be terminated and superseded by the requirements in part 1633. These comments do not pertain to the collection of information requirements under part 1632. These comments should have been submitted in, and similar comments previously were addressed in the rulemaking proceeding promulgating 16 CFR part 1633, which is now codified. Accordingly, the Commission now announces that it is submitting to the Office of Management and Budget (OMB) a request for extension of approval of this collection of information.

The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers and importers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads and to obtain acceptable results from such testing. Manufacturers and importers are required to maintain the records and test results specified under the standard. OMB previously approved the collection of information under control number 3041–0014. OMB's most recent extension of approval will expire on August 31, 2007.

An additional mattress standard was promulgated under section 4 of the Flammable Fabrics Act, 15 U.S.C. 1191–1204, effective July 1, 2007, to reduce deaths and injuries related to mattress fires, particularly those ignited by open flame sources such as lighters, candles and matches. 16 CFR part 1633. That standard established new performance requirements for mattresses and mattress sets that will generate a smaller size fire from open flame source ignitions. Part 1633 also contains recordkeeping requirements to document compliance with the standard. OMB approved that collection of information under Control Number 3041–0133, with an expiration date of June 30, 2009. 71 FR 37910.

In May 2006, an Interim Enforcement Policy for Mattresses subject to 16 CFR parts 1632 and 1633, effective May 1, 2006, was issued that reduced prototype surface testing and recordkeeping requirements from six mattress surfaces to two mattress surfaces for each new prototype created after March 15, 2006. That policy is available at *http://www.cpsc.gov/BUSINFO/Interimmattress.pdf.* Mattress prototypes created before March 15, 2006, are subject to the full requirements of part 1632. In addition, mattress pads are not subject to this policy and must continue to adhere to all the requirements set forth in part 1632.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

Title of information collection: Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR Part 1632.

Type of request: Extension of approval.

Frequency of collection: Varies, depending upon the number of individual combinations of materials and methods of construction used to produce mattresses.

General description of respondents: Manufacturers and importers of mattresses and mattress pads.

Estimated number of respondents: 751.

Estimated number of hours per respondent: 26 hours per year.

Estimated number of hours for all respondents: 19,526 per year.

Estimated cost of collection for all respondents: $875,000.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by July 5, 2007 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov,* or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Comments may also be sent via facsimile at (301) 504–0127.

Copies of this request for approval of information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov.*

Dated: May 29, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–10625 Filed 6–1–07; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–29]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–29 with attached transmittal and policy justification.

Dated: May 29, 2007.

C. R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

MAY 2 2007

In reply refer to:
I-07/005728

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-29, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $1.05 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Transmittal No. 07-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Iraq

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 billion
Other	$1.05 billion
TOTAL	$1.05 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** Medical Consumables, Pharmaceuticals, Medical, Surgical, Dental Supplies, Medical Equipment, support equipment, program support, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services and other related program requirements necessary.

(iv) **Military Department:** Army (BHB)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** [illegible]

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq – Medical Supplies, Equipment, and Training

The Government of Iraq has requested a possible sale of Medical Consumables, Pharmaceuticals, Medical, Surgical, Dental Supplies, Medical Equipment, support equipment, program support, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services and other related program requirements. The cost of this proposed sale will be less than $1.05 billion.

This proposed sale would contribute to the foreign policy and national security of the U.S. by providing basic medical needs to Iraqi forces and, as necessary and appropriate, civilians who are casualties of ongoing conflict. The medical supplies will help minimize the casualties sustained during military operations.

The proposed use of this equipment is consistent with the statutory authorities in section 4 of the Arms Export Control Act, as amended, and section 607 of the Foreign Assistance Act of 1961, as amended.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors are unknown at this time. There are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 07–2743 Filed 6–1–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of Secretary

[DOD–2007-OS–0060]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, Department of Defense.

ACTION: Notice to add a new system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on July 5, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service-Denver, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 24, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: May 29, 2007.

C.R. Choate

Alternative OSD Federal Register Liaison Officer, Department of Defense.

T7208

SYSTEM NAME:

General Accounting and Finance System—Defense Transaction Interface Module

SYSTEM LOCATION:

Defense Information Systems Agency, Defense Enterprise Computing Center, Ogden, 7879 Wardleigh Road, Hill Air Force Base, Utah 84058–5997.

Defense Finance and Accounting Service—Denver, 6760 E. Irvington Place, Denver, Colorado 80279–8000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army, Navy, Air Force, Marine Corps active duty, Reserve and National Guard members; and DoD civilian employees paid by appropriated funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), duty address, employing agency, military branch of service, and members' military status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 31 U.S.C. Sections 3511, 3512, 3513; and E.O. 9397 (SSN).

PURPOSE(S):

The system is in support of the DFAS accounting and finance disbursing systems. This system will receive obligations and expense data that will be used for the General Accounting and Finance System and the Centralized Disbursing System. As a management tool, it will determine budget execution status and generate statistical analysis as required by the Department of Defense (DoD).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are file folders and electronic storage media.

RETRIEVABILITY:

Individual's name and Social Security Number (SSN).

SAFEGUARDS:

Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and User IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access.

RETENTION AND DISPOSAL:

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the fiscal or payroll year, or when a case is closed. Records are then destroyed 6 years and 3 months after cutoff or 10 years after the case is closed. Records are destroyed by degaussing, burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Systems Manager, General Accounting and Finance System—Defense Transaction Interface Module, Information and Technology Directorate, Defense Finance and Accounting Service—Denver, 6760 E. Irvington Place, Denver, CO 80279–8000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11-R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From the individual concerned, and DoD Components such as, Army, Navy, Air Force, Marine Corps, Reserves and National Guard.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–10686 Filed 6–1–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[DOD–2007–OS–0059]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, Department of Defense.

ACTION: Notice to add a new system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on July 5, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 24, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: May 29, 2007.

C.R. Choate

Alternative Federal Register Liaison Officer, Department of Defense.

T7220

SYSTEM NAME:

Deployable Disbursing System (DDS).

SYSTEM LOCATION:

Defense Finance and Accounting Service—Indianapolis, 8899 East 56th, Indianapolis, IN 46249–7100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty United States Army and Marine Corps, and Reserve and Guard military members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, address, Social Security Numbers (SSN), Electronic Fund Transfer data (i.e. bank's name and address and bank's routine number), financial payment information, military branch of service, and military status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Volume 5; 31 U.S.C. Sections 3511, and 3513; and E.O. 9397 (SSN).

PURPOSE(S):

The Deployable Disbursing System (DDS) will provide automated accounting and disbursing documentation to mobile and remote military operations within contingency locations requiring foreign currency operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Treasury Department to provide information on check issues and electronic funds transfers.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The 'Blanket Routine Uses' published at the beginning of the DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screening, use of visitor registers, and electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the record system.

RETENTION AND DISPOSAL:

Records are cut off at the end of fiscal year and destroyed 6 years and 3 months after cutoff. If any discrepancy in the transaction has been identified, the records are cut off after the discrepancy has been corrected and the final payment made. Records are disposed of by degaussing the electronic media, shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Defense Finance and Accounting Service—Indianapolis, Deployable Disbursing System (DDS), 8899 East 56th Street, Indianapolis, IN 46249–7100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From the individual and DoD Components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–10687 Filed 6–1–07; 8:45 am]

BILLING CODE 2006–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2007–OS–0058]

Privacy Act of 1974; Systems of Records, DOD

AGENCY: Defense Finance and Accounting Service, Department of Defense.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on July 5, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 24, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated December 12, 2000, 65 FR 239.

Dated: May 29, 2007.

C.R. Choate,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

T7901a

SYSTEM NAME:

Standard Negotiable Instrument Processing System.

SYSTEM LOCATIONS:

Defense Information Systems Agency, Defense Enterprise Computing Center—Ogden, 7879 Wardleigh Road, Building 891, Hill Air Force Base, UT 84056–5997.

Defense Finance and Accounting Service—Indianapolis, 8899 E. 56th Street, Indianapolis, IN 46249–2700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Army Active and Reserve military members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), home and mailing address, military branch of service, member's status, check payment information such as check numbers, and payee names.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Volume 5; 5 U.S.C. Sections 3512 and 3513; and E.O. 9397 (SSN).

PURPOSE(S):

A processing system, designed to process checks for U.S. Army Active and Reserve military members. As a management tool it will produce reports for reconciliation of these checks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Department of the Treasury to provide information on check issues and electronic funds transfers.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The ''Blanket Routine Uses'' published at the beginning of the DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name, Social Security Number (SSN), and check number.

SAFEGUARDS:

Records are stored in a building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. User's ID and password are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access.

RETENTION AND DISPOSAL:

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, or destroyed up to 6 years and 3 months after cutoff. Records are destroyed by degaussing, shredding, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service—Indianapolis, Information Technology Directorate, Systems Manager, 8899 East 56th Street, Indianapolis, IN 46249–2700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

The individual, DFAS Defense Joint Military Payroll System, and the U.S. Army active and reserve members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–10688 Filed 6–1–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2007–OS–0057]

Privacy Act of 1974; Systems of Records, DOD

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 5, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a (r), of the Privacy Act of 1974, as amended, were submitted on May 24, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 29, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S153.20 DLA–I

SYSTEM NAME:

Personnel Security Information Subsystem of COSACS (November 16, 2004, 69 FR 67112).

CHANGES:

SYSTEM IDENTIFIER:

Delete ''DLA–I'' from entry.

SYSTEM NAME:

Delete entry and replace with ''Automated Listing of Eligibility and Clearances (ALEC).''

SYSTEM LOCATION:

Delete entry and replace with ''Defense Logistics Agency (DLA) Enterprise Data Center (EDC), Columbus, OH, 43218–3990. Headquarters DLA, the DLA Field Activities, and the DLA Enterprise Support have on-line access to the data concerning personnel under their jurisdiction.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name, Social Security Number (SSN), date of birth, place of birth (state), country, citizenship, job series, category, organization, servicing activity, employing activity, position sensitivity and determination date, type of investigation, investigating agency, date initiated, date completed, Periodic Reinvestigation (PR) due date, eligibility and date, access and date, new investigation pending (type and date initiated), Non-Disclosure Agreement (NDA) executed and date, date of departure, and special accesses.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 12333, United States Intelligence Activities; E.O. 12958, Classified National Security Information; DoD 5200.2–R, DoD Personnel Security Program; and E.O. 9397 (SSN).''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Individual's name and/or Social Security Number (SSN).''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a secure, limited access, and monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted by the use of passwords. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information and received Information Assurance and Privacy Act training. Paper records are marked ''FOUO–PRIVACY ACT PROTECTED DATA'' and stored in a locked container when not in use.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Staff Director, Public Safety, DLA Enterprise Support, ATTN: DES–S, 8725 John J. Kingman Road, Stop 6220, Ft. Belvoir, VA, 22060–6220, and Security Managers of all DLA Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), current address, and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Certificates of clearance or types of personnel security investigations previously completed by the Office of Personnel Management, the Defense Security Service, the Federal Bureau of Investigation, investigative units of the Army, Navy, Air Force, or other Federal agencies.''

* * * * *

S153.20

SYSTEM NAME:

Automated Listing of Eligibility and Clearances (ALEC).

SYSTEM LOCATION:

Defense Logistics Agency (DLA) Enterprise Data Center (EDC) in Columbus, OH, 43218–3990. HQ DLA, the DLA Field Activities, and the DLA Enterprise Support have on-line access to the data concerning personnel under their jurisdiction.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DLA civilian and military personnel who have been found eligible for employment in a sensitive position or eligible for or granted a security clearance or access to information

classified in the interests of national security.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), date of birth, place of birth (state), country, citizenship, job series, category, organization, servicing activity, employing activity, position sensitivity and determination date, type of investigation, investigating agency, date initiated and completed, Periodic Reinvestigation (PR) due date, eligibility and date, access and date, new investigation pending (type and date initiated), Non-Disclosure Agreement (NDA) executed and date, date of departure, and special accesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 12333, United States Intelligence Activities; E.O. 12958, Classified National Security Information; DoD 5200.2–R, DoD Personnel Security Program; and E.O. 9397 (SSN).

PURPOSE(S):

Records are collected and maintained for the purpose of centralizing eligibility and clearance information for use by all Defense Logistics Agency (DLA) Security Managers (listings are generated from ALEC in the form of a Record Activity Clearance Eligibility Listing (RACEL)). DLA Security Managers use the data to determine whether or not DLA employees are eligible for or occupy sensitive positions; whether they, or assigned military personnel, have been cleared for or granted access to classified information; and the level of such clearance or access, if granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To other Federal Government agencies and Federal Government contractors for the purpose of verifying clearance status and other clearance related information when necessary in the course of official business.

The DOD ''Blanket Routine Uses'' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in a secure, limited access, and monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted by the use of passwords. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information and received Information Assurance and Privacy Act training. Paper records are marked ''FOUO–PRIVACY ACT PROTECTED DATA'' and stored in a locked container when not in use.

RETENTION AND DISPOSAL:

New listings are published monthly and prior listings are destroyed as soon as the new listings are verified, but in no case beyond 90 days. Electronic records are purged two years after the individual departs DLA.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Public Safety, DLA Enterprise Support, ATTN: DES–S, 8725 John J. Kingman Road, Stop 6220, Ft. Belvoir, VA, 22060–6220, and Security Managers of all DLA Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Certificates of clearance or types of personnel security investigations previously completed by the Office of Personnel Management, the Defense Security Service, the Federal Bureau of Investigation, investigative units of the Army, Navy, Air Force, or other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–10689 Filed 6–1–07; 8:45 am]

BILLING CODE 2005–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Record of Decision (ROD) for Base Realignment and Closure (BRAC) and Other Army Actions at Fort Lee and Fort A.P. Hill, VA

AGENCY: Department of the Army, DoD.

ACTION: Record of Decision (ROD).

SUMMARY: The Department of the Army announces the availability of a ROD which summarizes the decision for implementing realignment actions as directed by the BRAC Commission at Fort Lee, Virginia and related actions at Fort A.P. Hill, Virginia.

ADDRESSES: To obtain a copy of the ROD please contact Ms. Carol Anderson, IMNE-LEE-PWE, 1816 Shop Road, Fort Lee, Virginia 23801–1604; E-mail address: *CRMLee@lee.army.mil*.

FOR FURTHER INFORMATION CONTACT: Ms. Anderson (Fort Lee) at (804) 734-5071, or Ms. Terry Banks (Fort A.P. Hill) at (804) 633–8223, during normal business hours Monday through Friday.

SUPPLEMENTARY INFORMATION: The Army has decided to proceed with implementing the Proposed Action consistent with the analysis in the

Environmental Impact Statement (EIS) (February 2007), supporting studies and comments provided during formal comment and review periods. The Proposed Action includes construction, renovation, and operation of proposed facilities to accommodate incoming military missions at Fort Lee. To implement the BRAC recommendations, Fort Lee will be receiving personnel, equipment, and missions from various closure and realignment actions within the Department of Defense. To implement the BRAC Commission recommendations, the Army will provide the necessary facilities, buildings, and infrastructure to support the establishment of a Sustainment Center of Excellence, a Joint Center for Consolidated Transportation Management Training, and a Joint Center of Excellence for Culinary Training at Fort Lee; locate various offices of the Defense Contract Management Agency Headquarters at Fort Lee; and receive all components of the Defense Commissary Agency at Fort Lee. Additionally, facilities will be installed or constructed at Fort A.P. Hill to accommodate field training exercises and leadership skills training for Student Soldiers at Fort Lee. The No Action Alternative would not meet the Army's purpose and need for the Proposed Action as the BRAC realignment is required by Congress and needed for Army transformation to be effective.

Special considerations was given to the effect of the Proposed Action on natural resources, cultural resources, traffic and the Petersburg National Battlefield. All practicable means to avoid or minimize environmental harm from the selected alternative have been adopted. The Army will minimize effects on all environmental and socioeconomic resources by implementing best management practices as described in the EIS. Mitigation measures, as described in the ROD, will be implemented (subject to the availability of funding) to minimize, avoid, or compensate for the adverse effects identified in the EIS at Fort Lee and Fort A.P. Hill for the following: Aesthetic and visual resources, noise, water resources, biological resources, cultural resources, and socioeconomics. The EIS identifies transportation projects that could eliminate adverse impacts from implementing the Proposed Action. The ROD describes the disposition of these projects and the approach the Army will take to mitigate traffic concerns. The ROD determines that implementing the Proposed Action reflects a proper balance between initiatives for protection of the environment, appropriate mitigation, and actions to achieve the Army's requirements.

An electronic version of the ROD can be viewed or downloaded from the following Web site: *http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm*.

Dated: May 25, 2007.

H.E. Wolfe,

Acting Principal Assistant Deputy Assistant Secretary of the Army. (Environment, Safety and Occupational Health)

[FR Doc. 07–2729 Filed 6–1–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2007–0036]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 5, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a (r), of the Privacy Act of 1974, as amended, were submitted on May 24, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 29, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01560–1

System Name:

Navy College Management Information System (NCMIS) (April 24, 2002, 67 FR 20100).

CHANGES:

SYSTEM IDENTIFICATION:

Delete entry and replace with ''NM01560–1.''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Navy and Marine Corps military personnel and Coast Guard Civil Service and service members who receive tuition assistance (TA); dependents of Marine Corp service members OCONUS who receive tuition assistance (TA); Navy service members who participate in the Navy College Program for Afloat College Education (NCPACE); Navy service members who participate in the Seaman To Admiral 21st Century Program (STA21), The Advanced Enlisted Voucher Program (AEV) and the Graduate Education Voucher program (GEV); Navy, Marine Corps, Adult Family Members (AFM) of service members; and Civil Service employees who participate in the Academic Skills Program.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with: ''To maintain information on participants in the tuition assistance (TA), Navy College Program for Afloat College Education (NCPACE), Academic Skills programs, the Seaman to Admiral 21st Century Program (STA21), the Advanced Enlisted Voucher Program (AEV) and the Graduate Education Voucher program (GEV); to provide information to education counselors for the purpose of determining TA eligibility; education and degree plans; and course selection and eligibility; to provide information to fiscal and accounting personnel for the purpose of financial management and funds disbursement; to provide supervisory and management personnel access to

the individual's degree and course completion records via the Electronic Training Jacket produced by the Navy Training Management and Planning System (NTMPS) for the purpose of personnel evaluation; determining special program eligibility, and duty assignments; and to provide degree and course completion information to NTMPS and enlisted master file in the form of an electronic extract.''

* * * * *

Record source categories: Delete entry and replace with ''Subject individual, Corporate Enterprise and Training Activity Resource System (CETARS) Standard Training Activity Support System (STASS), Navy Personnel Command, Application for Tuition, the Marine Corps and Coast Guard personnel systems extracts, Assistance Form (NAVMC 10883), education counselors, educational institutions, Tuition Assistance Authorization Form (NAVEDTRA 1560/5), and Academic contractor.''

* * * * *

NM01560–1

SYSTEM NAME:

Navy College Management Information System

SYSTEM LOCATION:

Naval Education and Training Professional Development and Technology Center, 6490 Saufley Field Road, Pensacola, FL 32509–5241.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps military personnel and Coast Guard Civil Service and service members who receive tuition assistance (TA); dependents of Marine Corp service members OCONUS who receive tuition assistance (TA); Navy service members who participate in the Navy College Program for Afloat College Education (NCPACE); Navy service members who participate in the Seaman To Admiral 21st Century Program (STA21), The Advanced Enlisted Voucher Program (AEV) and the Graduate Education Voucher program (GEV); and, Navy, Marine Corps, Adult Family Members (AFM) of service members and Civil Service employees who participate in the Academic Skills Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for tuition assistance; personnel data; counseling notes and education plans; degree, course completion and grade reports from academic institutions and contract training providers; authorization for disbursement; and agency approval/disapproval.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy and E.O. 9397 (SSN).

Purpose(s):

To maintain information on participants in the tuition assistance (TA), Navy College Program for Afloat College Education (NCPACE), Academic Skills programs, the Seaman to Admiral 21st Century Program (STA21), the Advanced Enlisted Voucher Program (AEV) and the Graduate Education Voucher program (GEV); to provide information to education counselors for the purpose of determining TA eligibility; education and degree plans; and course selection and eligibility; to provide information to fiscal and accounting personnel for the purpose of financial management and funds disbursement; to provide supervisory and management personnel access to the individual's degree and course completion records via the Electronic Training Jacket produced by the Navy Training Management and Planning System (NTMPS) for the purpose of personnel evaluation; determining special program eligibility, and duty assignments; and to provide degree and course completion information to NTMPS and EMF in the form of an electronic extract.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To U.S. Coast Guard Voluntary Education Program Office for the purpose of education counseling, financial management, and funds disbursement.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's name, Social Security Number (SSN), and branch of service.

SAFEGUARDS:

Paper copies of tuition applications are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours. Automated records are password protected.

RETENTION AND DISPOSAL:

Paper and/or electronic copies of the individual's signed Tuition Assistance applications are retained at the originating NCO for three years and then shredded or burned. Copies of tuition assistance authorizations for officers are maintained in their official personnel record for two years following the completion of courses paid by tuition assistance. All other records are maintained in electronic format within NCMIS indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Naval Education and Training Professional Development and Technology Center, 6490 Saufley Field Road, Pensacola, FL 32509–5241.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Commanding Officer, Naval Education and Training Professional Development and Technology Center, 6490 Saufley Field Road, Pensacola, FL 32509–5241.

Individuals should provide their full name, Social Security Number (SSN), branch of service, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system should address written inquiries to the Commanding Officer, Naval Education and Training Professional Development and Technology Center, 6490 Saufley Field Road, Pensacola, FL 32509–5241.

Individuals should provide their full name, Social Security Number (SSN), branch of service, and signature.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subject individual, Corporate Enterprise and Training Activity Resource System (CETARS) Standard

Training Activity Support System (STASS), Navy Personnel Command, Application for Tuition, the Marine Corps and Coast Guard personnel systems extracts, Assistance Form (NAVMC 10883), education counselors, educational institutions, Tuition Assistance Authorization Form (NAVEDTRA 1560/5), and Academic contractor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–10683 Filed 6–1–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 5, 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 IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 29, 2007.

James Hyler,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Financial Report for Grantees under the Title III Part A, Title III Part B, and the Title V Program Endowment Activities and Endowment Challenge Grant.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 900.

Abstract: This financial reporting form will be utilized for Title III Part A, Title III Part B and Title V Program Endowment Activities and Title III Part C Endowment Challenge Grant Program. The purpose of this Annual Financial Report is to have the grantees report annually the kind of investments that have been made, the income earned and spent, and whether any part of the Endowment Fund Corpus has been spent. This information allows us to give technical assistance and determine whether the grantee has complied with the statutory and regulatory investment requirements.

Requests for copies of the information collection submission for OMB review may be accessed from *http://www.edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3298. 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. 07–2769 Filed 6–1–07; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Eastern Plains Transmission Project, Colorado and Kansas

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of public meeting and additional opportunity for public review and comment.

SUMMARY: The U.S. Department of Energy (DOE), Western Area Power Administration (Western) issued a notice of intent (NOI) to prepare an Environmental Impact Statement (EIS) on August 2, 2006, for the Eastern Plains Transmission Project (EPTP or Transmission Project). This notice announces an additional public meeting to provide the public opportunity to review and comment on additional and revised transmission line routes and the scope of the EIS. A summary of comments previously received during the scoping meetings held in August and September 2006, and meetings held in February 2007, is available upon request or at *http://www.wapa.gov/transmission/eptp.htm.*

Western is proposing to participate with Tri-State Generation and Transmission Association, Incorporated (Tri-State) in the construction of the EPTP. Western's participation would be in exchange for 275 megawatts (MW) of capacity rights on the proposed transmission lines. The EIS will address the construction, operation, and maintenance of approximately 1,000 miles of high-voltage transmission lines and ancillary facilities, which include substations, fiber optic installations, access roads, and construction staging areas. The EIS will discuss alternatives such as Western's system alternatives and the no action alternative (no Federal action). The EIS will analyze and present environmental impacts compared to the existing baseline condition in which no Transmission Project facilities exist. The EIS also will include analyses of the environmental

impacts of Tri-State's proposed generation and other past, present and reasonably foreseeable projects in the EPTP area. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA) and DOE NEPA Implementing Procedures.

DATES: The public meeting will be held June 20, 2007. The meeting will be held between 5 and 8 p.m. The comment period will close July 5, 2007.

ADDRESSES: The public meeting will be held at the Miami-Yoder School, 420 S. Rush Road, Rush, CO 80833. Written comments, questions, and information on the scope of the EIS may be mailed, faxed, or e-mailed to Mr. Jim Hartman, Environmental Manager, Western Area Power Administration, Rocky Mountain Region, P.O. Box 3700, Loveland, CO 80539; fax (970) 461–7213; or e-mail *eptp@wapa.gov.* For persons wishing to leave voice messages, the toll-free number is (888) 826–4710.

FOR FURTHER INFORMATION CONTACT: For further information or to request copies of the EIS, contact Mr. Hartman at the addresses provided or telephone the Transmission Project toll-free number at (888) 826–4710. For general information on DOE's NEPA review procedures or the status of a NEPA review, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; telephone (202) 586–4600 or (800) 472–2756; or fax (202) 586–7031.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Western, a power marketing administration within DOE, markets Federal hydroelectric power to preferred customers, as specified by law. They include municipalities, cooperatives, public utility and irrigation districts, Federal and state agencies, and Native American tribes in 15 western states, including Colorado and Kansas. Western's proposal is to participate with Tri-State in the construction of the Transmission Project in exchange for approximately 275 MW of capacity rights on the proposed transmission lines. Tri-State is a wholesale electric power supplier, owned by the 44 electric cooperatives it serves. Tri-State and the member utilities serve customers throughout Colorado, Nebraska, New Mexico, and Wyoming.

Western needs to provide more economical, reliable, diverse, and flexible power delivery to its customers by expanding the capability and geographic reach of Western's existing transmission system. The Transmission Project would provide Western's customers with more economical service by allowing customers to purchase transmission service directly from Western rather than through other companies' transmission lines. Also, during low water times, the Transmission Project would provide Western increased access to other options for satisfying Western's Federal hydropower contractual allocations. In addition, the Transmission Project would provide a direct interconnection at the Midway Substation which would facilitate power transfer between two of Western's Federal projects, the Colorado River Storage Project and the Loveland Area Projects. Enhancing and expanding transmission pathways also would contribute to ensuring reliability of the Federal transmission system.

Proposed Action and Alternatives

Western is preparing the EIS on its proposal to participate with Tri-State in the construction of the Transmission Project. Western's proposed activities include construction planning and management for approximately 1,000 miles of high-voltage transmission lines, and acquiring rights-of-way for transmission lines, access roads, and communication facilities. In addition to the environmental effects of the transmission lines, access roads, and construction staging areas, the EIS will address environmental effects of four new substations, expansions of approximately eight existing substations, and installing a fiber optic communications system for control of the transmission lines.

Western issued a NOI to prepare an EIS for the Transmission Project on August 2, 2006 (71 FR 43733), which included dates, times, and locations of public scoping meetings, and opportunities available for the public to comment. Since the NOI was published, 10 public scoping meetings were conducted between August 28 and September 14, 2006, throughout eastern Colorado and western Kansas. Western issued a second notice of public meetings and additional opportunity for public review and comment on January 19, 2007 (72 FR 2507), and 10 public meetings were conducted between February 12 and 23, 2007. This notice announces an additional public meeting on June 20, 2007, to provide the public an opportunity to review and comment on additional and revised transmission line routes between Big Sandy Substation and Midway Substation, and on the scope of the EIS.

Alternative Transmission Line Routes

During the August and September 2006 scoping meetings, Western presented preliminary locations of transmission line corridors and new substations. As a result of comments received, Western gathered additional data, made several route refinements, added additional routes, and considered alternatives, all of which were made available to the public at the February 2007 meetings. At the February meetings, Western accepted comments on the routes. As a result of the comments received on routes between Big Sandy Substation and Midway Substation, Western determined that additional route refinement and public involvement would be beneficial to refining routes in the area. The route refinements will be presented at the public meeting in June. At the June meeting, Western seeks comments on the alternative routes and other issues related to scope of the EIS. Western will consider the comments in its analysis.

Western will address other alternatives in the EIS, including the no action alternative. Under the no action alternative, Western would not participate with Tri-State in the construction of the Transmission Project. The EIS will evaluate the environmental effects of the alternatives and compare them to the existing baseline condition, in which no Transmission Project facilities are present. Alternative transmission line routes and substation locations will be refined as part of the EIS public process and addressed in the EIS. Western will consider additional reasonable alternatives that are technically and economically viable and that would meet Western's purpose and need.

Impacts Associated With Tri-State's Generation Projects

Tri-State proposes to develop coal-fired generation in Holcomb, Kansas, and is planning for additional generation projects. Western is not a participant in, is not involved in, and does not have control over Tri-State's generation projects. The EIS will evaluate the environmental impacts of Tri-State's generation as well as other past, present, and reasonably foreseeable projects.

Summary of Comments Received During First and Second Round Scoping

Western prepared a summary of the comments received during the first round of scoping meetings. That summary is available at *http://www.wapa.gov/transmission/eptp.htm.*

Prior to the public meeting in June 2007, the comments from the February 2007 meetings will be available at the same internet address. Copies also are available on request.

Participation in the NEPA Process

Persons interested in receiving future notices, Transmission Project information, copies of the EIS, and other information on the NEPA review process should contact Mr. Hartman as described under **ADDRESSES**. The EIS (choice of summary or full document) will be available in printed and electronic (compact disc) formats.

Western anticipates the draft EIS will be available summer 2007, with a final EIS available spring 2008. A Record of Decision is expected to be issued spring 2008. The public will be provided an opportunity to comment on the draft EIS. The location of public hearings on the draft EIS will be provided in the **Federal Register** and to local media at a later date.

Dated: May 23, 2007.

Timothy J. Meeks,

Administrator.

[FR Doc. E7–10697 Filed 6–1–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0320; FRL–8130–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application and Summary Report for an Emergency Exemption for Pesticides; EPA ICR No. 0596.09, OMB Control No. 2070–0032

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Application and Summary Report for an Emergency Exemption for Pesticides'' and identified by EPA ICR No. 0596.09 and OMB Control No. 2070–0032, is scheduled to expire on February 28, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before August 3, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0320, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0320. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Cameo Gianne Smoot, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: *smoot.cameo@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that

employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this action are identified in the North American Industrial Classification System (NAICS) code assigned to the states and federal government agencies responding to this information as 9241, the Administration of Environmental Quality Programs subsector groups of government establishments primarily engaged in the administration of environmental quality.

Title: Application and Summary Report for an Emergency Exemption for Pesticides.

ICR numbers: EPA ICR No. 0596.09, OMB Control No. 2070–0032.

ICR status: This ICR is currently scheduled to expire on February 28, 2008. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to grant emergency exemptions to states and Federal Agencies to allow an unregistered use of a pesticide for a limited time if EPA determines that emergency conditions exist. A section 18 action arises when growers and others encounter a pest problem on a site for which there is either no registered pesticide available, or for which there is a registered pesticide that would be effective but is not yet approved for use on that particular site. Section 18 also allows states to submit requests to EPA to grant unregistered pesticide use exemptions for public health and quarantine reasons.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 99 hours per response. 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 which have subsequently changed; 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 50.

Frequency of responses: 500 annually.

Estimated total average number of responses for each respondent: Not applicable.

Estimated total annual burden hours: 49,500 hours.

Estimated total annual costs: $2,472,770. There are no capital investment or maintenance and operational costs for this ICR.

IV. Are There Changes in the Estimates from the Last Approval?

There is no change in the 49,500 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 24, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–10679 Filed 6–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8321–3]

Meetings of the Local Government Advisory Committee (LGAC)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee Steering Committee and the Small Community Advisory Subcommittee (SCAS) will meet via conference call(s). The conference call in number is (866) 299–3188 and the conference code, when prompted is ''2025642791''.

Local Government Advisory Committee Steering Committee will meet via conference call(s) on the following dates:

Tuesday, June 19, 2007 1:30–2:30 p.m. Eastern Standard Time (EST)

Tuesday, July 24, 2007 1:30–2:30 p.m. Eastern Standard Time (EST)

Tuesday, August 21, 2007 1:30–2:30 p.m. Eastern Standard Time (EST)

Tuesday, September 25, 2007 1:30–3:30 p.m. Eastern Standard Time (EST)

Small Community Advisory Subcommittee (SCAS) will meet via conference call(s) on the following dates:

Wednesday, June 13, 2007 1–2 p.m. Eastern Standard Time (EST)
Wednesday, July 11, 2007 1–2 p.m. Eastern Standard Time (EST)
Wednesday, August 8, 2007 1–2 p.m. Eastern Standard Time (EST)
Wednesday, September 12, 2007 1–2 p.m. Eastern Standard Time (EST)

Additional information can be obtained by e-mailing the DFO for the Local Government Advisory Committee at *Eargle.Frances@epa.gov,* or *Raymond.Anna@epa.gov* for the Subcommittee on Small Community Advisory Subcommittee (SCAS) or in written correspondence at 1200 Pennsylvania Avenue, NW. (1301A), Washington, DC 20460. For further information contact: Frances Eargle, DFO for the Local Government Advisory Committee (LGAC) at (202) 564–3115 or Anna Raymond, DFO for the SCAS at (202)564–3663.

Dated: May 29, 2007.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. E7–10682 Filed 6–1–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0794; FRL–8130–9]

Review of Draft Risk Management Evaluations and Risk Profiles for Chemicals Proposed for Addition under the Stockholm Convention on Persistent Organic Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice requests comment on draft risk management evaluations being developed pursuant to the Stockholm Convention on Persistent Organic Pollutants (POPs) for the following chemicals which are being reviewed for possible addition to the Stockholm Convention's Annexes A, B, and/or C: Chlordecone (CAS No. 143–50–0), hexabromobiphenyl (HBB) (CAS No. 36355–01–8), lindane (CAS No. 58–89–9), pentabromodiphenyl ether (PeBDE) (CAS No. 32534–81–9), and perfluorooctane sulfonate (PFOS). Additionally, this notice requests comment on draft risk profiles being developed pursuant to the Stockholm Convention for the following chemicals which are also being reviewed for possible addition to the Stockholm Convention's Annexes A, B, and/or C: Alpha–hexachlorocyclohexane (alpha–HCH) (CAS No. 319–84–6), beta–hexachlorocyclohexane (beta–HCH) (CAS No. 319–85–7), commercial octabromodiphenyl ether (octaBDE) (CAS No. 32536–52–0), pentachlorobenzene (PeCB) (CAS No. 608–93–5), and short–chained chlorinated paraffins (SCCP) (CAS No. 85535–84–8). EPA is issuing this notice in advance of the aforementioned documents' release to increase awareness of the status of the reviews of certain proposals under the Stockholm Convention, to alert interested and potentially affected persons of the documents' pending release, and to request comments on them when they are available for EPA's consideration in its development of comments of the documents and its submission to the Stockholm Convention Secretariat (hereafter Secretariat).

DATES: The Secretariat is expected to post these draft risk management evaluations and draft risk profiles on or about May 29, 2007, on its website *http://www.pops.int*. Comments on these draft documents must be received by EPA no later than 15 days after the Secretariat makes the draft documents available.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2006–0794, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on–line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2006–0794. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0794. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine

and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Ellie Clark, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2962; e-mail address: *clark.ellie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to chemical substance and pesticide manufacturers, importers, and processors. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*—i. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM 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.

ii. Procedures for preparing confidential information related to pesticides and industrial chemicals are in Unit I.B.1. Send confidential information about industrial chemicals using the submission procedures under **ADDRESSES**. Send confidential information about pesticides to: Janice K. Jensen, Office of Pesticide Programs (7506P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or hand delivered to: Janice K. Jensen, Government and International Services Branch, Office of Pesticide Programs, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Rm. S–11315, Arlington, VA 22202.

iii. Commenters should note that none of the CBI information received by EPA will be forwarded to the Secretariat. Information from submissions containing CBI may be considered by EPA in the development of the U.S. response. If commenters wish EPA to consider incorporating information in documents with CBI as part of the U.S. response, commenters should provide a sanitized copy of the documents. Sanitized copies must be complete, except that all information claimed as CBI must be deleted. EPA will place sanitized copies in the public docket.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

The Agency is issuing this notice to increase awareness of the proposals to list certain chemicals under Annexes A, B, or C of the Stockholm Convention, and to provide interested persons with an opportunity to provide comments to EPA for its consideration in the development of the U. S.' comments on the draft risk profiles and risk management evaluations. By May 29, 2007, the Secretariat is expected to have invited Parties and observers to submit to the POPs Review Committee (POPRC) (via the Secretariat) comments on the draft risk profiles and draft risk management evaluations (*http://www.pops.int*) and requested that comments be submitted by July 1, 2007. The United States is an observer. The United States intends to submit its comments on the drafts by July 1, 2007, to meet the Secretariat's deadline. Because of the short-time period for review, EPA is issuing this notice in advance of the documents being posted by the Secretariat to alert interested parties to the upcoming opportunity to participate in the review and comment process. In light of the POPRC deadlines for the receipt of comments, the Agency's public comment period for this action will close 15 days after the Secretariat posts the draft risk profiles and risk management evaluations on its website. The chemical listing process is discussed in more detail in Unit II.B. Individuals or organizations that wish to submit information directly to POPRC via the Secretariat should work through their respective observer organizations, if any.

B. What is the Stockholm Convention Chemical Listing Process?

The Stockholm Convention is a multilateral environmental agreement designed to protect human health and the environment from persistent organic pollutants. The United States signed the Stockholm Convention in May of 2001 but has not yet ratified it (and thus is not a Party to the Stockholm Convention). The United States currently participates as an observer in Stockholm Convention activities. The Stockholm Convention, which went into force in May of 2004, requires the Parties to reduce or eliminate the production and use of a number of intentionally produced POPs used as pesticides or industrial chemicals. The Stockholm Convention also calls upon Parties to take certain specified measures to reduce releases of certain unintentionally produced POPs with the goal of their continuing minimization and, where feasible, ultimate elimination. The Stockholm Convention also imposes controls on the handling of POPs wastes and on trade in POPs chemicals.

In addition, there are specific science-based procedures that Parties to the Stockholm Convention must use when considering the addition of new

chemicals to the Stockholm Convention's Annexes. Article 8 of the Stockholm Convention provides the process that must be followed for listing new chemicals in Annexes A, B, and/or C, and is described in summary in this unit.

1. A Party to the Stockholm Convention may submit a proposal to the Secretariat for listing a chemical in Annexes A, B, and/or C. The proposal shall contain the information specified in Annex D of the Stockholm Convention (''Information Requirements and Screening Criteria'').

2. The Secretariat verifies that the proposal contains the information specified in Annex D, and if the Secretariat is satisfied, the proposal is forwarded to POPRC.

3. POPRC examines the proposal, applies the Annex D screening criteria, and determines whether the screening criteria have been fulfilled.

4. If POPRC is satisfied that the criteria have been fulfilled, POPRC, through the Secretariat, will make the proposal and POPRC's evaluation available to all Parties and observers and invite them to submit the information specified in Annex E (''Information Requirements for the Risk Profiles'').

5. Draft risk profiles are prepared by ad hoc working groups under POPRC in accordance with Annex E for consideration by POPRC and made available to all Parties and observers to collect technical comments.

6. POPRC reviews the draft risk profile and technical comments, completes the risk profile, and determines whether the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects, such that global action is warranted.

7. If POPRC determines that action is warranted, then POPRC, through the Secretariat, will ask Parties and observers to provide information specified in Annex F (''Information on Socio-Economic Considerations'') to aid in the development of risk management evaluations (that include an analysis of possible control measures).

8. Draft risk management evaluations are prepared by ad hoc working groups under POPRC in accordance with Annex F for consideration by POPRC and made available to Parties and observers to collect technical comments.

9. POPRC reviews the draft risk management evaluation prepared by the ad hoc working group and completes it.

10. On the basis of the risk profile and the risk management evaluation for each chemical, POPRC recommends whether the chemical should be considered by the Conference of the Parties (COP) for listing in Annexes A, B, and/or C. (The type(s) of control measure(s) that might be introduced for a specific chemical would dictate whether the chemical would be listed in Annex A (elimination), Annex B (restriction), and/or Annex C (unintentional production) of the Stockholm Convention.).

11. COP makes the final decision on listing the chemical in Annexes A, B, and/or C.

EPA anticipates issuing **Federal Register** notices soliciting information, when appropriate.

C. What Comments Are Being Requested for the Draft Risk Management Evaluations?

For the chemicals currently at the risk management stage (see Unit II.G.), EPA is seeking comments on whether the draft risk management evaluations adequately reflect the socio-economic considerations specified in Annex F to the Stockholm Convention, and on whether the risk management measures recommended in the documents are reasonably supported in the draft documents. The types of information that the Stockholm Convention directs should be considered at this stage is discussed in Unit II.G.

In particular, because the possible control measures under the Stockholm Convention include, among others, the prohibition or restriction of production and use, commenters should consider whether accurate, high-quality information is available to support the draft recommendations.

D. What Information is Being Requested for the Draft Risk Profiles?

For chemicals at the risk profile stage (see Unit II.H.), EPA is seeking comments on whether the draft risk profiles adequately cover the information types specified in Annex E to the Stockholm Convention, and whether the information in the document adequately supports the determination of whether or not the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects, such that global action is warranted, as required under Article 8, paragraph 7(a) of the Stockholm Convention.

E. How Should the Information be Provided?

1. EPA requests that commenters include clear and precise references for any sources that they might refer to. Without the exact source of the information, POPRC will not be able to use the information. If the information is not readily available in the public literature, commenters may consider attaching the original source of the information to their submission. Commenters should indicate clearly on their comments which chemical the information concerns.

2. Although POPRC has developed provisional arrangements for the treatment of CBI, as mentioned in Unit I.B.1.iii., no CBI will be forwarded to the Secretariat. EPA will, however, consider such information in development of the U.S. response to the Secretariat. Instructions on where and how to submit comments and confidential information can be found in Unit I.B.1. and **ADDRESSES**.

3. Anyone wishing to have an opportunity to communicate with EPA orally on this issue should consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

F. What is the Agency's Authority for Taking this Action?

EPA is requesting comment and information under the authority of section 102(2)(F) of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, which directs all agencies of the Federal Government to ''[r]ecognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions and programs designed to maximize cooperation in anticipating and preventing a decline in the quality of mankind's world environment.'' Section 17(d) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) also provides additional support in that it directs the Administrator of EPA ''in cooperation with the Department of State and any other appropriate Federal agency, [to] participate and cooperate in any international efforts to develop improved pesticide research and regulations.''

G. What is the Status of Chemicals at the Risk Management Stage?

The first meeting of POPRC took place November 7–11, 2005, in Geneva, Switzerland. Information about the Stockholm Convention and the November POPRC meeting is available at the Stockholm Convention website (*http://www.pops.int* and *http://www.pops.int/documents/meetings/poprc/meeting_docs/en/default.htm*), respectively. POPRC had before it five proposals which were submitted for its consideration by Parties to the Stockholm Convention, for addition to

Annexes A, B, and/or C of the Stockholm Convention. Three of the five proposals were for industrial chemicals:

- Pentabromodiphenyl ether.
- Hexabromobiphenyl.
- Perfluorooctane sulfonate.

Two of the five proposals were for pesticides:

- Lindane.
- Chlordecone.

In accordance with the procedure laid down in Article 8 of the Stockholm Convention and discussed in Unit II.B., during the November meeting POPRC examined the proposals and applied the screening criteria in Annex D of the Stockholm Convention. With regard to all five chemicals, POPRC decided that it was satisfied that the screening criteria had been fulfilled and that further work should therefore be undertaken to develop risk profiles. Therefore, POPRC, through the Secretariat, requested that Parties and observers provide information relevant to POPRC's development of risk profiles for the five chemicals listed in this unit. In the **Federal Register** of January 30, 2006 (71 FR 4913) (FRL–7758–9), EPA invited commenters to provide EPA with information for the risk profiles.

The second meeting of POPRC took place November 6–10, 2006, in Geneva, Switzerland. EPA provided notice of this meeting and POPRC's intention to consider risk profiles for the five chemicals in the **Federal Register** of October 6, 2006 (71 FR 59108) (FRL–8099–2). Information about the November POPRC meeting is available at the Stockholm Convention website *http://www.pops.int.documents/meetings/poprc_2/meeting_docs.htm*.

In accordance with the procedure laid down in Article 8 of the Stockholm Convention and discussed in Unit II.B., during the November 2006 meeting POPRC examined the draft risk profiles with respect to the requirements in Annex E of the Stockholm Convention. With regard to all five chemicals, POPRC decided that, based on finalized risk profiles, these chemicals were likely, as a result of their long-range environmental transport, to lead to significant adverse-human health and environmental effects such that global action is warranted. Additionally, in accordance with paragraph 7(a) of Article 8 of the Stockholm Convention, POPRC invited Parties and observers to submit to the Secretariat the information specified in Annex F to the Stockholm Convention by February 9, 2007. In the **Federal Register** of December 20, 2006 (71 FR 76325) (FRL–8109–1), EPA invited commenters to provide EPA with risk management information to support the development of its submission to the Secretariat. On February 9, 2007, EPA provided comments to the Secretariat.

POPRC, through ad hoc working groups, is preparing draft risk management evaluations that are to include an analysis of possible control measures, which in accordance with Annex F of the Stockholm Convention (''Information on Socio-Economic Considerations'') should encompass ''the full range of options, including management and elimination.'' The risk management evaluations include socio-economic considerations associated with possible control measures (see Unit II.C.) and reflect due regard for the differing capabilities and conditions among the Parties. Additionally, these documents should discuss any specific exemptions or acceptable purposes being considered. Following the receipt of comments, the ad hoc working groups will further refine the draft risk management evaluations, which will then be considered by the full POPRC in November 2007 and proceed as discussed in Unit II.B.

H. What is the Status of Chemicals at the Risk Profile Stage?

As stated in Unit II.G., the second meeting of POPRC took place on November 6–10, 2006, in Geneva, Switzerland. EPA provided notice of this meeting and POPRC's intention to consider proposals for the five chemicals listed in this unit in the **Federal Register** of October 6, 2006. Information about the November POPRC meeting is available at the Stockholm Convention website (*http://www.pops.int* and *http://www.pops.int/documents/meeting/poprc_2/meeting_docs.htm*), respectively. POPRC had before it five proposals which were submitted for its consideration by Parties to the Stockholm Convention, for addition to Annexes A, B, and/or C of the Stockholm Convention.

Two of the five proposals were for industrial chemicals:

- Octabromodiphenyl ether.
- Short-chained chlorinated paraffins.

One of the five proposals was for a chemical with both industrial and pesticidal uses:

- Pentachlorobenzene.

Two of the five proposals were for pesticides:

- Alpha-hexachlorocyclohexane.
- Beta-hexachlorocyclohexane.

In accordance with the procedure laid down in Article 8 of the Stockholm Convention and discussed in Unit II.B., during the November meeting POPRC examined the proposals and applied the screening criteria in Annex D of the Stockholm Convention. With regard to all five chemicals, POPRC decided that it was satisfied that the screening criteria had been fulfilled and, in accordance with paragraph 4(a) of Article 8 of the Stockholm Convention, POPRC invited Parties and observers to submit to the Secretariat the information specified in Annex E to the Stockholm Convention by February 9, 2007. In the **Federal Register** of December 20, 2006, EPA invited commenters to provide EPA with risk profile information to support the development of its submission to the Secretariat. EPA provided comments to the Secretariat on February 9, 2007.

POPRC, through ad hoc working groups, has prepared draft risk profiles for each of the chemicals to, as noted in Annex E of the Stockholm Convention, ''evaluate whether the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects, such that global action is warranted.'' The draft risk profiles also further evaluate and elaborate on the information referred to in Annex D of the Stockholm Convention and include, as far as possible, the information listed in Annex E of the Stockholm Convention. Following the receipt of comments, the ad hoc working groups will further refine the draft risk profiles, which will then be considered by the full POPRC in November 2007, and proceed as discussed in Unit II.B.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: May 23, 2007.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. E7–10699 Filed 6–1–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 2007.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. FirstBank Holding Company, Lakewood, Colorado; to acquire up to 100 percent of the voting shares of FirstBank of Arizona, Phoenix, Arizona (in organization).

Board of Governors of the Federal Reserve System, May 30, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–10677 Filed 6–1–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Quality Measures for Medicaid Home and Community-Based Services

AGENCY: Agency for Healthcare Research and Quality (AHRQ), DHHS.

ACTION: Notice of request for measures.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is soliciting the submission of survey instruments and items that could be used to measure the quality of Medicaid home and community-based service (HCBS) programs. Specifically, AHRQ is interested in metrics related to assessing the performance of such programs, client functional outcomes and client experience of, and satisfaction with, Medicaid HCBS services and supports. This initiative is in response to the mandate within the Deficit Reduction Act (DRA) of 2005, Public Law 109–171, Section 6086(b) that AHRQ develop such measures, in consultation with relevant stakeholders. In preparation for this task, AHRQ is conducting an environmental scan of existing tools that could be adapted or used for assessing the quality of Medicaid HCBS services and supports.

Based on the agency's initial methodological work, there are several quality domains the resulting measure set could assess, including: timeliness of determining need and providing services and supports, person-centeredness, safety, equity, efficiency and, effectiveness of services and supports, qualifications of providers, client health and welfare, program administrative oversight, access, unmet need among current program participants, and coordination of long-term care services with other service providers. For example, relevant measures might include items from a consumer survey that ask about receipt of services or experience with select providers, or metrics that use program administrative data to determine if providers meet program qualifications or if assessments are done on a timely basis.

DATES: Please submit data collection instruments and supporting information about their development and/or use no later than 30 days after publication of this notice. AHRQ will not respond individually to submitters, but will consider all submitted items and instruments and publicly report the results of the review of the submission in an aggregated form.

ADDRESSES: Submission should include a brief cover letter, a copy of the instrument or items for consideration and supporting information (e.g., a users' guide, citation(s) or copies of supporting article(s)) as specified under the Submission Criteria below.

Submissions may be in the form of a letter or e-mail, preferably with an electronic file(s) as an e-mail attachment. Responses to this request should be submitted to: D.E.B. Potter, Center for Financing, Access and Cost Trends; Agency for Healthcare Research and Quality, 540 Gaither Road, Suite 500, Rockville, MD 20850, Phone: (301) 427–1564, Fax: (301) 427–1276; E-mail: *D.E.B.Potter@ahrq.hhs.gov.*

To facilitate handling of submissions, please include full information about the instrument developer and/or a designated contact.

- Name
- Title
- Organization
- Mailing address
- Telephone number
- Fax number
- E-mail address

Also, please submit a copy of the instrument or items for consideration, and evidence that it meets the submission criteria below. It is requested (but not required) that citation of a peer-reviewed journal article pertaining to the instrument, to include the title of the article, author(s), publication year, journal name, volume, issue, and page numbers where article appears be included.

Submitters must also provide a statement of willingness to grant to AHRQ the right to use and authorize others to use submitted measures and their documentation as part of any future instrument or measure set that may result from developing the statutorily-mandated Medicaid HCBS measure set. Electronic submissions are encouraged.

FOR FURTHER INFORMATION CONTACT: D.E.B. Potter at the address above.

SUPPLEMENTARY INFORMATION

Submission Criteria

Items and instruments submitted must focus on evaluating the performance of home and community-based services, client experience of, and satisfaction with, these home and community-based services and supports, as well as related client functional outcomes. Such services are defined broadly to include at a minimum the array of services included as HCBS under Section 1915(b), (c), or (b) and (c) of the Social Security Act (the Act), HCBS as a State plan option under Section 1915(i), as well as self-directed personal assistance services under Section 1915(j), and HCBS under Section 1115 of the Act, and HCBS demonstrations, as authorized under Section 6071 of the Deficit Reduction Act of 2005. For the purpose of this call for measures, the listed services are interpreted broadly to include Medicaid home health care services, Medicaid personal care services, and Medicaid targeted case management services.

Submitted materials should be designed to measure (i.e., quantify) program performance, client functional outcomes (including social role functioning), and/or client experience related to any of the following areas: The timeliness of determining need and providing services and supports,

person-centeredness, safety, equity, efficiency and effectiveness of services and supports, qualifications of providers, client health and welfare, program administrative oversight, access, unmet need among current program participants, and coordination of long-term care services with other service providers.

Measures submitted must be relevant or readily adaptable to collection of information on the Medicaid HCBS service experience of people with chronic disabilities, including the following populations:

- Physically- and/or cognitively-impaired elders, including those with dementia;
- Adults or children with intellectual or developmental disabilities;
- Children whose physical, intellectual and/or mental health disabilities significantly impair their ability to participate in age-appropriate activities (e.g., schooling and play), including children with special health care needs;
- Adults with severe and persistent mental illness;
- Adults with acquired brain injuries; and,
- Adults with physical disabilities and/or chronic conditions (such as HIV/AIDS) that place them at risk of institutional care.

Unless such measures can be adapted to HCBS, measures related exclusively to institutional services, specifically those provided in a skilled nursing facility, nursing home, State hospital, or intermediate care facility for the mentally-retarded (ICF/MR), will not be considered, although those that apply to alternative residential settings eligible for Medicaid HCBS funding, such as small group homes and assisted living facilities will be. Measures specific to the process of applying for Medicaid HCBS services (e.g., waiting lists) are also within the scope of this request. In addition, measures should be designed to quantify the experience of current Medicaid HCBS service recipients; including caregivers who receive such services directly (e.g., respite care or family therapy). Measures related to non-service recipients, including measures of staff satisfaction (including family caregivers as secondary recipients—as distinguished from direct recipients) are considered to be outside the scope of this effort. For a more detailed list of the home and community based services, see the **SUPPLEMENTARY INFORMATION** section below entitled ''Types of Home and Community-Based Services'':

AHRQ is particularly interested in soliciting information from three types of submitters:

1. Organizations (or persons) who use (or contract for the use of) another organization's survey (or survey item(s)) and the survey/items used are applicable to (or could be adapted to) HCBS.
2. Organizations (or persons) who developed a survey (or survey item(s)) and the survey/items are applicable to (or could be adapted to) HCBS.
3. Organizations (or persons) who use another organization's survey but have modified the original survey (added items to, taken items away or changed the wording) and the resulting hybrid survey is applicable to (or could be adapted to) HCBS.

Additional Submission Instructions

Submitter Type 1

Each submission should include the following information:

- Name of the measure(s)/instrument(s)/survey(s) used by (or contracted for by) your organization
- Brief description of the measure(s)/instrument(s)/survey(s)
- Population intended for measurement
- Care provider type (e.g., home health agency, consumer directed caregiver, assisted living facility, adult day care provider, skills training counselor)]
- Service setting (e.g., group home, client's home, school, assisted living facility)
- Domain(s) (i.e., content areas)
- Language(s) the measure(s)/survey(s) (e.g., number of HCBS programs, program size(s))
- Where the Submitter's organization has used (fielded), and/or is currently using, the measure(s)/instrument(s)/survey(s) (e.g., number of HCBS programs, program size(s))

Submission of copies of existing report formats developed by the Agency using the survey to disclose findings to consumers and providers is desirable, but not required. Additionally, information about existing database(s) (particularly at the state level) for collecting results gathered using the instrument(s) or items submitted is helpful, but not required for submission.

A partial response by a Submitter Type 1 could be ''* * * our Agency uses the National Core Indicator's (NCI) Child Family Survey (Phase VII version) for our State's 1915(c) waiver for children with special health care needs * * * for our HCBS program for elders with Alzheimer's we use the Participant Experience Survey (PES) Elder/Disabled Version (Version 1) * * *''

Submitter Type 2

Information about the instrument that you and/or your organization developed may be provided (in part) through submission of peer-reviewed journal articles). Each submission should include the following information.

- Name of the measure(s)/instrument(s)/survey(s) developed
- Description of the measure(s)/instrument(s)/surveys(s)
- Population intended for measurement
- Care provider type(s) (e.g., home health agency, consumer directed caregiver, assisted living facility, adult day care)
- Service setting (e.g., group home, client's home, school, assisted living facility)
- Copy of the relevant measure(s)/instrument(s)/survey)s) (e.g., individual items and response categories)
- Domain(s) (i.e., content areas)
- Language(s) the measure(s)/instrument(s)/survey(s) is available in
- Reliability of the measure(s)/instrument(s)/survey(s) (e.g., internal consistency, test-retest, etc).
- Validity of the measure(s)/instrument(s)/survey(s) (e.g., content, construct, criterion-related)
- Response rate(s) obtained when measure(s)/instrument(s)/survey(s) is used to measure on the intended population
- Methods and results of any cognitive testing associated with the measure(s), instrument(s) and/or survey(s)
- Methods and results of any field-testing associate with the measure(s), instrument(s) and/or survey(s)
- Data collection protocols (including mode and respondents)
- Description of sampling strategies used for data collection
- Where the Submitter's organization has used (fielded), and/or is currently using, the measure(s)/instrument(s)/survey(s) (e.g., number of HCBS programs, program size(s))
- Information about any professional or organizations endorsements associated with the measure(s)/instrument(s)/survey(s)

Submission of copies of existing report formats developed to disclose findings to consumers and providers is desirable, but not required. Additionally, information about existing database(s) collecting results gathered using the instrument(s) or items submitted is helpful, but not required for submission. Information about the instrument may be provided through submission of peer-reviewed journal article, if applicable or through the best

evidence available at the time of submission.

In submitting measures, submitters agree to relinquish ownership of any items developed by the submitter/organization that are selected to be pat of the measure set(s) developed by AHRQ for public use (beginning in 2008 as required by Section 6086(b) of the DRA). However, item ownership will be protected during the initial measure can, and during any subsequent measure development efforts AHRQ might undertake.

Submitter Type 3

Information about the original survey measures and the nature of any survey measure modifications (including new, changed or deleted items) is requested for submission.

For the measures/items based directly on an existing survey/measure(s) (and without any changes to the items), the information described under Submission Submitter Type 1 is requested along with copies of the relevant measures that are actually used (e.g., individual items and response categories).

In addition to the original measures information (requested in the previously paragraph), information about the modified measures/items is requested. Modifications may include question wording changes, the addition of new items/measures, and/or the deletion or original survey items. For the modified items, the following is requested:

For measures/items based directly on the original survey items, but modified with question wording changes, information (if available) described under Submission Submitter Type 2 is requested for modified items. The reason(s) for question wording change(s) is also requested, but not required. At a minimum, a copy of the modified measures, how the measures are used and some information about how the measures were developed is required.

For new items added to an existing survey, information described under Submission Submitter Type 2 is requested. Also requested, but not required, is (are) the reason(s) for the addition of the new items. An example of the latter might be along the lines of ''* * * for our HCBS program for elders with Alzheimer's we use the PES Elder/Disabled Version (Version 1) but have also added a module to capture information about medication management/administration for clients in a residential settings.* * *'' At a minimum, a copy of the modified measures, now the measures are used and some information about how the measures were developed is required.

In situations where the modifications to the original survey are simply a deletion(s) of original survey items (and with new items added) a description on of what items were deleted and why is also requested. An example of the latter might be ''* * * for our HCBS program for elders we use the ABC Survey but drop questions 34–42 at the Agency does not use this information.''

In submitting modified measures, submitters agree to relinquish ownership of any items developed by the submitter/organization and that are selected for use in the measure set(s) developed and adopted by AHRQ (beginning in 2008 as required by Section 6086(b) of the DRA). However, item ownership will be protected during the initial measure scan, and during any subsequent measure development efforts AHRQ might undertake.

Submitters Types 1, 2 and 3

It is not necessary to submit any actual data generated from using the survey instruments.

Types of Home and Community-Based Services

Both the type and extent of home and community-based services provided under Medicaid can vary from program to program. Below is a partial list of the broad range of services that have been provided by States under their Medicaid HCBS programs; States may provide additional services.

- 24 Hour Supervision/Monitoring
- Activities Therapy
- Adaptive Health and Wellness Services
- Adult Companion Services
- Adult Day Care
- Adult Day Health
- Adult Foster Care
- Adult Residential Care
- Alternative Living/Alternative Care Facility
- Assisted Living
- Assistive Technology
- Assistive Technology Evaluation
- Assistive Technology Repairs
- Attendant Care
- Attendant Care—Rent/Food for Unrelated Live-In Caretaker
- Augmentative Communication
- Behavior Management and Consultation
- Bereavement Counseling
- Case Management
- Case Management Aide
- Chore/Home Maintenance
- Clinic Services
- Clinical Supports
- Coaching/Cueing
- Cognitive/Behavior Services
- Cognitive Rehabilitation
- Community Access
- Community Connection
- Community Integration Training
- Community Membership
- Community Specialist
- Community Transition Services
- Companion Services
- Congregate Meals
- Consolidated Developmental Services
- Consultative Clinical and Therapeutic Services
- Consumer/Family/Caregiver Training
- Counseling
- Crisis Intervention Services/Support
- Day Habilitation
- Day Program
- Dental
- Developmental Day Care
- Early Intervention
- Educational Services Habilitation
- Electronic Home Response
- Emergency Move
- Environmental Adaptations/Home Modifications
- Environmental Engineering
- Escort/Outings
- Exercise Therapy
- Family Counseling
- Financial Counseling and Training
- Financial Risk Reduction
- Fiscal/Employer Agent/Management Services
- Group Homes
- Habilitation
- Home Accessibility Adaptations
- Home-Based Supportive Care
- Home Delivered Meals
- Home Health Aide
- Home Health Care
- Home Maintenance/Repair
- Homemaker Services
- Hospice
- Housing Access Coordination
- Housing Start-Up
- Independent Living Provider
- Independent Living Skills Training
- Individual Directed Goods and Services
- Integrated Therapeutic Network
- Interdisciplinary Team
- Life Skills Training
- Live-in Caregiver
- Meal Services
- Medical Equipment/Supplies
- Medical Nutritional Support
- Medically-Related Direct Therapies
- Medication Administration
- Medication Management
- Mental Health Day Treatment Services
- Mental Illness/Clinic
- Mental Illness/Day Treatment/Partial Hospitalization
- Mental Illness/Psychosocial Rehabilitation
- Money Management
- Moving Assistance

- Night Supervision
- Non-Legend/Non-Formulary Drugs
- Non-Medical Transportation
- Nursing Home Diversion Program
- Nutrition Therapy
- Nutritional Counseling/Assistance
- Nutritional Risk
- Nutritional Supplements
- Occupational Therapy
- Optometry Services
- Over-the-Counter Drugs
- Pediatric Community Transitional Home Services
- Periodic Nursing Evaluations
- Person Centered Planning
- Personal Adjustment Counseling
- Personal Agent
- Personal Care
- Personal Care Assistance
- Personal Care Coordination
- Personal Care—Rent/Food for Unrelated Live-In Caretaker
- Personalized Emergency Response Systems
- Phone Reassurance Monitoring
- Physical Risk Reduction
- Physical Therapy
- Physical Therapy—Extended State Plan Services
- Physician Services
- Podiatry Services
- Prescribed Drugs
- Prescription Drug Co-Pay
- Preventative/Consultative
- Prevocational Services Habilitation
- Private Duty Nursing
- Professional Care Assistant
- Professional Services
- Protective Services
- Psychiatrist Services
- Psychologist Services
- Psychosocial Counseling
- Psychosocial Nutrition
- Psychosocial Rehabilitation
- Rehabilitation Engineering
- Renal Dialysis
- Residential Care
- Residential Habilitation
- Respiratory Therapy
- Respite Care
- Restorative Assistance
- Retainer Payment for Personal Caregivers
- Shared Nursing
- Skill Building
- Skilled Nursing
- Socialization/Recreation
- Social Reassurance Therapeutic Counseling
- Social Work Services
- Special Therapeutic Services
- Specialized Child Care
- Specialized Consultation Services
- Specialized Medical Equipment and Supplies
- Specialized Psychiatric Services
- Specialized Therapies
- Speech, Hearing, and Language
- Staff/Family Consultation Training
- Subsidized Housing
- Substance Abuse Treatment/Counseling
- Support Brokerage
- Support Coordination
- Support Services
- Supported Employment Habilitation
- Supported Living
- Therapeutic Counseling
- Therapeutic Living
- Therapeutic Management
- Therapeutic Massage
- Therapeutic Resources
- Therapeutic Social and Recreational Program
- Therapeutic Supplies
- Training and Counseling Services for Unpaid Caregivers
- Transitional Case Management
- Transitional Living
- Transportation
- Vehicle Modifications
- Visual/Mobility Therapy
- Wandering Alarm System
- Wellness Monitoring
- Wrap-Around Services
- Extended State Plan Services:
  - Home health care services
  - Physical therapy
  - Occupational therapy
  - Speech, hearing and language services
  - Prescribed drugs, except drugs furnished to participants who are eligible for Medicare Part D benefits
  - Dental services

For additional information on HCBS service, please refer to Appendix C: Participant Services (pages 99 to 162) of the Application for a section 1915(c) Home and Community-Based Waiver [Version 3.4] Instructions, Technical Guide and Review Criteria Release Date: November 2006, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, Department of Health and Human Services, available at: *http://www.cms.hhs.gov/HCBS/02_QualityToolkit.asp#TopOfPage.*

Dated: May 27, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–2732 Filed 6–1–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Health Data Stewardship

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for information.

SUMMARY: There is a growing demand for healthcare data from many sectors. Key drivers for this demand have been surging interest in healthcare performance measurement and the information systems needed to aggregate, process and transmit healthcare data from which measures of health care quality may be derived and to which the measures could be applied. This need has raised the question of responsibility for safeguarding the data beyond the original care setting. This issue has led various stakeholders to propose the formation of a public-private national health care data stewardship organization with oversight of the various uses of healthcare data, as described below.

For the purpose of achieving a broader understanding of the issues that establishment of such an entity may present, input is requested from the public and private sectors on the concept of a national health data stewardship entity (NHDSE). The primary purpose of this RFI is to gather information to foster broad stakeholder discussion; there are no current plans to issue a related request for proposals (RFP).

DATES: Responses to this RFI are due no later than July 27, 2007.

ADDRESSES: Electronic responses are preferred and may be addressed to: *steward@ahrq.hhs.gov*. Written responses should be addressed to: P. Jon White, MD, 540 Gaither Road, Rockville, MD 20850.

A copy of this RFI is also available on the AHRQ and AQA Web sites. Please follow the instructions for submitting responses.

If a response to this RFI is planned, notification is requested in advance by a simple response to one of the above addresses. Such notification is nonbinding and will not be made public.

The submission of written materials in response to the RFI should not exceed 50 pages, including appendices and supplemental documents. Responders may submit other forms of electronic materials to demonstrate or exhibit key concepts of their written responses. If the response is over 20 pages, an executive summary is requested of the comments, no longer than 5 pages.

Public access: Responses to this RFI will be available to the public at AHRQ. Please call 301–427–1505 between 9 a.m. and 5 p.m. to arrange access. The RFI and all responses will also be made available on the AHRQ Web site at

http://healthit.ahrq.gov. Any information submitted will be made public.

Do not send proprietary, commercial, financial, business confidential, trade secret, or personal information that should not be made public.

FOR FURTHER INFORMATION CONTACT: P. Jon White, MD, Health IT Director, Agency for Healthcare Research and Quality, *jonathan.white@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION: A primary purpose of this RFI is to gather information that AHRQ can bring to the AQA (*http://www.aqaalliance.org*), a multistakeholder health care improvement organization formed to advance and implement clinician-level performance measurement. To carry out its statutory mandates to improve health care quality and specifically through quality measurement, AHRQ was a primary convener and has been a participant in AQA alliance from its inception. A full list of AQA participants is available at its Web site, referenced above. The AAQ (*http://www.aqaalliance.org*) has extensively discussed, in relation to its activities and objectives, the utility of having a NHDSE. The AQA has outlined and recommended processes for performance of quality measure selection, as well as for the underlying data sharing and data aggregation activities necessary to develop and apply performance measures, and public reporting of performance data. The following framed text contains excerpts from AQA proposal documents.

National Health Data Stewardship Entity

Proposed Mission

The public/private entity will set uniform operating rules and standards for sharing and aggregating public and private sector data on quality and efficiency; offer guidance on implementation of such national operating rules and standards; and provide a framework for collecting, aggregating and analyzing data, to afford means of more effective oversight of health care data analyses and reporting in the United States.

Proposed Precepts

In performing activities, the entity shall follow certain precepts:

- To be objective in its decision making.
- To weigh carefully the views of its constituents in developing concepts and operating rules and standards.
- To bring about needed changes in ways that minimizes disruption to current aggregation efforts.
- To review the effects of past decisions and interpret, amend or replace operating rules, standards and processes in a timely fashion when such action is indicated.
- To follow an open, orderly process for setting policies, operating rules and standards that precludes placing any particular interest above the interests of the many stakeholders who rely on health care information.

Proposed Scope of Work

As previously noted, a wide range of activities need to be undertaken to advance health data exchange and use, including the development of measures and setting data transmission/lT technical standards. While all of these activities are important, the entity's responsibilities would primarily focus on specific issues relating to data collection, aggregation, analysis, and sharing.

The scope of work shall include setting policies, rules and standards for:

- Data aggregation—Should address various data aggregation issues including required characteristics of aggregators (e.g., they should be trusted and respected entities), transparency of aggregation processes, control and ownership rights of the data, potential liability within data aggregation processes, and issues that arise when competing aggregation efforts are in a single market area; should ensure that the experience of existing aggregation efforts are leveraged.
- Data collection (includes identification of data sources)—Should set policies, rules and standards for collecting public and private sector data from relevant stakeholders, including providers, employers, health insurance plans and others based on an agreed-upon measurement set; should assess the pros and cons of using data derived from administrative data (e.g., claims, pharmacy and lab data), medical record review and surveys, and develop policies that prioritize data sources based on various dimensions.
- Attribution—Should address at what specific level(s) data should be aggregated (*e.g.*, individual physician level or group practice level). When making this determination, should consider sample size issues and physician/practice identifier issues.
- Methodologies—Should set methodological rules and standards for aggregating data, including those addressing risk adjustment, measure weights and sample size.
- Data analysis—Should set data analysis rules and standards, including those relating to trending, benchmarking, distribution, outlier analysis, correlation analysis and stratified analysis (variance between regions and states).
- Data validation (audits)—Should set policies, rules and standards to ensure that the validity of the data submitted is independently audited.
- Uses of data—Based on current law, should recommend allowable and nonallowable uses of data. Allowable data uses may include quality and efficiency improvement, consumer reporting, accountability, and pay for performance programs; also should, address allowable secondary uses of raw/primary data.
- Data access—Should specify who should have access to data and applicable limitations, such as confidentiality and privacy rules; should consider policies which allow contributors, including both public and private sector entities, to have access to their own data as well as information which allows them to compare their data against benchmarks.
- Data sharing and reporting—Should develop guiding principles for public reporting and reporting back information to clinicians. Screening processes to ensure valid reporting also should be addressed.

Proposed Characteristics

1. Objective—Be objective in its decision-making and have the ability to preclude placing any particular interest above the interests of many.
2. Independent—Have a governing structure that is independent of all other business and professional organizations.
3. Knowledgeable—Demonstrates knowledge and expertise in the area of health care delivery, data management, and security or acceptable proxy for this.
4. Responsive—Insure input and use from key experts who possess knowledge of health care quality assessment, health data transmission, IT standards, physician and hospital systems design and a concern for the public interest in matters of health care quality analysis, reporting, and patient privacy. Represent key stakeholder groups that are measured and users of this information.
5. Trustworthy—Is recognized as a trustworthy organization by multi stakeholder groups.
6. Adaptable—Be flexible enough to address issues and key stakeholder needs as the market evolves.
7. Transparent—Have an existing stable infrastructure for consensus

decision making that is transparent and involves the broad stakeholder communities.

8. Timely—Have the ability to carry out activities and achieve goals in a timely manner.

9. Collaborative—Have the ability to engage and work with other organizations to ensure effective implementation of rules and standards.

10. Sustainable—Have adequate resources to meet long and short term goals.

The concept of a national entity responsible for setting rules and standards for sharing and using healthcare quality measurement data has also been supported by the Institute of Medicine in their 2005 report Performance Measurement. IOM additionally proposed that this entity would be responsible for several other roles in performance measurement, including articulation of national goals, selection of measures, aggregation of data, reporting of results and performance measurement research. It is recognized that the role of a NHDSE might extend to domains beyond health care performance measurement. Respondents are encouraged to describe such domains and provide information relating to NHDSE roles and characteristics, with the understanding that any such information will be considered and will be presented by AHRQ to AQA but may not be acted on in the immediate future.

Information Requested

For the purpose of achieving a broader understanding of the need for a nationwide health data stewardship entity, and what form it might take, input is requested from interested parties. It is not necessary to answer all questions. In your response, please indicate which question you are addressing in your comments. Specific areas for comment include:

1. Whether or not there is a need for a national health data stewardship entity with reasons, including value such an entity might bring and issues it might solve

2. Desirable governmental and private sector roles in such an organization or in health data stewardship more generally

3. The roles and responsibilities currently assumed by other existing entities that might be addressed by a NHDSE, as well as roles that should not be fulfilled by a NHDSE

4. The relationship of a NHDSE and its work to other quality improvement organizations and activities

5. The relationship of a NHDSE and its work to other initiatives which set national standards for health information, such as the ANSI Health IT Standards Panel (HITSP)

6. Key challenges to creation and maintenance of a NHDSE

7. The risks of creating a NHDSE

8. The appropriate role(s) of a NHDSE in advancing quality measurement

9. The appropriate role(s) of a NHDSE in characterization and evaluation of the comprehensiveness, accuracy and reliability of shared and aggregated health care quality measurement data

10. The appropriate role(s) of a NHDSE regarding the transmission of shared and aggregated data

11. The appropriate scope of activities for a NHDSE beyond quality measurement (in such domains as research and population health)

12. The key stakeholders that would be impacted by a NHDSE and how to structure interactions with a NHDSE

13. Appropriate governance model(s) for a NHDSE

14. Means to assure NHDSE objectivity and independence

15. Means to achieve trustworthiness or trust in a NHDSE, and how that would best be achieved

16. Recommendations for achieving timeliness in NHDSE decision making

17. Recommendations for achieving compliance with NHDSE recommendations, rules or standards

18. The essential external inputs to a NHDSE

19. Recommendations for achieving organizational flexibility for a NHDSE

20. The potential organizational infrastructure needs of a NHDSE

21. Potential funding requirements and sources of funding for a NHDSE

22. The organizational skill set required of a NDHSE

23. Priority activities for NHDSE to support data sharing and aggregation

24. Issues concerning the above-excerpted AQA characterizations of a NHDSE

25. The suitability of one or more existing organizations to fulfill the role of a NHDSE

Potential Responders

Responses are both requested and anticipated from a broad range of individual organizations that have interests in healthcare data. Examples of commenters from whom we would hope to hear include, but are not limited to:

Health care professional societies
Payers, including public and private insurers
Health maintenance organizations
Purchasers, including employers and healthcare consumers
Consumer and patient interest groups
Community health delivery systems
State and local health agencies
Interested Federal agencies
University-based health systems
Advocacy groups and public interest organizations
Trade industry organizations
Health information technology industry vendors
Regional health information organizations
Interested individuals

We look forward to receiving constructive comments representing diverse perspectives.

Dated: May 25, 2007.

Carolyn M. Clancy,

AHRQ, Director.

[FR Doc. 07–2733 Filed 6–1–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Communities Empowering Youth (CEY) Program Evaluation.

OMB No.: New collection.

Description: This proposed information collection activity is to obtain information from Communities Empowering Youth (CEY) grantee agencies and the faith-based and community organizations working in partnership with them. The CEY evaluation is an important opportunity to examine the outcomes achieved through this component of the Compassion Capital Fund in meeting its objective of improving the capacity of faith-based and community organizations and the partnerships they form to increase positive youth development and address youth violence, gang involvement, and child abuse/neglect. The evaluation will be designed to assess changes and improvements in the structure and functioning of the partnership and the organizational capacity of each participating organization.

Respondents: CEY grantees and the faith-based and community organizations that are a part of the partnership approved under the CEY grant.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Initial/Baseline Survey	800	1	.75	600
Follow-up Survey	640	1	.75	480

Estimated Total Annual Burden Hours: 1,080.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 29, 2007.

Brendan C. Kelly,

Reports Clearance Officer.

[FR Doc. 07–2724 Filed 6–1–07; 8:45 am]

BILLING CODE 4184–01–M

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.

Human and Avian Influenza Whole Genome Phage Display Libraries

Description of Technology: Available for use in developing research reagents, therapeutics or diagnostics are recombinant bacteriophage display libraries for identifying influenza viral gene products in preparation for pandemic threats the cross-reactivity and long-term protection of interpandemic influenza vaccines. Influenza vaccines predominantly include haemagglutinin (HA) and Neuraminidase (NA) antigens that characterize annual circulating influenza types A and type B. Analyses of the immune responses against new candidate vaccines is required in order to identify the best correlate of protection against seasonal human influenza strains and potential pandemic strains.

These ''Whole Viral Genome Phage Display Libraries'' express complete sets of protein fragments encoded by several Human and Avian Influenza strains including HlN1, H3N2, H5N1 and H7N7 and can be used for in depth analyses of plasma samples from: (a) Individuals exposed to human influenza; (b) individuals exposed to avian influenza; (c) individuals vaccinated with traditional influenza vaccines; (d) individuals vaccinated with new generation vaccines against human and bird influenza viruses.

Applications: Serological assays for surveillance of pandemic influenza outbreaks; Serological assays for distinguishing between exposure to human and bird influenza strains; Serological assays for diagnosing true infections in previously vaccinated individuals; Rapid analyses of immune sera from pre-clinical and clinical trials of novel influenza vaccines; Mapping of monoclonal and polyclonal antibodies against different influenza gene products; Identification of highly conserved ''protective'' epitopes for inclusion in future broadly-reactive influenza vaccines (against either inter-pandemic or pandemic influenza strains); Studies of viral protein-protein, viral RNA-protein and viral-host protein interactions (viral pathogenesis studies).

Market: Influenza diagnostics and vaccines.

Development Status: Materials available as research tools.

Inventors: Hana Golding, Ph.D. (FDA), Surender Khurana, Ph.D. (FDA).

Patent Status: HHS Reference No. E–031–2007/0—Research Tool.

Licensing Status: Available for licensing as a biological material.

Scientific Contact: Hana Golding, Ph.D.; FDA/CBER/OVRR/DVP/LR; 9000 Rockville Pike, Building 29B, Room 4N04, Bethesda, MD 20892; E-mail: *goldingh@cber.fda.gov*; Phone: 301/827–0784.

Licensing Contact: Michael A. Shmilovich, Esq.; National Institutes of Health, Office of Technology Transfer; 6011 Executive Blvd., Suite 325, Rockville, MD 20852; E-mail: *shmilovm@mail.nih.gov*; Phone: 301/435–5019; Fax: 301/402–0220.

Diagnostic and Therapeutic Use of Brother of the Regulator of Imprinted Sites (BORIS) Alternative Splice Forms

Description of Technology: This technology identifies twenty five (25) new alternatively spliced transcripts of the *BORIS* gene. The transcripts lead to the expression of seventeen different protein isoforms with variable N- and C-termini encoded by *BORIS* gene locus. Differential expression levels of *BORIS* isoforms were observed in different cancers. While some *BORIS* alternative splice variants were expressed at different levels in all types of cancers,

other expressed forms are specific to particular cancer(s).

Advantages and Applications: Simple, rapid, RT–PCR based diagnostic test to detect BORIS isoforms in cancer patients; Profiling of BORIS splice variants can be useful as a diagnostic tool for the detection of cancers; BORIS can be a therapeutic target antigen for immunotherapeutic and/or siRNA based treatments for cancer; BORIS can be used in combination with other established immunogens for immunotherapeutic treatment of several cancers.

Market: Approximately 600,000 deaths from cancer related diseases are estimated in 2007. The technology, involving a differential expression of BORIS isoforms in cancer, can be useful for the diagnostics and treatment of several cancers having a potential market of more than 7 billion U.S. dollars.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Victor V. Lobanenkov et al. (NIAID).

Patent Status: U.S. Provisional Application No. 60/841,342 filed 31 Aug 2006 (HHS Reference No. E–117–2006/0–US–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Mojdeh Bahar, J.D.; 301/435–2950; *baharm@mail.nih.gov*.

Collaborative Research Opportunity: The NIAID Laboratory of Immunopathology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize methods of cancer diagnostics and treatment based on detection of *BORIS* isoforms. Please contact Cecilia Pazman at *pazmance@niaid.nih.gov* or (301) 451–3526 for more information.

Dated: May 23, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–10711 Filed 6–1–07; 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.

A MicroRNA Profile for Androgen Responsive Prostate Cancer

Description of Technology: This invention describes a microRNA gene expression profile in prostate cancers that correlates with androgen responsiveness. Most prostate cancers are androgen sensitive and can be treated with anti-androgen therapies. Tumors non-responsive to anti-androgen therapy are more aggressive and needs alternative therapeutic interventions. Additionally, the microRNAs discovered can also be potential targets for developing new prostate cancer drugs.

Applications: MicroRNA expression profile can help physicians take informed treatment action on an individual basis.

Advantages: In vitro proof-of-concept data available.

Inventors: Dr. Chang Hee Kim *et al.* (NCI).

Related Publications: A manuscript directly related to this technology will be available as soon as it is accepted for publication.

Patent Status: U.S. Provisional Application No. 60/906,742 filed 12 Mar 2007 (HHS Reference No. E–142–2007/0–US–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Thomas P. Clouse, J.D.; 301/435–4076; *clousetp@mail.nih.gov.*

Collaborative Research Opportunity: The NCI/SAIC-Frederick, Advanced Technology Program, Laboratory for Molecular Technology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize microRNA diagnostic markers in cancer. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A Gene Expression Signature Identifying Pro-Angiogenic Genes in Ovarian Tumor Endothelial Cell Isolates

Description of Technology: Cancer is a heterogeneous disease that requires multimodality therapy. Most of the therapeutic approaches for ovarian cancer have focused on chemotherapy, which primarily targets proliferating tumor cells. Women with ovarian cancer are typically asymptomatic and they are often diagnosed at an advanced stage and have poor survival. Despite an 80% positive patient response rate to surgery and chemotherapy, most patients will experience tumor recurrence within two years. A majority of women who die of ovarian cancer will have ovarian epithelial carcinomas.

The inventors have discovered a unique proangiogenic biomarkers isolated from ovarian endothelial cells. By targeting tumor angiogenesis by inhibiting endothelial cells that support tumor growth, this technology provides methods to diagnose an ovarian cancer in its early stages.

Applications: Method to diagnose and treat ovarian cancer in its early stage; Novel early stage ovarian cancer biomarkers; Therapeutic targets and compositions that inhibit ovarian tumors such as siRNA.

Market: Ovarian cancer is the seventh most common cancer and the fifth leading cause of cancer death in the U.S; An estimated 15,310 deaths in the U.S. in 2006.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Michael J. Birrer (NCI) *et al.*

Publication: C Lu *et al.* Gene alterations identified by expression profiling in tumor-associated endothelial cells from invasive ovarian carcinoma. Cancer Res. 2007 Feb 15;67(4):1757–1768.

Patent Status: U.S. Provisional Application No. 60/901,455 filed 14 Feb 2007 (HHS Reference No. E–095–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Cell and Cancer Biology Branch, Molecular Mechanisms Section, is seeking statements of capability or interest from parties interested in collaborative

research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, Ph.D., at 301/435–3121 or *hewesj@mail.nih.gov* for more information.

Conjugates of Ligand, Linker, and Cytotoxic Agent and Related Compositions and Methods of Use

Description of Technology: Systemic toxicity of drugs is one of the most serious problems in cancer chemotherapy and frequently is dose limiting. Specific delivery of cytotoxic drugs to cancer cells remains among the most intractable problems of cancer therapy. Targeted delivery of anti-proliferation drugs through the cell surface receptors that are over expressed on cancer cells can reduce systemic toxicity and increase effectiveness of a treatment.

The present invention describes cytotoxic compounds with an intracellular target that can selectively enter tumor cells through specific receptors on the cell surface. The invention also describes a conjugate comprising a cytotoxic agent, a linker arm and a ligand capable of delivering a cytotoxic agent in a cell specific manner. Such conjugates of a cytotoxic agent and a ligand (delivery moiety) have increased selectivity for tumor cells. The toxic moiety and the ligand are joined by a linker arm that is stable in circulation, but is easily cleaved in lysosomes upon internalization of the conjugate. A panel of compounds comprised of a variety of cytotoxic warheads, against various intracellular targets linked to an assortment of ligands, has been developed and tested in a model system. Ligand moieties of these conjugates are capable of specific delivery of cytotoxic agents to receptors that are frequently over expressed in gastric, colon, lung, breast, ovarian and pancreatic tumors. These compounds have the potential to be highly effective anti-tumor agents with considerably little negative effect. This disclosed technology could provide new and exciting methodologies to treat cancer.

Inventors: Nadya I. Tarasova *et al.* (NCI)

Patent Status: U.S. Patent Application No. 10/505,239 filed 19 Aug 2004, claiming priority to 27 Feb 2002 (HHS Reference No. E–057–2002/2-US–02).

Licensing Contact: Adaku Nwachukwu, J.D.; 301/435–5560; *madua@mail.nih.gov.*

DLC–1 Gene Deleted in Cancers

Description of Technology: Chromosomal regions that are frequently deleted in cancer cells are thought to be the loci of tumor suppressor genes, which restrict cell proliferation. Recurrent deletions on the short arm of human chromosome 8 in liver, breast, lung and prostate cancers have raised the possibility of the presence of tumor suppressor genes in this location.

The inventors have discovered the deletion of human DLC–1 gene in hepatocellular cancer (HCC) cells. They have performed in vitro experiments demonstrating the deletion in over 40% of human primary HCC and in 90% of HCC cell lines. The DLC–1 gene is located on human chromosome 8p21.3–22, a region frequently deleted in many types of human cancer. DLC–1 mRNA is expressed in all normal tissues tested, but it has either no or low expression in a high percentage of several types of human cancer, such as liver, breast, lung, and prostate cancers. Through in vitro and in vivo tumor suppression experiments, the inventors further demonstrated that DLC–1 acts as a new tumor suppressor gene for different types of human cancer.

Applications: Method to diagnose HCC; Method to treat HCC patients with DLC–1 compositions; Transgenic model to study HCC and other types of human cancer; DLC–1 compositions.

Market: Primary liver cancer accounts for about 2% of cancers in the U.S., but up to half of all cancers in some undeveloped countries; 251,000 new cases are reported annually; post-operative five year survival rate of HCC patients is 30–40%.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Bao-Zhu Yuan, Snorri S. Thorgeirsson, Nicholas Popescu (NCI).

Publications: 1. BZ Yuan *et al.* DLC–1 operates as a tumor suppressor gene in human non-small cell lung carcinomas. Oncogene. 2004 Feb 19;23(7):1405–1411.

2. BZ Yuan *et al.* DLC–1 gene inhibits human breast cancer cell growth and in vitro tumorigenicity. Oncogene. 2003 Jan 23;22(3):445–450.

3. BZ Yuan *et al.* Promoter hypermethylation of DLC–1, a candidate tumor suppressor gene, in several common human cancers. Cancer Genet Cytogenet. 2003 Jan 15;140(2):113–117.

4. BZ Yuan *et al.* Cloning, characterization, and chromosomal localization of a gene frequently deleted in human liver cancer (DLC–1) homologous to rat RhoGAP. Cancer Res. 1998 May15;58(10):2196–2199.

Patent Status: U.S. Patent No. 6,897,018 issued 24 May 2005 (HHS Reference No. E–042–1998/0–US–03).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; wongje@mail.nih.gov

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Experimental Carcinogenesis, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize diagnostics based on tumor suppressor genes. Please contact John D. Hewes, Ph.D., at 301/435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: May 23, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–10712 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

Date: July 10, 2007.

Time: 9 a.m. to 3:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference room 10, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, PhD, Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, 6116 Executive Boulevard, Room 2114, Bethesda, MD 20892, (301) 496–7628, *wojcikb@mail.nih.gov.*

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: *deainfo.nci.nih.gov/advisory/bsc.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2752 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences National Cancer Institute.

Date: July 9, 2007.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Bethesda, MD 20892, 301–496–7628, *ff6p@nih.gov.*

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2753 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the President's Cancer Panel, May 24, 2007, 12:30 p.m. to May 24, 2007, 2:30 p.m. National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on May 4, 2007, 72 FR 25322.

This meeting has been rescheduled to occur on June 14, 2007 from 9 a.m. to 10 a.m. The meeting is closed to the public.

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2756 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Cancer Institute Clinical Trials Advisory Committee.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials Advisory Committee, Coordination Subcommittee.

Date: July 10, 2007.

Time: 7 p.m. to 9 p.m.

Agenda: Provide advice to the Director, NCI on how to foster collabration among the various components of the NCI-support clinical trials infrastructure.

Place: Pooks Hill Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Sheila A. Prindiville, MD, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Suite 507, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gov*.

Name of Committee: National Cancer Institute Clinical Trials Advisory Committee; CTAC.

Date: July 11, 2007.

Time: 8:30 a.m. to 4 p.m.

Agenda: Update on the Clinical Trials Working Group Implementation.

Place: National Institutes of Health, Building 31, 6th Floor, C–Wing, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Suite 507, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2766 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Absorption and Metabolism of Oral Codeine in Mechanically Ventilated.

Date: June 25, 2007.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864. Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2754 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Reproduction, Andrology, and Gynecology Subcommittee.

Date: June 25, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–2717, *leszczyd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2755 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: June 26–27, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2757 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Complications of Type II Diabetes, Ancillary R01 Applications Review.

Date: July 6, 2007.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 910, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Review of Grant Application.

Date: July 11, 2007.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7798, *muston@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2758 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–69, Review R03.

Date: June 8, 2007.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rajk Krishnaraju, PHD, MS, Scientific Review Administrator, Scientific Review Branch, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–70, Review R13.

Date: June 20, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Specialist, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Bldg., RM 4AN38F, Bethesda, MD 20892–6402, (301) 594–4809, *mary_kelly@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–68, Review Phase III clinical trial.

Date: June 26, 2007.

Time: 11 a.m. to 2 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: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN38E, Bethesda, MD 20892, (301) 594–3169, yujing—liu@nih.gov.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–60, Review R21s.

Date: July 23, 2007.

Time: 1:30 p.m. to 2:30 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: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 07–59, Review R21s.

Date: August 14, 2007.

Time: 1:30 p.m. to 3 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: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 25, 2007

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2759 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Women's Interagency HIV Study (WIHS) IV, Limited Competition.

Date: June 27–28, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

Contact Person: Lucy A. Ward, DVM, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *lward@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2760 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Environmental Determinants of Diabetes in the Youth Study.

Date: June 29, 2007.

Time: 1 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2764 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Mentored Career Development Application.

Date: June 26, 2007.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kan Ma, PhD, Scientific Review Administrator, EP Review Branch, NIH/NIAMS, One Democracy Plaza, Suite 800, MSC 4872, 6701 Democracy Blvd., Bethesda, MD 20892–4872, 301–594–4952, *mak2@mail.nih.gov.*

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2765 Filed 6–1–07; 8:45am]

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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Hearing and Balance.

Date: June 25, 2007.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication

Disorders Special Emphasis Panel; CDRC CONFLICTS.

Date: June 26, 2007.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2767 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development Methods of In Vivo Imaging and Bioengineering Research.

Date: June 24, 2007.

Time: 6:30 p.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vascular Biology.

Date: June 26, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Bukhtiar H. Shah, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095J, MSC 7822, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Transplantation, Tolerance and Tregs.

Date: June 27, 2007.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; K Applications in Adult Psychopathology and Disorders of Aging.

Date: June 27–28, 2007.

Time: 12:01 a.m. to 11:59 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0913, *latonia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pathogenic Viruses.

Date: June 27, 2007.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Soheyla Saadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Prokaryotic Microbiology.

Date: June 28, 2007.

Time: 9 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–06–214: Pharmacogenetics of Fluoride (R01).

Date: June 28, 2007.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetics, Phenotypes and Endophenotypes of Psychiatric Disorders.

Date: June 28, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, Washington, DC 20037.

Contact Person: Elizabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906, *kosse@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–06–421: Pharmacogenetics of Fluorosis (R21).

Date: June 28, 2007.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Bioinformatics and Software Development.

Date: July 2–3, 2007.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, 301–402–1074, *rigasm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psychopathology, Developmental Disabilities and Disorders of Aging.

Date: July 2–3, 2007.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Cognition, Memory, and Speech Therapy.

Date: July 2, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 ONC–G (02): Gynecologic Biomarkers.

Date: July 3, 2007.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *meyerjl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Food Safety, non-HIV Infectious Agents Sterilization and Bioremediation.

Date: July 5–6, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pancreatic Islet Biology.

Date: July 6, 2007.

Time: 9 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2761 Filed 6–01–07; 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 Centers for Scientific Review Special Emphasis Panel, June 20, 2007, 12 p.m. to June 20, 2007, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 22, 2007, 72 FR 28706–28708.

The meeting will be held June 26, 2007, from 2 p.m. to 4 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2762 Filed 6–1–07; 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 Cancer Immunopathology and Immunotherapy Study Section, June 14, 2007, 8 a.m. to June 15, 2007, 5 p.m. The Madison Loews Hotel, 1177 15th Street, NW., Washington, DC 20005 which was published in the **Federal Register** on May 21, 2007, 72 FR 28515–27517.

The meeting will be held June 14, 2007, 8 a.m. to 7 p.m. at the Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852. The meeting is closed to the public.

Dated: May 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2763 Filed 6–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice Regarding Substance Abuse and Mental Health Services Administration's National Registry of Evidence-Based Programs and Practices (NREPP): Priorities for NREPP Reviews

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) is committed to preventing the onset and reducing the progression of mental illness, substance abuse, and substance-related problems among all individuals, including youth. As part of this effort, SAMHSA has expanded and refined the agency's National Registry of Evidence-based Programs and Practices (NREPP). Two previous notices announcing these changes have been published in the **Federal Register** (70 FR 50381, Aug. 26, 2005; 71 FR 13133, Mar. 14, 2006). A third notice announced the first open submission period, October 1, 2006, through February 1, 2007 (71 FR 37590, June 30, 2006).

This notice explains how SAMHSA and its three Centers will prioritize interventions submitted for NREPP reviews during fiscal year 2008 and provides guidance on the submission process. This information can be helpful to individuals and organizations seeking to have an intervention reviewed and described on the NREPP Web site.

FOR FURTHER INFORMATION CONTACT: Kevin D. Hennessy, PhD, Science to Service Coordinator/SAMHSA, 1 Choke Cherry Road, Room 8–1017, Rockville, MD 20857, (240) 276–2234.

Dated: May 25, 2007.

Terry L. Cline,

Administrator, SAMHAS.

Substance Abuse and Mental Health Services Administration's National Registry of Evidence-Based Programs and Practices (NREPP): Priorities for NREPP Reviews

Background

The Substance Abuse and Mental Health Services Administration's (SAMHSA) National Registry of Evidence-based Programs and Practices

(NREPP) is a voluntary rating system designed to provide the public with reliable information on the scientific basis and practicality of interventions that prevent and/or treat mental health and substance use disorders. Descriptive information and quantitative ratings are provided across several key areas for all interventions reviewed by NREPP. This information is available to the public through a new NREPP Web site (*http://www.nrepp.samhsa.gov)*.

Public input from a range of stakeholders has improved NREPP's accessibility and usefulness as a ''decision support tool'' to help States, Territories, community-based organizations, and other interested stakeholders identify interventions that may meet their needs. NREPP provides useful information—including ratings on the quality of research and readiness for dissemination—to assist individuals and organizations in identifying interventions that may address their particular needs and match their specific capacities and resources.

Each of SAMHSA's Centers—the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services—has established annual review priorities regarding the types of interventions to be included in NREPP. In general, these priorities represent the interests and needs of relevant stakeholders and reflect SAMHSA's matrix and grant priorities.

This notice describes the Centers' priorities for fiscal year 2008 and provides guidance to individuals and organizations who may be considering submitting an intervention for NREPP review.

SAMHSA's NREPP Priorities

SAMHSA is prioritizing for NREPP review interventions that prevent and treat mental and/or substance use disorders. For NREPP purposes, SAMHSA defines interventions as programs, practices, and/or environmental strategies designed to change behavioral outcomes among a definable population or within a definable geographic area.

Minimum Requirements for NREPP Review

Individuals and organizations interested in submitting an intervention for review must first document that the intervention meets the following three requirements:

1. The intervention demonstrates one or more positive outcomes ($p \leq .05$) in mental health and/or substance use behavior among individuals, communities, or populations.

2. Intervention results have been published in a peer-reviewed publication or documented in a comprehensive evaluation report.

3. Documentation (e.g., manuals, process guides, tools, training materials) of the intervention and its proper implementation is available to the public to facilitate dissemination.

Interventions that do not meet all three of these minimum requirements will not be considered for NREPP review.

SAMHSA particularly encourages submissions of gender and culturally appropriate interventions that specifically target the following underserved populations: American Indian/Alaska Native, Asian American, Black or African American, Hispanic or Latino, and Native Hawaiian or other Pacific Islander.

Priority Review Points

Interventions that meet the three minimum requirements may be awarded points that will help determine their prioritization for potential NREPP review. Interventions will receive 1 priority point, and thus higher priority for potential NREPP review, if they have been evaluated using a quasi-experimental or experimental study design. Such studies may include a pre/post design with a comparison or control group or a longitudinal/time series design. Time series designs must include at least three preintervention or baseline measurements and at least three postintervention or follow-up measurements. An additional priority point may be obtained if at least one primary outcome of the submitted intervention falls within any of the current SAMHSA Center Priority Areas. The Priority Areas for fiscal year 2008 for each of SAMHSA's three Cnters are listed below.

Center for Substance Abuse Prevention (CSAP)

CSAP strives to expand and enhance the development of comprehensive, integrated systems and services within all States, Tribes, and jurisdictions that promote community and personal health and wellness and prevent substance abuse and mental disorders. In support of this goal, CSAP Priority Areas focus on comprehensive community-based approaches and innovative interventions that:

- Prevent and/or reduce substance abuse and its related problems—e.g., underage drinking, inhalant abuse, cannabis use and abuse, drug-related suicide, alcohol and drug abuse among young adults, misuse of alcohol and prescription drugs among the elderly, and HIV/substance abuse problems.
- Reduce risk factors and/or increase protective factors (factors known to contribute to positive changes in substance abuse behaviors).
- Address emerging substance abuse problems—e.g., methamphetamine use, abuse of over-the-counter and prescription drugs, use of fentanyl and other synthetic drugs.

Center for Substance Abuse Treatment (CSAT)

CSAT Priority Areas focus on interventions to treat adolescents and adults with alcohol and/or drug disorders, including interventions developed or adapted for special populations (e.g., American Indians/Alaska Natives, other minorities), that are delivered as part of one or more of the following types of services:

- Screening and brief intervention in general health care settings.
- Outreach and engagement for drug-dependent populations, including persons with or at risk for HIV.
- Treatment and rehabilitation, including behavioral interventions alone or in combination with pharmacological treatment.
- Treatment and rehabilitation for individuals involved in the criminal justice system.
- Recovery support and/or continuing care.

Center for Mental Health Services (CMHS)

CMHS Priority Areas focus on interventions to:

- Foster consumer- and family-provided mental health services, excluding school-based services.
- Reduce the effects of trauma on the mental well-being of children, adolescents, and adults.
- Promote employment among individuals with serious mental illness.
- Provide treatment for mental illnesses in settings that are either integrated or closely coordinated with primary care.
- Divert adults with serious mental illness and/or children and adolescents with serious emotional disturbances from criminal and juvenile justice systems.
- Develop alternatives to the use of seclusion and restraint for adults with serious mental illness and/or children and adolescents with serious emotional disturbances.
- Prevent suicide in specific age groups (i.e., adolescents, young adults, elders).

Exclusions From NREPP

The following types of interventions are not eligible for review and should not be submitted to NREPP:

1. Stand-alone pharmacologic treatments—The evidence base for pharmacologic treatments is reviewed and approved through the U.S. Food and Drug Administration (FDA). NREPP reviews will be limited to on-label use of FDA-approved pharmacotherapy interventions that are combined with one or more psychosocial treatments.

2. Stand-along smoking prevention and/or cessation interventions—These interventions are appropriate for NREPP review only when they are conducted as part of a program addressing the prevention and/or treatment of alcohol or other drugs of abuse.

Availability of NREPP Review Funds

The number of reviews conducted by NREPP in any given year is contingent on both the total number of submissions received and the availability of NREPP contract resources. SAMHSA cannot guarantee the review of any specific submission.

Submission Guidance

SAMHSA has established a 4-month period for receipt of NREPP submissions in fiscal year 2008 that will begin October 1, 2007, and end February 1, 2008. Interventions submitted after February 1, 2008, will not be considered for NREPP review during this fiscal year. Interventions not selected for review may be resubmitted again in the next open submission period provided they meet NREPP's minimum requirements. All submissions must be made by the intervention developer or principal investigator. Third parties may submit an intervention, but documentation must be provided to NREPP confirming that the intervention developer or principal investigator has formally authorized the third-party submission.

To be considered for potential review, interventions must demonstrate that they meet NREPP's three minimum requirements. Table 1 depicts the types of documentation that should be submitted so that NREPP staff can accurately assess whether the intervention meets these requirements.

If an intervention is accepted for review, additional supporting documentation and three copies of all hard-copy dissemination materials will need to be submitted.

TABLE 1.—SUGGESTED DOCUMENTATION INDICATING COMPLIANCE WITH MINIMUM REQUIREMENTS

Minimum requirement	Suggested supporting documentation
1. The intervention demonstrates one or more positive outcomes ($p \leq .05$) related to mental health and/or substance use behaviors.	Full-text electronic or hard copies of: • Research articles. • Published and/or unpublished evaluation reports. • Grant final reports. • Replication studies. Note: Abstracts or URLs to partial articles are regarded as incomplete and will not be considered.
2. Intervention results have been published in a peer-reviewed publication or documented in a comprehensive evaluation report. A comprehensive evaluation report has the following components: Review of the literature, theoretical framework, purpose, methodology, findings/results, discussion, and conclusions.	
3. Documentation of the intervention and its implementation is available to the public to facilitate dissemination.	• List of dissemination materials (e.g., manuals, process guides, tools, training materials, quality assurance protocols) that are available to the public. • Materials catalog. • Program Web site.

Selection and Ordering of Reviews

All submitted interventions meeting NREPP's minimum requirements will be considered for NREPP review. The selection of interventions and order of reviews will be determined in part by a system of priority points on the SAMHSA Center Priority Areas described above. Interventions awarded 2 priority points have higher priority than those awarded 1 priority point, and interventions awarded 1 priority point have higher priority than those awarded 0 priority points. In addition, SAMHSA reserves the right to select interventions based on other factors to ensure that NREPP provides a balanced portfolio of information relating to the prevention and/or treatment of mental health and/or substance use disorders.

NREPP submissions not selected for review will be returned to the applicant. These submissions will not automatically be considered for review in subsequent submission cycles; however, applicants may choose to resubmit their intervention at a later date.

The number of reviews that NREPP actually undertakes in any given year will depend upon available contract resources.

Contact Regarding Submissions

Individuals and organizations interested in submitting an intervention should contact the NREPP contractor, MANILA Consulting Group, to express their interest. Staff from MANILA will provide further guidance and details about the submission process as appropriate. Electronic correspondence (e-mail) is preferred and can be sent to *nrepp@samhsa.hhs.gov*. Interested parties can also contact MANILA by phone at (571) 633–9797, ext. 406.

[FR Doc. 07–2739 Filed 6–1–07; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Addition of a New System of Records

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Proposed addition of a new system of records.

SUMMARY: The Department of the Interior (DOI) is issuing public notice of its intent to add a new Privacy Act system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). The Privacy Act requires publication of a **Federal Register** notice of the existence and character of records systems maintained by the agency (5 U.S.C. 552 a e)(4)). The new system of records is ''DOI–06'' and is titled ''The 'America The Beautiful—The National Parks and Federal

Recreational Lands Pass' System'' (hereinafter ''the Pass System'').

DATES: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the Pass System. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to comment. Any persons interested in commenting on the proposed Pass System may do so by submitting comments in writing to the National Park Service Privacy Act Officer, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, or by e-mail at *diane_cooke@nps.gov*. Comments received within 40 days of the date of publication in the **Federal Register** will be considered. The notice will be effective as proposed at the end of the comment period unless comments are received that would require substantial modifications to the Pass System. In that case, the Department will re-publish the notice.

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

FOR FURTHER INFORMATION CONTACT: Ben Simon, Office of Policy Analysis, at *Benjamin_Simon@ios.doi.gov*, MS–3530–MIB, 1849 C St., NW., Washington, DC 20240. Phone: 202–208–4916. Fax: 202–208–4867.

SUPPLEMENTARY INFORMATION: The Pass System will contain information about (a) organizations and individuals who purchase and/or receive the ''America The Beautiful—The National Parks and Federal Recreational Lands Pass'' (hereinafter ''the Pass''), and (b) individuals who register to receive information about the Pass program and stewardship opportunities. The information collected will be that needed to process financial transactions to complete Pass purchase requests; fulfill Passes to individuals (''fulfill'' and ''fulfillment'' refer to shipping and handling of Passes), Federal recreation sites, and third parties; and provide such associated customer services as sending anniversary renewal notices and providing information about the Pass program and Federal lands. Any entity authorized to sell and fulfill Passes on behalf of the government will be barred from selling, renting, licensing, sharing, or disclosing to third parties any personal information collected. Any such entity will also be barred from using any personal information collected for purposes other than to sell and fulfill Passes. Informational or promotional messages will be sent to individuals only if they have affirmatively requested such messages through an ''opt-in'' mechanism. A copy of the system notice for the Pass System, DOI–06, follows.

Diane M. Cooke,

National Park Service Privacy Act Officer, Department of the Interior.

INTERIOR/DOI–06

SYSTEM NAME:

The ''America The Beautiful—The National Parks and Federal Recreational Lands Pass'' System—Interior, DOI–06.

SECURITY CLASSIFICATION:

Not classified.

SYSTEM NAME:

Department of the Interior, The ''America The Beautiful—The National Parks and Federal Recreational Lands Pass'' System (hereinafter ''the Pass System'').

SYSTEM LOCATION:

Initially, records in this system pertaining to Pass sales and fulfillment will be located at the U.S. Geological Survey: U.S. Geological Survey Geospatial Information Office, Science Information & Education Branch, MS–306/Accounting Team, Box 25286, Denver Federal Center, Denver, CO 80225. Once a contractor(s) for Pass sales has been selected, these records will be located at a secure site (see ''Safeguards'' heading below) at a location managed by the contractor for the Department of the Interior responsible for these functions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Members of the public who (a) purchase the ''America The Beautiful—The National Parks and Federal Recreational Lands Pass'' (hereinafter, ''the Pass'') via the Internet or a telephone call-center, (b) register online to receive information about the Pass program and stewardship opportunities, or (c) are awarded a Pass as a result of reaching the necessary threshold of hours volunteered at Federal recreation lands; (2) representatives of businesses and organizations who are third party vendors of the Pass; and (3) DOI and U.S. Department of Agriculture, Forest Service employees who serve as ordering contacts for the Pass for sale/distribution.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Name of individual/organization and contact information, including home address, telephone number, and e-mail address.

(2) Category of Pass(es) being purchased or awarded (Annual Pass or Volunteer Pass).

(3) Financial information necessary to process Pass purchases, including credit card number, type of credit card (e.g., Visa or Mastercard), expiration date, and credit card security code.

(4) Date that Pass(es) were last purchased or awarded.

(5) Other information necessary to manage the Pass program (such as desire to receive further information when requested, contact method, and other preferences).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authorization is granted in the Federal Lands Recreation Enhancement Act of 2004 (REA), 16 U.S.C. 6804.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the Pass System are: (1) To process financial transactions to complete sales of Passes; (2) to fulfill Passes to individuals, Federal recreation sites, and third party vendors of the Pass; (3) for those who ''opt-in'' or register, to send updates, reminders (including remarketing the Pass when an individual's Pass is about to expire), and additional information on the Pass program and stewardship opportunities from the REA participating agencies and three Congressionally Authorized Foundations (the National Fish and Wildlife Foundation, the National Forest Foundation, and the National Park Foundation); and (4) for other necessary actions to manage the Pass program within the intent of the authorizing legislation.

DISCLOSURES OUTSIDE OF THE DEPARTMENT OF THE INTERIOR MAY BE MADE TO:

(1) An expert, consultant, contractor (including employees of the contractor) of DOI that performs, on DOI's behalf, services requiring access to these records.

(2) The Department of Agriculture's Forest Service as necessary to implement the Pass program.

(3) The three Congressionally Authorized Foundations (the National Fish and Wildlife Foundation, the National Forest Foundation, and the National Park Foundation) about those

individuals or entities who ''opt-in'' or register.

(4)(a) Any of the following entities or individuals when the circumstances set forth in (b) are met:

(i) The Department of Justice (DOJ);

(ii) A court, adjudicative, or other administrative body;

(iii) A party in litigation before a court or adjudicative or administrative body;

(iv) The Department or any component of the Department;

(v) Any Department employee acting in his or her official capacity; or

(vi) Any Departmental employee acting in his or her individual capacity if the Department or the DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When

(i) There is a proceeding in which one of the following is a party or has an interest:

(A) The Department or any component of the Department;

(B) Any Department employee acting in his or her official capacity;

(C) Any Departmental employee acting in his or her individual capacity if the Department or the DOJ has agreed to represent that employee or pay for private representation of the employee;

(D) The United States, when the DOJ determines that the Department is likely to be affected by the proceeding; and

(ii) The Department deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purposes for which the records were compiled.

(5) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order, or license, when the Department becomes aware of a violation or potential violation of a statute, rule, regulation, order, or license.

(6) A congressional office in response to a written inquiry an individual covered by the Pass System has made to the congressional office about him or herself.

(7) A debt collection agency for the purpose of collecting outstanding debts owed to the Department for fees associated with processing FOIA/PA requests.

(8) Consumer reporting agencies to facilitate collection of debts owed the government.

(9) To disclose debtor information to the Internal Revenue Service, or to another Federal agency or its contractor solely to aggregate information for the Internal Revenue Service to collect debts owed to the Federal government through the offset of tax refunds.

(10) Other Federal agencies for the purpose of collecting debts owed to the Federal government by administrative or salary offset.

(11) Entities or individuals as otherwise required by law.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored, in paper form, in file folders within filing cabinets, and in electronic form, in computer systems.

RETRIEVABILITY:

Information from the Pass System will be retrievable by (1) name of individual or organization, (2) address, (3) credit card information (for Pass purchasers only), and (4) other unique identifiers such as an e-mail address or a phone number.

SAFEGUARDS:

Access to records in the Pass System is limited to authorized personnel whose official duties require such access. Paper records are maintained in file cabinets in secured rooms that will be locked during non-business hours. Electronic records conform to Office of Management and Budget and Departmental guidelines reflecting the implementation of the E–Government Act of 2002, National Information Security Act Special Publication standards for Cyber Security and the Department of Interior regulations on safeguarding of Privacy Act information (43 CFR 2.51). A Privacy Impact Assessment was developed for the Pass System to ensure that Privacy Act requirements and safeguards are met. Database tables will be kept on separate file servers away from general file storage and other local area network usage. The database itself will be stored in a password-protected, client-server database. Electronic transmissions of records will be encrypted and password-protected. Such security measures will establish access levels for different types of users.

RETENTION AND DISPOSAL:

Records in the Pass System will be retained and disposed of in accordance with item 9105 of the Office of the Secretary's Consolidated Subject-Function Code Records Disposition Schedule, which is being drafted to cover the Pass System.

SYSTEM MANAGER AND ADDRESS:

America The Beautiful—The National Parks and Federal Recreational Lands Pass Program Manager, National Park Service, MS–7408–MIB, 1849 C St., NW., Washington, DC 20240.

NOTIFICATION PROCEDURES:

Individuals requesting information as to the existence of records pertaining to themselves in the Pass System must write to the System Manager, at the address provided above. Their requests must be signed, and must include their full names and addresses. (See 43 CFR 2.60)

RECORD ACCESS PROCEDURES:

Individuals requesting copies of their records from the Pass System must write to the System Manager at the address provided above. Their requests must be signed, and must include their full names and addresses. Their request envelopes and letters should be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS'' (See 43 CFR 2.63).

CONTESTING RECORD PROCEDURES:

Individuals requesting changes to their records must write to the System Manager at the address provided above. Their requests must be signed, and must include their full names and addresses, as well as an explanation of what information they believe should be changed, and why. (See 43 CFR 2.71)

RECORD SOURCE CATEGORIES:

Information in the Pass System comes primarily from persons or parties purchasing or receiving Pass(es) or registering to receive additional information. Individuals provide information using electronic forms or over the telephone if using a telephone call-in center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–10726 Filed 6–1–07; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Comprehensive Conservation Plan for Mingo, Pilot Knob, and Ozark Cavefish National Wildlife Refuges (NWRs) Wayne, Stoddard, Iron, Lawrence, and Newton Counties, MO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that the Final Comprehensive Conservation Plan (CCP) is available for Mingo, Pilot Knob, and Ozark Cavefish NWRs, Missouri.

The CCP was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. Goals and objectives in the CCP describe how the agency intends to manage the refuge over the next 15 years.

ADDRESSES: Copies of the Final CCP are available on compact disk or hard copy. You may obtain a copy by writing to: U.S. Fish and Wildlife Service, Division of Conservation Planning, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111 or you may access and download a copy via the planning Web site at *http://www.fws.gov/midwest/planning/mingo.*

FOR FURTHER INFORMATION CONTACT: Kathleen Burchett, (573) 222–3589.

SUPPLEMENTARY INFORMATION: Established in 1944 under authority of the Migratory Bird Treaty Act, the 21,592-acre Mingo NWR serves as a resting and wintering area for migratory waterfowl. A shallow basin, the Refuge lies in an abandoned channel of the Mississippi River bordered on the west by the Ozark Plateau and on the east by Crowley's Ridge. The Refuge contains approximately 15,000 acres of bottomland hardwood forest, 5,000 acres of marsh and water, 1,100 acres of cropland and moist soil units, and nearly 500 acres of grassy openings. During fall and spring migration, the Refuge wetlands support thousands of waterfowl.

The 90-acre Pilot Knob NWR was established in 1987. It is located atop Pilot Knob Mountain and contains abandoned iron mine shafts excavated in the mid-1800s that have since become critical habitat for the Federally endangered Indiana bat.

Ozark Cavefish NWR was established in 1991. The 41.8-acre Refuge is located in southwest Missouri and includes the outlet of an underground stream that contains a population of the Federally endangered Ozark cavefish.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee et seq.), requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Management of the refuges for the next 15 years will focus on: (1) Improving the long-term sustainability of the bottomland forest; (2) increasing opportunities for wildlife dependent recreation and a number of other recreational activities; and (3) strengthening and expanding partnerships with government agencies, organizations, and communities.

Dated: August 11, 2006.

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. E7–10676 Filed 6–1–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Draft Post-Delisting Monitoring Plan for the Western Great Lakes Distinct Population Segment of the Gray Wolf (Canis lupus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of post-delisting monitoring plan; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Draft Post-Delisting Monitoring Plan (PDM Plan) for the Western Great Lakes (WGL) Distinct Population Segment (DPS) of the Gray Wolf (*Canis lupus*). Under the Draft PDM Plan, we would monitor the status of the gray wolves in the WGL DPS over a 5-year period. Our monitoring would include population estimates, health data from individual wolves, and review of changes in State and tribal management and legal protections that might impact the WGL DPS's status. During the PDM period, we and the Eastern Timber Wolf Recovery Team would annually conduct a review of the monitoring data and monitoring program. We solicit review and comment on this Draft Monitoring Plan from local, tribal, State, and Federal agencies and the public.

DATES: We must receive any written comments on or before July 5, 2007.

ADDRESSES: To request a copy of the 11-page PDM Plan, write to our Midwest Regional Office: U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056, or call 612–713–5350. Copies also may be requested by fax at 612–713–5292 or by sending a request to *graywolfPDM@fws.gov.* Specify whether you want to receive a hard copy by U.S. mail or an electronic copy by e-mail or fax. The PDM Plan may also be downloaded from our Web site at *http://www.fws.gov/midwest/wolf/.*

Send your comments by any of the following methods. You may also drop off comments in person. See ''Viewing Documents'' and ''Public Comments Solicited'' under **SUPPLEMENTARY INFORMATION** for important information.

- *E-mail: graywolfPDM@fws.gov.* Include ''Wolf PDM Plan Comments'' in the subject line of the message.
- *Fax:* 612–713–5292. Include ''Wolf PDM Plan Comments'' in the subject line.
- *U.S. Mail:* Wolf PDM Plan Comments, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056.
- *In-Person Drop-off:* Room 646 at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for additional information to Ron Refsnider, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111–4056 or 612–713–5350. Additional information is also available on our World Wide Web site at *http://www.fws.gov/midwest/wolf/.* Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

We published our decision to remove the Western Great Lakes Distinct Population Segment of the gray wolf from the Federal List of Threatened and Endangered Wildlife and Plants on

February 8, 2007 (72 FR 6052), and it became effective March 12, 2007. We determined this DPS to be recovered as a result of its primary threats being reduced or eliminated and because wolf populations in Minnesota, Wisconsin, and Michigan have greatly exceeded the numerical recovery criteria established in the Federal recovery plan. Section 4(g)(1) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires that we implement a system, in cooperation with the States, to monitor for no fewer than 5 years the status of all species that have recovered and no longer need the protection of the Act. We began developing the PDM Plan in advance of making a final decision on the delisting proposal in order to be able to implement the PDM activities in a timely manner in the event that we determined that delisting the WGL DPS is appropriate. Now that we have made the delisting determination for the WGL DPS, we are implementing the PDM as described in the Draft PDM Plan, although we recognize that the PDM Plan may be modified as a result of this review. We have used the expertise of the Recovery Team during the drafting of the PDM Plan.

The WGL DPS includes all of Minnesota; Wisconsin; Michigan; the part of North Dakota that is north and east of the Missouri River, upstream as far as Lake Sakakawea, and east of Highway 83, from Lake Sakakawea to the Canadian border; the part of South Dakota that is north and east of the Missouri River; the parts of Iowa, Illinois, and Indiana that are north of Interstate Highway 80; and the part of Ohio north of Interstate Highway 80 and west of the Maumee River (at Toledo). This includes the area currently occupied by wolf packs in Minnesota, Wisconsin, and Michigan; the nearby areas in these States, including the Northern Lower Peninsula of Michigan, in which wolf packs may become established in the foreseeable future; and a surrounding area into which Minnesota, Wisconsin, and Michigan wolves may disperse, but where we do not expect packs to persist. The area surrounding the core wolf populations includes the locations of most known dispersers from the core populations, especially the shorter- and medium-distance dispersers that are most likely to survive and potentially return to the core areas.

We propose to monitor the status of the gray wolf WGL DPS over a 5-year period following delisting. The PDM program primarily would be a continuation of State monitoring activities similar to those which have been conducted by the Departments of Natural Resources in Minnesota, Wisconsin, and Michigan over several decades. These activities would include both population monitoring and health monitoring of individual wolves, as well as Service review of changes to State and tribal wolf management and protection. Additionally, the PDM would review evidence of increased post-delisting threats, especially human-caused mortality and disease. During the PDM period, we and the Recovery Team would annually conduct a review of the monitoring data and monitoring program. We would consider various relevant factors (including but not limited to mortality rates, population changes and rates of change, disease occurrence, and range expansion or contraction) to determine if the population of gray wolves within the WGL DPS warrants expanded monitoring, additional research, and/or resumption of Federal protection. At the end of the 5-year PDM program, we would conduct a final review.

Viewing Documents

The complete file for the monitoring plan is available for inspection, by appointment, during normal business hours at our Ft. Snelling, Minnesota, Regional Office. Call 612–713–5350 to make arrangements. The comments and materials we receive on the monitoring plan during the comment period also will be available for public inspection by appointment during normal business hours at the Ft. Snelling office and also at our Ecological Services Field Offices in Bloomington, Minnesota (612–725–3548); New Frankin, Wisconsin (920–866–1717); East Lansing, Michigan (517–351–2555), and Marquette, Michigan (906–226–6571). Call those offices to make arrangements.

Public Comments Solicited

We intend for the PDM Plan to effectively monitor the status of the delisted gray wolf WGL DPS as required by section 4(g)(1) of the Act. Therefore, we hereby solicit comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning our draft PDM Plan. We will consider all comments and information we receive during the comment period on this draft PDM during our preparation of a final PDM.

Public Availability of Comments

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

Author

The primary author of this document is Ron Refsnider (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 27, 2007.

Wendi Weber,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. E7–10673 Filed 6–1–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Chiricahua Leopard Frog Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final recovery plan for Chiricahua leopard frog.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final recovery plan for the Chiricahua leopard frog (*Rana chiricahuensis*). The species occurs in central and southeastern Arizona, west-central and southwestern New Mexico, and the sky islands and Sierra Madre Occidental of northeastern Sonora and northwestern Chihuahua, Mexico. The Chiricahua Leopard Frog Recovery Plan (Recovery Plan) presents information on the species and its habitat, including delisting criteria and recovery actions to conserve the species.

ADDRESSES: You may access this document from our Web site, *http://fws.gov/arizonaes/*. Copies of the Recovery Plan are also available on compact disk or in hard copy. To obtain a copy, contact Jim Rorabaugh by U.S. mail at Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951.

FOR FURTHER INFORMATION CONTACT: Jim Rorabaugh (see **ADDRESSES**), (602) 242–0210 x238 (telephone) or *jim_rorabaugh@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. On April 12, 2006, we published a notice of document availability in the **Federal Register** announcing the availability for public review of the draft Recovery Plan (71 FR 18767). We accepted public comments through June 12, 2006. We also conducted peer review at this time. We received six letters of comment during the comment period. Based on this input, we revised and finalized the Recovery Plan.

The Recovery Plan describes the status, current management, recovery objectives and criteria, and specific actions needed to recover and delist the threatened Chiricahua leopard frog. The Recovery Plan was developed by a recovery team, including a Technical Subgroup and three Stakeholders Subgroups, in coordination with the Service. The Technical Subgroup included experts on the species, conservation biology, and other relevant topics. The Stakeholders Subgroups included land owners and managers, agency representatives, ranchers, the mining industry, environmental organizations, herpetologists, and other interested parties.

The Chiricahua leopard frog is an inhabitant of a variety of valley and montane aquatic habitats, such as springs, pools, cattle tanks, lakes, reservoirs, streams, and rivers. The frog has disappeared from more than 80 percent of its historical localities due to threats including predation by non-native organisms, especially American bullfrogs, fishes, and crayfish; the fungal disease chytridiomycosis; drought; floods; degradation and loss of habitat as a result of water diversions, groundwater pumping, and livestock management that has or continues to degrade frog habitats; a long history of fire suppression, mining, development, and other human activities; disruption of metapopulation dynamics; increased chance of extirpation or extinction resulting from small numbers of populations and individuals existing in dynamic environments; and probably environmental contamination (such as runoff from mining operations and airborne contaminants from copper smelters).

Actions needed to recover the Chiricahua leopard frog include protection of existing populations and occupied habitats, creation or restoration of additional habitats and populations, control of non-native predators and minimizing spread of disease, monitoring of the recovery effort and frog populations, research that will facilitate better and more efficient recovery, and adaptive management. The Recovery Plan provides delisting criteria for the species that will indicate the species is no longer threatened with extinction throughout all or a significant portion of its range. When the following criteria have been met, the species may be considered for removal from the List of Threatened and Endangered Wildlife: (1) At least two metapopulations located in different drainages plus at least one isolated and robust population in each recovery unit exhibit long-term persistence and stability as demonstrated by a scientifically acceptable population monitoring program; (2) Aquatic breeding habitats necessary for persistence of metapopulations and isolated populations are protected and managed; (3) Additional habitat needed for population connectivity, recolonization, and dispersal is protected and managed; and (4) Threats and causes of decline have been reduced or eliminated, and commitments of long-term management are in place in each recovery unit such that the Chiricahua leopard frog is unlikely to need protection under the Act in the foreseeable future.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 14, 2007.

Benjamin N. Toggle,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E7–10674 Filed 6–1–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of extension of an information collection (1028–0070).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), USGS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the Consolidated Consumers' Report, Form 9–4117MA.

DATES: Submit written comments by August 3, 2007.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1028–0070 as an identifier in your message.

- E-mail USGS at *atravnic@usgs.gov*. Identify with Information Collection Number 1028–0070 in the subject line.
- Fax: 703–648–6821. Identify with Information Collection Number 1028–0070.
- Mail or hand-carry comments to the Department of the Interior; U.S. Geological Survey; Attention: Alfred Travnicek; 12201 Sunrise Valley Drive, MS–807; Reston, Virginia 20192. Please reference ''Information Collection 1028–0070'' in your comments.

FOR FURTHER INFORMATION CONTACT: Imogene Bynum, Data Collection and Coordination Section, Minerals Information Team at (703) 648–7960. You may also contact Imogene Bynum to obtain a copy, at no cost, of Form 9–4117MA.

SUPPLEMENTARY INFORMATION:

Title: Consolidated Consumers' Report, Form 9–4117MA.

OMB Control Number: 1028–0070.

Abstract: Respondents supply the U.S. Geological Survey with domestic consumption data of 12 metals and ferroalloys, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' No items of a sensitive nature are collected. Responses are voluntary. We intend to release data collected on Form 9–4117MA only in a summary format that is not company-specific.

Frequency: Monthly and Annually.

Estimated Number and Description of Respondents: 397 consumers of ferrous

and related metals. Respondents are canvassed for one frequency period only (e.g., monthly respondents are not canvassed annually).

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The currently approved ''hour'' burden for Form 9–4117MA is 1,709 hours. We estimate the public reporting burden averages 45 minutes per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost '' burden associated with Form 9–4116MA.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software your purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

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

USGS Information Collection Clearance Office: Alfred Travnicek (703) 648–7231.

Dated: May 29, 2007.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 07–2735 Filed 6–1–07; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 9:30 a.m., on Friday, June 22, 2007, at the Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

DATES: Friday, June 22, 2007.

ADDRESSES: Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, Telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson
Mr. Charles J. Weir
Mr. Barry A. Passett
Mr. James G. McCleaf II
Mr. John A. Ziegler
Mrs. Mary E. Woodward
Mrs. Donna Printz
Mrs. Ferial S. Bishop
Ms. Nancy C. Long
Mrs. Jo Reynolds
Dr. James H. Gilford
Brother James Kirkpatrick
Ms. Mary Ann D. Moen
Dr. George E. Lewis, Jr.
Mr. Charles D. McElrath
Ms. Patricia Schooley
Mr. Jack Reeder
Ms. Merrily Pierce

Topics that will be presented during the meeting include:

1. Update on park operations.

2. Update on major construction/development projects.

3.Update on partnership projects.

4. Subcommittee Reports.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussued. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: May 14, 2007.

Kevin D. Brandt,

Superintendent, Chesapeake and Ohio Canal National Historical Park.

[FR Doc. 07–2751 Filed 6–1–07; 8:45 am]

BILLING CODE 4310–60–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the American Museum of Natural History, New York, NY, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 67 cultural items are 1 fossil bird bone, 1 carved human face, 8 unio shells, 1 shell bead, 1 bead of shell or chalk, l large slate bead, 3 strings of beads of various shell and stone materials, 1 string of predominately serpentine beads, 47 serpentine beads, 1 sculpted human head, 1 seal head sculpture, and 1 pipe. The three strings of beads are of mixed composition – containing approximately 34, 36, and over 100 beads respectively. The one string of predominately serpentine beads is composed of approximately 35 beads of serpentine and some shell. Each of these four strings of beads appears to have been strung together after they had been found and it is believed that they represent four separate pieces.

The cultural items were collected or acquired by James Terry in 1882. The museum acquired all the cultural items from Mr. Terry in 1891 when the museum purchased his entire collection of more than 26,000 items. The museum accessioned the items between 1891 and 1893.

Mr. Terry collected the 1 fossil bird bone, 1 carved human face, 8 unio shells, 1 shell bead, 1 of the strings of beads of mixed composition, and 1 sculpted human head from various locations in Umatilla County, OR. The fossil bird bone is a single broken piece and approximately 8 cm in length. The human face, carved from bone, was acquired in 7 fragments, measuring between .5 cm by .5 cm and 4 cm by 2.5 cm. The unio shells measure from 5 cm to 8.5 cm in length. The shell bead, which is perforated with three holes, is roughly rectangular, and measures 2.5 cm by 3 cm. The sculpted human head is a single stone, which appears to be granite and weighs approximately 6.8 kg (or 15 lbs), and features a human face.

Mr. Terry acquired the 1 shell or chalk bead, 2 remaining strings of beads of mixed composition, 47 serpentine beads, and 1 seal head sculpture from Mrs. Kunzie of Umatilla, OR. Mrs. Kunzie had collected the seal head sculpture and one string of beads of mixed composition from the vicinity of the Columbia River in Umatilla, OR. The shell or chalk bead, the other string of beads of mixed composition, and serpentine beads were collected from unknown locations in Umatilla County, OR. The bead of shell or chalk is discoid in shape and has a diameter of approximately 1.25 cm. The serpentine beads range in size, and are discoid, cylindrical, and rectangular in shape. The seal head sculpture is a single piece of basalt, weighing approximately 16 kg (or 35 lbs), and carved with a zoomorphic face.

Mr. Terry acquired the pipe and large serpentine bead from Mrs. Gordon, who collected them from the vicinity of the Columbia River in Umatilla, OR. The pipe is tubular in shape and is made of kaolin. The large slate bead is an ovaloid disc, with a large perforation, and measures approximately 2.5 by 4 cm.

Mr. Terry acquired the string of predominately serpentine beads from Mrs. Terry, his wife, who collected them from the vicinity of the Columbia River in Umatilla, OR.

The determination that the items described above are ''unassociated funerary objects'' is based on information provided during consultation by representatives of the Confederated Tribes of the Umatilla Reservation, Oregon and expert opinion. According to museum records, Mr. Terry indicated that the cultural items he collected himself were from sand dunes of Umatilla, OR. The sand dunes of Umatilla were unlikely to have been used as habitation sites and are likely to contain burials. The museum also has four sets of human remains that Mr. Terry acquired from sand dunes of Umatilla, but which are not associated with the cultural items described in this notice.

Carved heads, complete tubular pipes, and whole beads tend to be found in burials on the Plateau. The items were likely associated with the Umatilla site, a Late Prehistoric to Historic Umatilla village, which is located in the area where the items were likely collected. Geographic location is consistent with the traditional and post–contact territory of the Confederated Tribes of the Umatilla Reservation, Oregon.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 67 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, before July 5, 2007. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: May 14, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–10713 Filed 6–1–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of

the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA. The human remains were removed from Marin and Sonoma Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Archaeological Collections Facility staff in consultation with representatives of the Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Federated Indians of Graton Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Middletown Rancheria of Pomo Indians of California; and Tuolumne Band of the Me-Wuk Indians of the Tuolumne Rancheria of California.

In April of 1977, human remains representing a minimum of one individual were removed from CA–SON–290 near Bodega, CA, during archaeological testing and mapping conducted prior to construction of a housing development. The human remains were accessioned and have been housed at the Archaeological Collections Facility since that time (accession #77–03). No known individual was identified. No associated funerary objects are present.

Analysis of artifacts found at site CA–SON–290 indicate an occupation during the Historic period (A.D. 1579 to present). The location of CA–SON–290 corresponds with the historic Miwok village of Súwutene.

In 1978, human remains representing a minimum of one individual were removed from CA–MRN–484 in Peacock Gap, Marin County, CA, during test investigations conducted prior to the construction of a housing subdivision. The human remains were accessioned by the Archaeological Collections Facility accession #78–03). No known individual was identified. No associated funerary objects are present.

The human remains date to prehistoric times and are Native American; however, the exact age is unknown. The site is within the traditional territory of the Coast Miwok.

In 1979, human remains representing a minimum of one individual were removed from CA–SON–1048, Sebastopol, Sonoma County, CA, during an excavation by the Anthropological Studies Center, conducted for the Sonoma County Department of Public Works. Remains identified as human at the time were re-buried on the site at the time of discovery. In 1997, during a NAGPRA inventory, human remains thought to be associated with this individual were identified in museum collections (accession #79–04). No known individual was identified. No associated funerary objects are present.

The human remains date to prehistoric times and are Native American; however, the exact age is unknown. The site is within the traditional territory of the Coast Miwok.

At an unknown time, human remains representing a minimum of two individuals were removed from CA–MRN–365, Marin County, CA. The human remains were donated to the Archaeological Collections Facility in 1984 or 1985 by the Marin Museum of the American Indian. It is now known when or under what circumstances the donor obtained the collection. No known individuals were identified. No associated funerary objects are present.

The human remains date to prehistoric times and are Native American; however, the exact age is unknown. The site is within the traditional territory of the Coast Miwok.

At an unknown date, human remains representing a minimum of one individual were removed from CA–MRN–502, Novato, Marin County, CA. In 1992, the human remains were donated to the Archaeological Collections Facility by Steve Dietz. It is not known when or under what circumstances the donor obtained the collection. The collection has been housed at the Archaeological Collections Facility since its donation. No known individual was identified. No associated funerary objects are present.

The human remains date to prehistoric times and are Native American; however the exact age is unknown. The site is within the traditional territory of the Coast Miwok.

In 1980, human remains representing a minimum of one individual were removed from CA–MRN–503, Marin County, CA, during a survey by the anthropological Studies Center conducted by Barry Price. The human remains have been held at the Archaeological Collections Facility since that time, but were not accessioned into the collection. No known individual was identified. No associated funerary objects are present.

The presence of bedrock mortars at the site indicates a site occupation during the Middle Period (B.C. 3000–B.C. 1000) and Late Period (1000 B.C.–A.D. 500). The human remains date to prehistoric times based on archeological context, however, the exact age and identity is unknown. The site is within the traditional territory of the Coast Miwok.

In 1998, the Archaeological Collections Facility, Sonoma State University determine that while there was evidence of a shared group identity (cultural affiliation) between the human remains and a particular Indian group, the human remains were ''culturally unidentifiable'' since the particular Indian group, the Federal Coast Miwok, was not recognized as an Indian tribe by the United States at that time. The Archaeological Collections Facility requested that the Native American Graves Protection and Repatriation Review Committee recommend disposition of the human remains to the Federated coast Miwok. On May 21, 1999, the Review Committee's Designated Federal Officer, writing on behalf of the Secretary of the Interior, recommended disposition of the human remains to the Federal Coast Miwok once concurrence with the proposal was obtained from federally recognized Indian tribes that currently resided in the immediate vicinity of where the human remains were recovered. Officials of the Archaeological Collections Facility, Sonoma State University consulted with five federally recognized Indian tribes: Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Middletown Rancheria of Pomo Indians of California; and Tuolumne Band of the Me-Wuk Indians of the Tuolumne Rancheria of California. All five tribes supported the Federated Coast Miwok request for disposition. In 2000, the Federated Coast Miwok became the federally recognized Federated indians of Graton Rancheria, California. Descendants of the Coast Miwok are members of the Federated Indians of Graton Rancheria, California.

Officials of the Archaeological Collections Facility, Sonoma State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of seven individuals of Native American ancestry. Officials of the Archaeological Collections Facility, Sonoma State University also have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity can be reasonably traced between the Native American human remains and

the Federated Indians of Graton Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Erica Gibson, NAGPRA Project Coordinator, Anthropological Studies Center Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA 94929, telephone (707) 664–2015, before July 5, 2007. Repatriation of the human remains to the Federated Indians of Graton Rancheria, California may proceed after that date if no additional claimants come forward.

The Archaeological Collections Facility, Sonoma State University is responsible for notifying the Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Federated Indians of Graton Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Middletown Rancheria of Pomo Indians of California; and Tuolumne Band of the Me-Wuk Indians of the Tuolumne Rancheria of California that this notice has been published.

Dated: May 9, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 07–2770 Filed 6–1–07; 8:45 am]

BILLING CODE 4312–50–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: California Department of Transportation, Oakland, CA and Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in control of the California Department of Transportation, Oakland, CA and in the possession of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA. The human remains were removed from Sonoma County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Archaeological Collections Facility, Sonoma State University staff in consultation with representatives of the Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Federated Indians of Graton Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Middletown Rancheria of Pomo Indians of California; and Tuolumne Band of the Me–Wuk Indians of the Tuolumne Rancheria of California.

In 1993, human remains representing a minimum of one individual were removed from CA–SON–1695 (accession #93–37), Sonoma County, CA, during an excavation conducted by the Archaeological Collections Facility, Sonoma State University on behalf of the California Department of Transportation. No known individual was identified. No associated funerary objects are present.

At the time of discovery, remains that were identified as human were re–buried. In 1996, Archaeological Collections Facility, Sonoma State University staff identified human remains probably associated with this individual during a NAGPRA inventory. The human remains date to the Middle Period (2000 B.P.–900 B.P.) and are Coast Miwok based on cultural constituents recovered from the site.

In 1998, the Archaeological Collections Facility, Sonoma State University determined that while there was evidence of a shared group identity (cultural affiliation) between the human remains and a particular Indian group, the human remains were ''culturally unidentifiable'' since the particular Indian group, the Federated Coast Miwok, was not recognized as an Indian tribe by the United States at that time. The Archeological Collections Facility requested that the Native American Graves Protection and Repatriation Review Committee recommend disposition of the human remains to the Federated Coast Miwok. On May 21, 1999, the Review Committee's Designated Federal Officer, writing on behalf of the Secretary of the Interior, recommended disposition of the human remains to the Federal Coast Miwok once concurrence with the proposal was obtained from federally recognized Indian tribes that currently resided in the immediate vicinity of where the human remains were recovered. Officials of the Archaeological Collections Facility, Sonoma State University consulted with five federally recognized Indian tribes: Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Middletown Rancheria of Pomo Indians of California; and Tuolumne Band of the Me–Wuk Indians of the Tuolumne Rancheria of California. All five tribes supported the Federated Coast Miwok request for disposition. In 2000, the Federated Coast Miwok became the federally recognized Federated Indians of Graton Rancheria, California. Descendants of the Coast Miwok are members of the Federated Indians of Graton Rancheria, California.

Officials of the California Department of Transportation and Archaeological Collections Facility, Sonoma State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the California Department of Transportation and Archaeological Collections Facility, Sonoma State University also have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity can be reasonably traced between the Native American human remains and the Federated Indians of Graton Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Erica Gibson, NAGPRA Project Coordinator, Archaeological Collections Facility, Anthropological Studies Center, Sonoma State University, Rohnert Park, CA 94928, telephone (707) 664–2015, or Jennifer Darcangelo, District Office Chief, Office of Cultural Resources Studies, Caltrans District 4, Oakland, CA 94623–0660, telephone (510) 286–5618, before July 5, 2007. Repatriation of the human remains to the Federated Indians of Graton Rancheria, California may proceed after that date if no additional claimants come forward.

The California Department of Transportation is responsible for notifying the Dry Creek Rancheria of Pomo Indians of California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Federated Indians of Graton Rancheria, California; Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California; Middletown Rancheria of Pomo Indians

of California; and Tuolumne Band of the Me–Wuk Indians of the Tuolumne Rancheria of California that this notice has been published.

Dated: May 9, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–10714 Filed 6–1–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Colorado Archaeological Society, Denver Chapter, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Colorado Archaeological Society, Denver Chapter, Denver, CO. The human remains were removed from Jefferson County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Colorado Archaeological Society, Denver Chapter that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

The Colorado Archaeological Society, Denver Chapter is a private, non–profit organization that has not received federal funding and is not legally associated with any museum or other institution that falls under the purview of NAGPRA. The Colorado Archaeological Society, Denver Chapter proposes to repatriate a minimum of seven individuals to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Between 1974 and 1984, human remains representing a minimum of seven individuals were removed from sites 5JF52, 5JF48, 5JF211, and 5JF321 in Jefferson County, CO, during archeological investigations by the Colorado Archaeological Society, Denver Chapter. No known individuals were identified. The associated funerary objects identified with the human remains have previously been repatriated.

The morphologic characteristics of the human remains are consistent with Native American lineage. The contexts of the burials suggest affiliation to the Middle to Late Archaic Periods (B.C. 3000 to 200 A.D.). Radiocarbon dates on charcoal found in association with the burials supports this time frame. During consultation, representatives of the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah considered the human remains to be ancestral to them. Based on archeological context, morphology, geography, and tribal consultation, the Colorado Archaeological Society, Denver Chapter reasonably believes the human remains to be culturally affiliated with the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Officials of the Colorado Archaeological Society, Denver Chapter have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of seven individuals of Native American ancestry. Officials of the Colorado Archaeological Society, Denver Chapter also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. William Hammond, 635 S. Alton Way ι12C, Denver, CO 80247, telephone (720) 532–0512, before July 5, 2007. Repatriation of the human remains to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed after date if no additional claimants come forward.

The Colorado Archaeological Society, Denver Chapter is responsible for notifying the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Cheyenne–Arapaho Tribes of Oklahoma; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Comanche Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: May 9, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–10717 Filed 6–1–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Denver Museum of Nature & Science, Denver, CO. The human remains were removed from an unknown site in Minnesota.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Denver Museum of Nature & Science professional staff in consultation with

representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Iowa Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nez Perce Tribe of Idaho; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Ottawa Tribe of Oklahoma; Pawnee Nation of Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac and Fox Nation of Missouri in Kansas and Nebraska; Sac and Fox Nation, Oklahoma; Sac and Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton–Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

At an unknown date, human remains representing a minimum of one individual were removed from an unspecified site in Minnesota. In 1940, C.H. Hannington donated the human remains to the Denver Museum of Nature & Science, calling them ''Sioux.'' No known individual was identified. No associated funerary objects are present.

The human remains are the complete cranium and mandible of an adult female. The skull was identified as Native American by physical anthropologists at the museum. Copper staining around the mastoids suggests that copper ear spools were worn and provides further evidence of Native American identification. Native copper was used prehistorically and copper earrings were also known trade items of Indian people of Minnesota during the historic period.

Written and scholarly accounts of the presence of the Sioux in Minnesota, and information from consultation, indicates that several Sioux groups have occupied large areas of Minnesota for the past several hundred years. Based on donor information, provenience, and tribal consultation the Native American human remains are reasonably believed to be Sioux. The Sioux groups that occupied Minnesota are represented by the Flandreau Santee Sioux Tribe of South Dakota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton–Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001, (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Flandreau Santee Sioux Tribe of South Dakota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton–Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Stephen Nash, NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Blvd., Denver, CO 80205, telephone (303) 370–6056, before July 5, 2007. Repatriation of the human remains to the Flandreau Santee Sioux Tribe of South Dakota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Iowa Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nez Perce Tribe of Idaho; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Ottawa Tribe of Oklahoma; Pawnee Nation of Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac and Fox Nation of Missouri in Kansas and Nebraska; Sac and Fox Nation, Oklahoma; Sac and Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Sisseton–Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: May 9, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–10719 Filed 6–1–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Augusta State University, Department of History, and Anthropology, and Philosophy, Archaeology Laboratory, Augusta, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and an associated funerary object in the possession of Augusta State University, Department of History and Anthropology, Archaeology Laboratory, Augusta, GA. The human remains and associated funerary object were removed from McIntosh County, GA.

A detailed assessment of the human remains was made by Augusta State University professional staff in consultation with representatives of the Muscogee (Creek) Nation of Oklahoma; Seminole Nation of Oklahoma; Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations). The Poarch Band of Creek Indians of Alabama was invited to consult but did not participate.

At an unknown time prior to September 1971, human remains representing a minimum of one individual were removed from an unidentified site on Creighton Island, McIntosh County, GA, by an unknown party or parties. The human remains were discovered in a room of Augusta College (now Augusta State University) that had previously been used by an earlier instructor as an archeology lab.

No known individual was identified. The one associated funerary object is a conch shell.

The human remains had been stored in a paper bag. The bag itself had no identifying information, but it contained a modified conch shell that is reasonably believe to be a ritual drinking vessel with an ink inscription inside the lip of the shell. The inscription reads ''Creighton Is., McIntosh Co, Ga.'' The bag also contained two fragmentary human bones. No further documentation exists, but it is reasonable to believe that the conch shell and human remains have the same provenience.

It is reasonable to believe that the human remains and the associated funerary object are culturally affiliated with the Creeks or Seminoles based on historical and archeological evidence of their traditional homelands and by claims of modern descendants. Descendants of the Creek and Seminole are members of the Alabama–Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation of Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations); and Thlopthlocco Tribal Town, Oklahoma.

Officials of the Augusta State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of Augusta State University also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with, or near, individual human remains at the time of death, or later, as part of the death rite or ceremony. Lastly, officials of the Augusta State University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Alabama–Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation of Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations); and Thlopthlocco Tribal Town, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Dr. Christopher Murphy, Augusta State University, 2500 Walton Way, Augusta, GA 30904, telephone (706) 667–4562, before July 5, 2007. Repatriation of the human remains and associated funerary object to Muscogee (Creek) Nation of Oklahoma; Seminole Nation of Oklahoma; and Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations) may proceed after that date if no additional claimants come forward.

Augusta State University is responsible for notifying the Alabama–Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Muscogee (Creek) Nation of Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations); and Thlopthlocco Tribal Town, Oklahoma that this notice has been published.

Dated: May 9, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–10715 Filed 6–1–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Slater Museum of Natural History, University of Puget Sound, Tacoma, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Slater Museum of Natural History, University of Puget Sound, Tacoma, WA. The human remains were removed from Oak Harbor, Island County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Slater Museum of Natural History, University of Puget Sound professional staff and with help from a consultant in consultation with representatives of the Swinomish Indians of the Swinomish Reservation, Washington and Tulalip Tribes of the Tulalip Reservation, Washington.

In 1936, human remains representing a minimum of two individuals were removed from Oak Harbor, Island County, WA, by Preston Wright. The human remains were later donated to the Slater Museum of Natural History, University of Puget, by Mr. Wright. No known individuals were identified. No associated funerary objects are present.

The individuals are most likely of Native American ancestry as indicated by morphological features.

The geographical location where the human remains were recovered is consistent with the historically documented territory of the Lower Skagit tribe. Ethnographic and historical sources place the Lower Skagit tribe in the location of Oak Harbor (Tribes of Western Washington and Northwestern Oregon, Dall 1877; ICC 1974 Final Decision; Distribution of Tribes of the Upper Columbia Region in Washington, Oregon, and Idaho, Mooney 1896; A History of the Swinomish Tribal Community, Roberts 1975; The Coast Salish of Puget Sound, Smith 1941; Tribal Distribution in Washington, Spier, 1936; Identity, Treaty Status, and Fisheries of the Swinomish Indian Tribal Communities, Lane 1978; ICC Decision for Skagit, Docket No. 294; ICC Decision for Snohomish, Docket No. 125; ICC Decision for Snoqualmie, Docket No. 93; United States v. State of Washington 1985, 626 Federal Supplement 1405). There was extensive travel of the Puget Sound waterways, including the Oak Harbor area, by other tribes; however, the individuals are most likely Lower Skagit. Descendants of the Lower Skagit are members of the Swinomish Indians of the Swinomish Reservation, Washington.

Based on provenience, historical documentation, and tribal consultation there is a reasonable belief that the human remains share a common ancestry with members of the tribes now represented by the Swinomish Indians of the Swinomish Reservation, Washington.

Officials of the Slater Museum of Natural History, University of Puget Sound have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Slater Museum of Natural History, University of Puget Sound also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the

Swinomish Indians of the Swinomish Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Alyce DeMarais, Associate Dean, University of Puget Sound, 1500 N. Warner, Tacoma, WA 98416, telephone (253) 879–3207, before July 5, 2007. Repatriation of the human remains to the Swinomish Indians of the Swinomish Reservation, Washington may proceed after that date if no additional claimants come forward.

The Slater Museum of Natural History, University of Puget Sound is responsible for notifying the Swinomish Indians of the Swinomish Reservation, Washington and Tulalip Tribes of the Tulalip Reservation, Washington that this notice has been published.

Dated: May 4, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–10729 Filed 6–1–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Slater Museum of Natural History, University of Puget Sound, Tacoma, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Slater Museum of Natural History, University of Puget Sound, Tacoma, WA. The human remains were removed from Gig Harbor, Pierce County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Slater Museum of Natural History, University of Puget Sound professional staff with help from a consultant in consultation with representatives of the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Squaxin Island Tribe of the Squaxin Indian Reservation, Washington; and Suquamish Indian Tribe of the Port Madison Reservation, Washington.

At an unknown date, human remains representing a minimum of one individual were removed from the vicinity of Gig Harbor, Pierce County, WA, probably by Frank D'Andrea. Mr. D'Andrea's name is on a piece of cardboard that accompanies the human remains. There was no additional documentation with this set of human remains in the museum records. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from the vicinity of Gig Harbor, Pierce County, WA, by Howard Richardson. Mr. Richardson donated the human remains to the museum in 1935. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from the vicinity of Gig Harbor, Pierce County, WA. The human remains were donated to the museum in 1939. No known individual was identified. No associated funerary objects are present.

The catalog and information with the human remains indicate that the three individuals were found in the vicinity of Gig Harbor. The individuals are most likely of Native American ancestry as indicated by morphological features. The geographical location where the human remains were recovered is consistent with the historically documented territory of the Puyallup Tribe of the Puyallup Reservation, Washington. Officials of the Slater Museum of Natural History, University of Puget Sound, reasonably believe based on provenience, museum and donor records, historical documentation, and tribal consultation that the human remains share a common ancestry with members of tribes now represented by the Puyallup Tribe of the Puyallup Reservation, Washington.

Officials of the Slater Museum of Natural History, University of Puget Sound have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the Slater Museum of Natural History, University of Puget Sound also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Puyallup Tribe of the Puyallup Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Alyce DeMarais, Associate Dean, University of Puget Sound, 1500 N. Warner, Tacoma, WA 98416, (253) 879–3207, before July 5, 2007. Repatriation of the human remains to the Puyallup Tribe of the Puyallup Reservation, Washington may proceed after that date if no additional claimants come forward.

The Slater Museum of Natural History, University of Puget Sound is responsible for notifying the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Squaxin Island Tribe of the Squaxin Indian Reservation, Washington; and Suquamish Indian Tribe of the Port Madison Reservation, Washington that this notice has been published.

Dated: May 9, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–10731 Filed 6–1–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Colorado Museum, Boulder, CO. The human remains were removed from an unknown location.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of

Colorado Museum professional staff in consultation with representatives of the Pawnee Nation of Oklahoma and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown location, by an unknown individual. The human remains were donated to the University of Colorado Museum by an anonymous donor. Based on the sequence of the catalog number (Catalog number 06498), the human remains were cataloged between 1947 and 1948. No known individual was identified. No associated funerary objects are present.

Based on the morphology of the teeth and mandible, the human remains represent a Native American adult female. The entry in the original museum ledger states, ''Jaw (lower) of Arikara Indian.''

Arikara and Pawnee ancestors have been identified archeologically as the Upper Republican phase of the Central Plains Village tradition in Kansas and Nebraska. Both groups lived in earthen lodges in compact villages that were sometimes fortified. They were separate bands of Caddoan speakers living together, but spoke distinct Caddoan dialects, until just prior to European contact, when the Arikara moved north. Today the Arikara live in North Dakota, where they settled on a reservation with the Sioux–speaking Mandan and Hidatsa, and are federally recognized as the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. The Pawnee Nation resides in north–central Oklahoma, where they were given land in 1876 in exchange for ceding much of Nebraska. Officials of the University of Colorado Museum based on the preponderance of the evidence, including museum records, reasonably believes the human remains are Arikara or Pawnee. Descendants of the Arikara are members of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. Descendants of the Pawnee are members of the Pawnee Nation of Oklahoma.

Officials of the University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the University of Colorado Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pawnee Nation of Oklahoma and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Steve Lekson, Curator of Anthropology, University of Colorado Museum, Henderson Building, Campus Box 218, Boulder, CO 80309–0218, telephone (303) 492–6671, before July 5, 2007. Repatriation of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation may proceed after that date if no additional claimants come forward.

The University of Colorado Museum is responsible for notifying the Pawnee Nation of Oklahoma and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: May 4, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–10716 Filed 6–1–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee (Committee) will meet on June 20, 2007. The agenda for the Committee meeting will include discussions with State and Federal agency representatives on the CALFED Bay-Delta Program Draft End of Stage 1 Report and a recommendation from the Program Performance and Financing Subcommittee to include their Draft Performance Assessment in that Report; presentations from the agencies on long-term performance measures; and approval of the 207–08 Program Plans. The meeting will also include reports from the Lead Scientist and the Independent Science Board, Subcommittees, and updates on the status of the Environmental Justice Framework Proposal and Delta Vision initiatives underway.

DATES: The meeting will be held on Wednesday, June 20, 2007, from 9 a.m. to 4 p.m. If reasonable accommodation is needed due to a disability, please contract Colleen Kirtlan at (916) 445–5511 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the John E. Moss Federal Building located at 650 Capitol Mall, 5th Floor, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Diane Buzzard, U.S. Bureau of Reclamation, at 916–987–5022 or Julie Alvis, California Bay-Delta Program, at 916–445–5551.

SUPPLEMENTARY INFORMATION: The Committee was established to provide advice and recommendation to the Secretary of the Interior on implementation of the CALFED Bay-Delta Program. The Committee makes recommendations on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee agendas and meeting materials will be available prior to all meetings on the California Bay-Delta Program Web site at *http://calwater.ca.gov.* and at the meetings. These meetings are open to the public. Oral comments will be accepted from members of the public at each meeting and will be limited to 3–5 minutes.

(Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Water Supply, Reliability, and Environmental Improvement Act, Pub. L. 108–361; the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.;* the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* and the Reclamation Act of 1902, 43 U.S.C. 391 *et seq.;* and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws.)

Dated: May 18, 2007.

Diane A. Buzzard,

Acting Special Projects Officer, Mid-Pacific Region, U.S. Bureau of Reclamation.

[FR Doc. 07–2742 Filed 6–1–07; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0024 and 1029–0113

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR Part 732—Procedures and Criteria for Approval or Disapproval of State Program Submissions, and 30 CFR Part 874—General Reclamation Requirements.

DATES: Comments on the proposed information collections must be received by August 3, 2007.

ADDRESSES: Mail comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection requests contact John A. Trelease at (202) 208–2783, or via E-mail at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR parts 732 and 874.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for these information collection activities.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submissions of the information collection requests to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activities:

Title: 30 CFR Part 732—Procedures and Criteria for Approval or Disapproval of State Program Submissions.

OMB Control Number: 1029–0024.

Summary: Part 732 establishes the procedures and criteria for approval and disapproval of State program submissions. The information submitted is used to evaluate whether State regulatory authorities are meeting the provisions of their approved programs.

Bureau Form Number: None.

Frequency of Collection: Once and annually.

Description of Respondents: 24 State regulatory authorities.

Total Annual Responses: 51.

Total Annual Burden Hours: 6,405.

Title: 30 CFR Part 874—General Reclamation Requirements.

OMB Control Number: 1029–0113.

Summary: Part 874 establishes land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility. 30 CFR 874.17 requires consultation between the AML agency and the appropriate Title V regulatory authority on the likelihood of removing the coal under a Title V permit and concurrences between the AML agency and the appropriate Title V regulatory authority on the AML project boundary and the amount of coal that would be extracted under the AML reclamation project.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 23 State regulatory authorities and Indian tribes.

Total Annual Responses: 23.

Total Annual Burden Hours: 1,610.

Dated: May 30, 2007.

Kathryn S. O'Toole,

Acting Chief, Division of Regulatory Support.

[FR Doc. 07–2741 Filed 6–1–07; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1114 and 1115 (Preliminary)]

Certain Steel Nails From China and the United Arab Emirates

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731–TA–1114 and 1115 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and the United Arab Emirates of certain steel nails, provided for in subheadings 7317.00.55, 7317.00.65, and 7317.00.75 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by July 13, 2007. The Commission's views are due at Commerce within five business days thereafter, or by July 20, 2007.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* May 29, 2007.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187/ *fred.ruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on May 29, 2007, by Davis Wire Corporation (Irwindale, CA), Gerdau Ameristeel Corporation (Tampa, FL), Maze Nails (Peru, IL), Mid-Continent Nail Corporation (Poplar Bluff, MO), and Treasure Coast Fasteners, Incorporated (Fort Pierce, FL).

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. 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 investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in these investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 19, 2007, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (*202–205–3187/fred.ruggles@usitc.gov*) not later than June 15, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 22, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 29, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–10684 Filed 6–1–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–919 and 920 (Review)]

Welded Large Diameter Line Pipe From Japan and Mexico

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year reviews.

DATES: *Effective Date:* Date of Commission action.

FOR FURTHER INFORMATION CONTACT: Dana Lofgren (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On February 22, 2007, the Commission established a schedule for the conduct of the subject reviews (72 FR 9357, March 1, 2007). Due to a subsequent scheduling conflict, however, the Commission is revising its schedule. Under the Commission's new schedule for the reviews, the hearing will be held at the U.S. International Trade Commission building at 9:30 a.m. on July 25, 2007. The Commission's original schedule is otherwise unchanged.

For further information concerning the conduct of these reviews and rules of general application, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 29, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–10685 Filed 6–1–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America, et al. v. Arizona Hospital and Healthcare Association, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of the District of Arizona in *United States of America, et al.* v. *Arizona Hospital and Healthcare Association, et al.*, Civil Action No. 2:07–cv–1030. On May 22, 2007, the United States filed a

Complaint alleging the Arizona Hospital and Healthcare Association and its subsidiary, the AzHHA Service Corporation, violated Section 1 of the Sherman Act, 15 U.S.C. § 1. The proposed Final Judgment, filed the same time as the Complaint, requires the Defendants to terminate their illegal agreements and to end their illegal rate-setting and information-sharing activities, and to create a program to monitor their compliance with the antitrust laws. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215, 325 Seventh Street, NW., at the Office of the Clerk of the United States District Court for the District of Arizona, in Phoenix, and via the internet at *http://www.usdoj.gov/atr/cases.html*.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joseph M. Miller, Acting Chief, Litigation I Section, United States Department of Justice, Suite 4000, 1401 H Street, NW., Washington, DC 20530, (telephone: 202–307–0001).

J. Robert Kramer, II,

Director of Operations, Antitrust Division.

Ryan Danks, Steven Kramer, Seth Grossman, Rebecca Perlmutter

U.S. Department of Justice Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 305–0128

Attorneys for the United States

Terry Goddard, Attorney General, Nancy Bonnell, Antitrust Unit Chief, ID #016382, Consumer Protection and Advocacy Section, Department of Law Building, Room #259, 1275 West Washington Street, Phoenix, AZ 85007–2997, (602) 542–7728

Attorneys for the State of Arizona

United States District Court

District of Arizona

United States of America and the State of Arizona, Plaintiffs, v. Arizona Hospital and Healthcare, Association and AzHHA Service, Corporation, Defendants.

[Case No. CV07–1030–PHX]

Complaint

1. The United States of America, acting under the direction of the Attorney General of the United States, and the State of Arizona, acting under the direction of the Attorney General of the State of Arizona, bring this civil actio to obtain equitable and other relief against Defendants Arizona Hospital and Healthcare Association (''AzHHA'') and its subsidiary the AzHHA Service Corporation to restrain Defendants' violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and the State of Arizona seeks relief also under Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402.

I. Introduction

2. AzHHA, through its subsidiary the AzHHA Service Corporation, runs the AzHHA Registry Program (''AzHHA Registry''), a group purchasing organization, which contracts with nursing agencies to provide temporary nursing services for most Arizona hospitals. Through the Registry, AzHHA and its participation member hospitals have jointly set prices and other terms governing the hospitals' purchases of per diem and travel nursing services.

3. For nearly ten years after AzHHA started the Registry in 1988, it focused on setting uniform quality standards for per diem and travel nursing personnel, and enforcing those standards through regular audits. During this time, AzHHA allowed each participating agency that employed per diem and travel nurses to set its own bill rates, provided that the agency offered the same rates to every hospital participating in the Registry. Since 1997, however, AzHHA has imposed the same bill rates on each participating agency, which the agency must offer each participating hospital.

4. Acting collectively on behalf of most of the hospitals in Arizona, AzHHA has set bill rates below the levels its member hospitals could otherwise have achieved by negotiating independently with each agency. AzHHA also has imposed other noncompetitive contractual terms on participating agencies.

5. Efficiencies do not explain or justify the Registry's conduct. Agencies have not obtained significant transactional efficiencies or scale economies as a result of the imposition of uniform bill rates by the Registry. The Registry's practice of imposing uniform bill rates has not been reasonably necessary to achieve any benefits, such as greater quality assurance. Neither agencies nor hospitals have acted as though the Registry's rate setting creates efficiences.

6. Through this suit, the United States and the State of Arizona ask this Court to declare the Defendant's conduct illegal and enter injunctive relief to prevent further violations of the antitrust laws.

II. Defendants

7. AzHHA is a nonprofit corporation existing under the laws of the State of Arizona and headquartered in Phoenix. The association describes itself as dedicated to providing leadership on issues affecting the delivery, quality, accessibility, and cost effectiveness of healthcare. Active members of AzHHA include more than 100 hospitals and health systems in Arizona. Executives from member hospitals control the AzHHA Board of Directors.

8. The AzHHA Service Corporation is a for-profit corporation existing under the laws of the State of Arizona and is a wholly owned subsidiary of AzHHA; it is also headquartered in Phoenix. The AzHHA Service Corporation runs the AzHHA Registry, which helps member hospitals purchase the services of temporary healthcare personnel, including per diem and travel nurses. Executives from AzHHA member hospitals control the AzHHA Service Corporation Board of Directors.

III. Jurisdiction and Venue

9. The Court has subject-matter jurisdiction over this action under 15 U.S.C. § 4 and 15 U.S.C. § 26, which authorize the United States and the State of Arizona, respectively, to bring actions in district courts to prevent and restrain violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. Subject matter jurisdiction also exists pursuant to 28 U.S.C. §§ 1331, 1337.

10. Venue is proper in the District of Arizona, under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) & (c), because the defendant corporations reside there.

11. The Court has jurisdiction over the State of Arizona's claim under the Uniform Arizona Antitrust Act, A.R.S. §§ 44–1402, et seq., under the doctrine of pendent jurisdiction, 28 U.S.C. § 1367.

IV. Conspirators

12. Various firms and individuals, not named as defendants in this Complaint, have knowingly participated as conspirators with Defendants in the violation alleged in this Complaint, and have done acts and made statements in furtherance of the alleged conspiracy.

V. Trade and Commerce

13. Arizona hospitals employ various types of nursing personnel to treat and care for patients. Hospitals are the primary employers in Arizona of registered nurses (RNs), who must graduate from an approved professional nursing program to obtain a license in Arizona. Specialty RNs are RNs who receive additional education and training and become certified to practice in a specialty unit, such as critical care, neonatal intensive care, or telemetry. Specialty RNs and RNs account for most of the nursing staff employed by

Arizona hospitals. Besides RNs and specialty RNs, Arizona hospitals employ several other types of nursing personnel, including licensed practical nurses (LPNs), certified nursing assistants (CNAs), operating room technicians, behavioral health technicians, and sitters.

14. Arizona hospitals frequently cannot meet their nursing needs with their own regularly employed nurses. Hospitals cannot meet their needs because of, for example, temporary absences of the hospitals' regularly employed nursing staff, daily variations in hospitals' censuses, an influx of visitors to Arizona during the winter months, and a rapidly increasing population.

15. Most Arizona hospitals try to fill their needs for nursing services by having their regularly employed nurses work overtime and by using internal pools of employees who ''float'' among units as needed (and as qualified). Some Arizona hospitals also maintain their own in-house list of nurses who may be available to work at the hospitals temporarily.

16. These measures do not satisfy the hospitals' demands for nursing services. At such times, the hospitals will purchase the services of temporary nursing personnel through nurse staffing agencies. Temporary nursing personnel fall usually into two categories: per diem nurses and travel nurses.

17. Per diem nurses are typically local nurses who work on short notice to fill hospitals' immediate needs on a single shift. In contrast, travel nurses contract to work at hospitals for longer periods, usually thirteen weeks. Unlike per diem nurses, travel nurses generally live outside Arizona and receive short-term housing in Arizona while employed there. Arizona hospitals purchase the services of travel nurses to satisfy their demand for nursing services, including responding to the influx of seasonal residents, and covering planned absences of regularly employed nursing staff, such as those on maternity leave. Along with California, Florida, and Texas, Arizona hospitals have the highest demand for travel nursing services.

18. Nurse staffing agencies coordinate most placements of per diem and travel nurses with Arizona hospitals. Many nurse staffing agencies focus on providing either per diem or travel nurses. Arizona hospitals pay agencies an hourly bill rate for the work done by the agencies' nursing personnel. Agencies pass most of that bill rate directly to nursing personnel as wages and benefits, and allocate the balance to their overhead and profit. Temporary nurses' compensation is directly correlated to the bill rate paid by hospitals to nurse staffing agencies, and a decrease in temporary nursing agency bill rates results in lower compensation for temporary nurses.

19. Dozens of nurse staffing agencies work with hospitals in Arizona. Before the Registry, Arizona hospitals used to compete on price with each other to purchase temporary nursing services from nurse staffing agencies.

20. Some hospitals use third parties to coordinate their procurement of temporary nursing personnel from multiple nurse staffing agencies. Until 2004, the AzHHA Registry Program was the only major provider of such services in Arizona.

VI. The AzHHA Nurse Registry Program

21. The AzHHA Registry operates separate registries for per diem nursing personnel in Northern Arizona (mainly Phoenix) and Southern Arizona (mainly Tucson), together called the ''Per Diem Registry.'' The Registry also operates a registry for travel nursing personnel throughout Arizona, called the ''Travel Registry.'' These registries cover various types of nursing personnel, including RNs, specialty RNs, LPNs, CNAs, operating room technicians, behavioral health technicians, and sitters.

22. Since 2000, most of AzHHA's member hospitals have purchased services of temporary nursing personnel through the AzHHA Registry. In 2005, 65 Arizona hospitals participated in at least one part of the Registry. The hospitals then participating in the Per Diem Registry controlled approximately 80 percent of hospital beds in the Phoenix area and approximately 84 percent of hospital beds in the Tucson area. Hospitals then participating in the Travel Registry controlled approximately 78 percent of all hospital beds in Arizona. From May 2004 to May 2005, these hospitals purchased approximately 850,000 hours of per diem nursing services (worth about $43 million) and approximately 2.3 million hours of travel nursing services (worth about $116 million) through the AzHHA Registry.

23. The AzHHA Registry began in 1988 with a focus on quality assurance. The Registry seeks to provide quality assurance by establishing standards for agencies' temporary nursing personnel and agencies' personnel recordkeeping requirements. AzHHA employees monitor the agencies' quality assurance through annual audits. These audits verify that each agency properly maintains files on its nursing personnel's education, background, work experience, skill level, and references.

24. Hospitals participating in the AzHHA Registry commit to turn first to participating agencies when purchasing temporary nursing services. If the participating agencies cannot fill a participating hospital's needs promptly, then a hospital may purchase services from a nonparticipating agency, provided that its total purchases of per diem nursing services remain above 50 percent. Most participating hospitals have fulfilled this contractual obligation and have purchased most of their temporary nursing services through the Registry. Overall, participating hospitals have purchased about 70 percent of their per diem nursing services through the Registry. The Travel Registry has accounted for about 90 percent of travel nurse agency sales to hospitals in Arizona.

25. The participating hospitals regularly meet to select agencies to participate in the AzHHA Registry. In 2005, the participating hospitals selected approximately 80 different nurse staffing agencies to participate in at least one part of the Registry, out of approximately 170 completed applications.

26. The AzHHA Service Corporation has collected an administrative fee from each agency based on the amount that each agency bills hospitals through the Registry. For per diem personnel, AzHHA has collected a flat 2 percent fee. For travel nurses, AzHHA has collected fees based on a tiered structure starting at 2 percent and decreasing to 0.5 percent, depending on the total amount an agency bills participating hospitals. The fees collected from the agencies fund the Registry and other AzHHA activities.

27. When the AzHHA Registry began, each participating agency submitted a set of standard bill rates that the agency agreed to charge all participating hospitals. Starting from the bill rates submitted by an agency, each hospital could then individually negotiate discounted bill rates with each agency.

28. In 1997, with the support of participating hospitals, AzHHA began collectively setting the rates agencies could bill hospitals through the Per Diem Registry. To do so, AzHHA began requiring all participating agencies to accept a uniform bill rate schedule, set by the Registry, for all participating hospitals. In 1998, AzHHA imposed a similar, uniform rate schedule for the Travel Registry.

29. The AzHHA Registry has formulated uniform nurse agency bill rates through a three-step process. First,

AzHHA employees surveyed the bill rates from each participating agency, averaged the rates, and forwarded the averaged rate information to participating hospitals. Each hospital then provided its own desired agency bill rates to AzHHA. Finally, AzHHA set the uniform agency bill rates, based only on the average rates submitted by participating hospitals.

30. At the insistence of the CEOs of several participating hospitals, AzHHA employees sometimes prepared and circulated usage reports detailing hospitals' usage of per diem personnel though the Per Diem Registry, and outside it. The reports included estimates of the cost of hiring per diem personnel outside the Registry. In May 2002, participating hospitals agreed to expel any hospital using participating agencies for less than 50 percent of its total per diem hours. This new rule affected six hospitals. Four hospitals responded by immediately increasing their use of participating agencies to at least 50 percent of their total per diem needs. One system, comprising two hospitals, chose to leave the Per Diem Registry rather than face expulsion.

31. In 2005, AzHHA altered the Per Diem Registry's rate structure by eliminating the bill rate differential between weekday and weekend shifts. In addition, AzHHA significantly reduced overtime and holiday bill rates. AzHHA made these changes over objections from many participating agencies. Several per diem agencies subsequently left the Registry.

32. AzHHA has taken other steps to further coordinate how participating hospitals deal with agencies. The AzHHA Registry contract requires participating agencies to accept certain competitively sensitive contract provisions relating to, among others, payment terms between participating hospitals and participating agencies, indemnification, and cancellation policies. AzHHA also gathers from and shares with participating hospitals competitively sensitive information such as bonuses offered to temporary nursing personnel.

33. In November 2006, while under investigation by the Plaintiffs and defending a private antitrust action, AzHHA reverted to its pre-1997 approach to pricing for the Per Diem Registry. It now requires each agency to submit bill rates that it will charge all participating hospitals. The revised pricing method applies only to per diem agencies, and AzHHA retains the right to reject an agency's rate submission. The Travel Registry continues to impose a uniform bill rate schedule applicable to all participating hospitals' purchases from travel nurse staffing agencies.

VII. Interstate Commerce

34. The activities of the Defendants that are the subject of this Complaint are within the flow of, and have substantially affected, interstate trade and commerce.

The AzHHA Service Corporation has transmitted contracts to nurse staffing agencies across state lines and has communicated with nurse staffing agencies by mail and telephone across state lines. AzHHA employees have traveled across state lines to audit nurse staffing agencies.

36. The Travel Registry contracts with agencies that arrange for nurses to travel from outside Arizona to provide temporary nursing services in Arizona hospitals.

37. Many AzHHA member hospitals that purchase services from nurse staffing agencies through the AzHHA Registry remit substantial payments across state lines to nurse staffing agencies. Nurse staffing agencies also remit substantial payments in the form of administrative fees across state lines to the AzHHA Service Corporation.

VIII. Relevant Markets

A. Hospitals' Purchases of Per Diem Nursing Services in the Phoenix and Tucson Metropolitan Areas

38. Per diem nursing services is a relevant service market within the meaning of the antitrust laws.

39. Positions as regularly employed RNs at hospitals are generally not attractive alternatives for per diem nurses because they do not offer the scheduling flexibility or pay attractive to per diem nurses. Many per diem nurses work part-time as secondary wage earners for their families and highly value flexible work schedules. Per diem nurses generally are paid higher hourly wages compared to regularly employed nursing staff, but typically do not receive benefits such as health insurance or retirement contributions. Although some per diem nurses also work full-time at a hospital, many do not.

40. Nursing positions in non-hospital settings tend to pay even lower wages, are generally less prestigious, and usually offer less professionally challenging work environments than RN positions in hospitals. Thus hospital per diem nurse openings are generally more attractive than per diem nurse openings in other settings, such as in-home nursing visits or care, physician offices, freestanding outpatient care facilities, skilled-nursing facilities, schools, and prisons. Moreover, there are relatively few employment opportunities for per diem nurses in non-hospital settings.

41. The Per Diem Registry has collectively imposed per diem bill rates below competitive levels, and lowered the compensation paid to per diem nurses. Those reduced bill rates have not induced per diem nurses to stop offering their services in sufficient quantities to make the reduction in bill rates unprofitable. Purchases of per diem nursing services by hospitals is, therefore, a relevant service market. This service market aggregates, for analytic convenience, several relevant service markets, including hospitals' purchases of discrete types of temporary nursing services, such as per diem medical/surgical RN services, various per diem specialty RN services, per diem LPN services, and per diem CNA services.

42. The Phoenix and Tucson metropolitan areas are relevant and distinct geographic markets, within the meaning of the antitrust laws, for the purchase of per diem nursing services.

43. Phoenix and Tucson are distinct relevant geographic markets for the purchase of per diem nursing services in part because they are located about 120 miles from each other. Per diem nurses generally must live within a reasonable commute of the hospitals where they work to ensure their work is profitable and they are available on short notice. In Arizona, per diem nurses generally reside in either Phoenix or Tucson and live in the metropolitan area where they work. More distant hospitals are not good substitutes for per diem nurses living in the Phoenix or Tucson metropolitan areas.

44. The Per Diem Registry consequently has operated distinct purchasing programs centered in Phoenix and Tucson. Participating hospitals and per diem nurse staffing agencies have considered the Phoenix and Tucson metropolitan areas to be distinct markets for the purchase of per diem nursing personnel services, and the Registry has priced them differently.

45. The Per Diem Registry has collectively imposed per diem bill rates below competitive levels in Phoenix. Those reduced bill rates have not induced per diem nurses in Phoenix to stop offering their per diem services in Phoenix in sufficient quantities to make the reduction in bill rates unprofitable. Similarly, the reduced bill rates in Tucson have not induced per diem nurses to stop offering their per diem services in that city in sufficient quantities to make the reduction in bill rates there unprofitable.

B. Hospitals' Purchases of Travel Nursing Services in Arizona

46. Travel nursing services is a relevant service market within the meaning of the antitrust laws.

47. No other nursing position offers the benefits that travel nursing provides: temporary residence in a new or attractive are of the country, the ability to work near friends or relatives in the area, and the chance to try out a hospital for future long-term employment. Travel nurses usually earn a higher hourly rate than regularly employed nurses, and often receive health benefits and paid vacation from their agency. Many hospitals in Arizona also pay travel nurses through their agencies bonuses upon completion of their assignments.

48. The Travel Registry has collectively imposed travel bill rates below competitive levels and lowered the compensation to travel nurses. Those reduced bill rates have not induced travel nurses to stop offering their services in sufficient quantities to make the reduction in bill rates unprofitable. Purchases of travel nursing services by hospitals in Arizona is, therefore, a relevant service market. This service market aggregates, for analytic convenience, several relevant service markets, including hospitals' purchases of discrete types of travel nursing services, such as medical/surgical RN services, and various specialty RN services.

49. Arizona is a relevant geographic market, within the meaning of the antitrust laws, for the purchase of travel nursing services.

50. Most of the thousands of travel nurses throughout the country have strong preferences for assignments in a particular location at any given time. A substantial number of travel nurses prefer Arizona over other warm-weather locations with high demands for travel nurses, such as Southern California, Texas, and Florida. Nurses prefer Arizona for any number of reasons, including previous work experience, preferred recreational opportunities, and proximity to friends and relatives. Also, Arizona, unlike California and Florida, is a member of the multistate Nurse Licensure Compact. This means that nurses licensed in Compact states face lower transaction costs to provide services in Arizona, and incur higher costs when choosing Florida or California instead of Arizona for their thirteen-week travel assignments.

51. Travel nurse agencies' experiences in Arizona further corroborate that Arizona is a relevant market for travel nurses. Starting in 1998, the Travel Registry collectively imposed bill rates in Arizona lower than they would have been absent the Registry, while hospitals in comparable states continued to pay relatively higher bill rates. That change has had a significant negative effect on the margins of the travel nurse agencies and reduced somewhat the hourly wages those agencies paid to travel nurses working in Arizona. Despite the travel Registry's adverse effects, travel nurse agencies have not been able to steer a sufficient number of travel nurses to other states to defeat the small but significant nontransitory decrease imposed by the Travel Registry on travel nurse billing rates in Arizona.

52. For instance, in 1998, one of the nation's largest travel nurse agencies, which provided a substantial number of travel nurses to AzHHA participating hospitals, withdrew from the Travel Registry in response to the collectively imposed bill rates. Because about 90 percent of travel nursing services sold by travel nurse agencies in Arizona are purchased by hospitals through the Travel Registry, the travel nurse agency was effectively shut out of Arizona hospitals. The agency found that it could not redirect nurses with a preference for Arizona in sufficient numbers to other states, and so lost business to other agencies. The travel nurse agency was ultimately forced to rejoin the travel Registry and accept its collectively imposed bill rats.

53. The Travel Registry has collectively imposed travel bill rates below the competitive levels in Arizona. Those reduced bill rates have not induced travel nurses to stop offering their travel nursing services in Arizona in sufficient quantities to make the reduction in bill rates unprofitable.

IX. Market Power

54. As of 2005, the Arizona hospitals that participated in the Per Diem Registry controlled approximately 80 percent of all hospital beds in the area in and around Phoenix and approximately 84 percent of all hospital beds in the area in and around Tucson. (The number of hospital beds serves as a proxy for the demand for nursing services.) As the dominant purchasers of per diem nursing services in the areas in and around both Phoenix and Tucson, the hospitals participating in the Registry possessed market power in those relevant markets.

55. As of 2005, the Arizona hospitals that participated in the Travel Registry controlled approximately 78 percent of all hospital beds in Arizona. As the dominant purchasers of travel nursing services in Arizona, the hospitals participating in the Registry possessed market power in that relevant market.

56. The high percentage of Arizona hospitals that participate in the AzHHA Registry has allowed the Registry to impose uniform rates and noncompetitive contract terms, despite objections from many large nurse staffing agencies in Arizona, because there are not enough alternative purchasers of per diem and travel nursing services to thwart AzHHA's exercise of market power. Indeed, the managers of the Registry have recognized that the ''more [hospitals they] can bring into the program the more purchasing power [the hospitals] can have as a group.'' In communications to its member hospitals, AzHHA executives have ''emphasize[d] the importance of functioning as a group,'' and stressed that the Registry's ''strength lies in the group's ability to stay consistent in [its] purchasing decisions when contracting for agency nurses, including travelers.''

X. Anticompetitive Effects

57. Through the Registry, AzHHA and its participating hospitals have decreased prevailing wages for temporary nursing personnel below competitive levels.

58. By AzHHa's own estimate, the AzHHA Registry has forced agency bill rates below competitive levels. In communications to other state hospital associations and to its own member hospitals, AzHHA has admitted that participating hospitals paid much lower bill rates for temporary nursing services than they would have paid absent the Registry. In advertising materials, AzHHA has estimated the bill rates its member hospitals paid agencies were as much as 12 percent lower than they would have been if agencies had been able to negotiate competitively with hospitals. AzHHA has reported to participating hospitals that the bill rates paid through the Per Diem Registry were 9 percent to 16 percent lower than they otherwise would have been. (The elimination of shift differentials and reduced overtime and holiday rates imposed since 2005 further lowered the effective per diem agency bill rates.) In its communications, AzHHA has reported similar savings, 7 percent or more, in the bill rate paid through the Travel Registry. In sum, AzHHA has estimated that participating hospitals lowered payments to nurse staffing agencies by 10 to 12.7 million dollars per year through the reduced bill rates provided by the AzHHA Registry. Notably, AzHHA has attributed these savings to its collective price-setting and

not to any administrative or transactional efficiencies.

59. Hospitals have recognized that the AzHHA Registry forced agency bill rates below competitive levels. Indeed, multiple hospitals, including two of the largest hospital systems in Arizona, concluded that leaving the Registry would have forced them to pay much higher rates for temporary nursing personnel. Instances where participating hospitals have left the Registry confirm that hospitals usually have paid higher bills rates outside it. In the last two years, several hospitals have left the Registry and signed contracts with AzHHA competitors; the new contracts generally have included higher bill rates for agencies.

60. Temporary nurse staffing agencies in Arizona have observed that AzHHA forced bill rates below competitive levels. Agencies that were not part of the Registry, including several former participating agencies, have received higher bill rates from the hospitals through arrangements outside the Registry. A comparison of per diem rates done several years ago by AzHHA showed that the bill rates paid by AzHHA hospitals to agencies operating outside the Per Diem Registry ranged from 5 percent to 40 percent higher than the Registry's rates. Still, many agencies have continued to participate in the Registry because they feared that failure to do so would effectively exclude them from the Arizona market, namely, the more than 3 million temporary nursing hours paticipating hospitals purchase through the Registry each year. Agencies that left the Registry Program have reported sharp declines in their overall sales.

61. To maintain agency bill rates below competitive levels, AzHHA has monitored participating hospitals' use of nonparticipating nurse staffing agencies and directed hospitals to increase their purchases of temporary nursing services through the Registry using the collectively determined, depressed bill rates. For instance, in March 2000, an AzHHA representative warned hospitals that ''[t]he more that non-contract agency usage increase, the less powerful our contract becomes because agencies will drop and follow suit with 'higher bill rate' agencies. The final result would be the Registry Program ceasing to exist.''

62. As a result of the Registry's lowering bill rates paid to nurse staffing agencies, those agencies have paid temporary nurses lower wages. Thus temporary nurses hired through the Registry have earned a lower hourly wage rate than temporary nurses not hired through the Registry.

63. The low agency bill rates imposed by AzHHA and resulting lower wages have reduced agencies' ability to recruit temporary nurses. The Registry's reduced agency bill rates and the resulting lower temporary nurse wages likely have distorted the incentives of hospitals and nurses, with significant long-run adverse consequences to the overall supply and mix of nursing services in Arizona.

64. The AzHHA Registry's downward effect on agency bill rates and nursing personnel wages has not resulted from efficiency-enhancinig behavior.

65. The transactional efficiencies and scale economies AzHHA claims the Registry has generated do not account for, nor are they produced by, the lower bill rates the Registry has imposed on participating agencies. Some transactional efficiencies may have accrued to participating agencies because they can deal with most of the market through a single contact. But the anticompetitive effects of the AzHHA Registry have substantially outweighed any potential transactional efficiencies that have accrued to the temporary nursing agencies.

66. The Registry also has not created significant economies of scale accruing to agencies because those agencies have not obtained appreciable per unit reductions in cost because of their participation in the AzHHA Registry, much less as a result of the Registry's collective rate setting. The Registry has not resulted in an increase in the supply of temporary nurses in Arizona.

67. AzHHA's imposition of uniform rate schedules and other competitively sensitive contract terms was not reasonably necessary to achieve any efficiencies that may have resulted from the Registry's credentialing and quality-assurance activities. AzHHA conducted its quality-assurance activities for nearly a decade before it began setting uniform bill rates. Its adoption of uniform rate schedules starting in 1997 did not relate to the Registry's quality-assurance process. In November 2006, AzHHA ceased imposing uniform agency bill rates through the Per Diem Registry while maintaining the same quality-assurance activities, which reconfirmed that uniform pricing is not reasonably necessary to achieve the Registry's quality-assurance goals.

XI. Violations Alleged

68. AzHHA, the AzHHA Service Corporation, and AzHHA's participating member hospitals, acting through the AzHHA Registry Program, agreed to fix certain terms and conditions relating to the purchase of temporary nursing personnel, including temporary nurse staffing agency bill rates.

69. The agreement among AzHHA, the AzHHA Service Corporation, and AzHHA's participating member hospitals, acting through the AzHHA Registry Program, has caused and continues to cause:

i. A reduction in competition for hospitals' purchases of per diem nursing services in and around Phoenix, Arizona, and accompanying reductions in bill rates paid to temporary nursing agencies and wages paid to per diem nurses in that area;

ii. A reduction in competition for hospitals' purchases of per diem nursing services in and around Tucson, Arizona, and accompanying reductions in bill rates paid to temporary nursing agencies and wages paid to per diem nurses in that area;

iii. A reduction in competition for Arizona hospitals' purchases of services provided by travel nurses, and accompanying reductions in bill rates paid to temporary nursing agencies and wages paid to travel nurses in that state; and, in view of these effects, Defendants' actions have violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402.

XII. Request for Relief

70. To remedy the violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402, alleged herein, the United States and the State of Arizona request that the Court:

i. Adjudge the Defendants AzHHA and AzHHA Service Corporation as constituting and having engaged in an unlawful combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402;

ii. Order that the Defendants AzHHA and AzHHA Service Corporation, their officers, directors, agents, employees, and successors, and all others acting or claiming to act on their behalf, be permanently enjoined from engaging in, carrying out, renewing, or attempting to engage in, carry out, or renew the combination and conspiracy alleged herein or any other combination or conspiracy having a similar purpose or effect in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402,

iii. Award costs of this action; and

iv. Such other and further relief as may be required and the Court may deem just and proper.

Dated: May 22, 2007.

Thomas O. Barnett, Assistant Attorney General, Antitrust Division.
J. Robert Kramer II, Director of Operations, Antitrust Division.
Joseph M. Miller, Acting Chief, Litigation 1 Section, Antitrust Division.
Ryan Danks, Steven Kramer, Seth A. Grossman, Rebecca Perlmutter,
Attorneys, Litigation I Section,
United States Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, Telephone: (202) 305–0128, Facsimile: (202) 307–5802.
Terry Goddard, Attorney General, Nancy Bonnell, Antitrust Unit Chief (Arizona Bar #016382),
Consumer Protection and Advocacy Section, Department of Law Building, Room #259, 1275 West Washington Street, Phoenix, AZ 85007, Telephone: (602) 542–7728, Facsimile (602) 542–9088.

Certificate of Service

I hereby certify that on May 22, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Nancy Bonnell, Antitrust Unit Chief, ID #016382, Consumer Protection and Advocacy Section, Department of Law Building, Room #259, 1275 West Washington Street, Phoenix, AZ 85007–2997, (602) 542–7728.
Attorney for the State of Arizona
Andrew S. Gordon, Coopersmith Gordon Schermer & Brockelman PLC, 2800 North Central Avenue, Suite 1000, Phoenix, AZ 85004, (602) 381–5460, Facsimile: (602) 224–6020,
Attorney for the Defendants.
Ryan Danks, United States Department of Justice, Antitrust Division.
United States of America and the State of Arizona, Plaintiffs, v. Arizona Hospital and Healthcare Association and AzHHA Service Corporation, Defendants

[Case No. CV07–1030–PHX]

Final Judgment

Exhibit A

Whereas, Plaintiffs, United States of America and the State of Arizona, filed their Complaint on May 22, 2007, alleging Defendants' violation of Section I of the Sherman Act, 15 U.S.C. § 1, and the State of Arizona has also alleged Defendants' violated Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402, and Plaintiffs and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by Defendants, or any other entity, as to any issue of fact or law;

And whereas, the essence of this Final Judgment is the prohibition of certain agreements on bill rates and competitively sensitive contract terms, and actions coordinating and supporting those agreements, by the Arizona Hospital and Healthcare Association, its subsidiary the AzHHA Service Corporation, and their participating member hospitals;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged and decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and the parties to this action. Defendants stipulate that the Complaint states a claim upon which relief may be granted against Defendants under Section I of the Sherman Act, as amended, 15 U.S.C. § 1, and A.R.S. § 44–1402.

II. Definitions

As used in this Final Judgment,

A. ''AzHHA'' means the Arizona Hospital and Healthcare Association, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''AzHHA Service Corporation'' means the AzHHA Service Corporation, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Competitively Sensitive Contract Terms'' means those contractual terms, and any information related to those terms, that, as specified in Section IV(A) of this Final Judgment, cannot be included in the Program Contract and must be negotiated independently between each Participating Hospitals and each Participating Agency.

D. ''Defendants'' means AzHHA and the AzHHA Service Corporation, jointly or individually.

E. ''Non-Participating Agencies'' means temporary staffing agencies that sell services to Participating Hospitals or other AzHHA members outside the Registry Program.

F. ''Participating Agencies'' means temporary staffing agencies that sell services to Participating Hospitals through the Registry Program.

G. ''Participating Hospitals'' means hospitals or hospitals systems that are members of AzHHA that use the Registry Program to purchase Temporary Nursing Personnel.

H. ''Per Diem Registry'' means the Registry Program used by Participating Hospitals for the purchase of Temporary Nursing Personnel on an ad hoc or as needed basis, including both the Northern and Southern regions of the Registry Program.

I. ''Program Contract'' means any contract used by the Defendants to set the terms and conditions of the contractual relationship between Participating Hospitals and Participating Agencies for the Per Diem Registry and the Travel Registry.

J. ''Registry Program'' means the program for the purchase of Temporary Nursing Personnel through the Per Diem Registry or the Travel Registry operated by the AzHHA Service Corporation, or any such program operated by AzHHA or the AzHHA Service Corporation in the future.

K. ''Temporary Nursing Personnel'' means registered nurses, licensed practical nurses, certified nurse assistants, operating room technicians, behavioral health technicians, and sitters whom offer their services on a temporary basis.

''Travel Registry'' means the Registry Program used by Participating Hospitals for the purchase of Temporary Nursing Personnel for thirteen weeks or longer.

III. Applicability

This Final Judgment applies to AzHHA, the AzHHA Service Corporation, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

A. The Defendants shall not include in any Program Contract any provision setting, prescribing, or imposing, directly or indirectly:

1. Rates paid by Participating Hospitals to Participating Agencies, including the process or manner by which Participating Agencies submit, negotiate, or contract for rates with Participating Hospitals;

2. A common rate structure, including shift differentials;

3. Payment terms between Participating Hospitals and Participating Agencies;

4. Any cancellation policy or penalty for cancellation by Participating Hospitals or Participating Agencies;

5. The payment of bonuses by Participating Hospitals or Participating Agencies; or,

6. Any requirement or encouragement of Participating Hospitals to give

priority to or deal with Participating Agencies, including any minimum usage requirements of Participating Hospitals or Participating Agencies.

B. The Defendants shall not:

1. Impose on, encourage, facilitate, induce, or require, directly or indirectly, Participating Hospitals to (a) use any Registry Program or Participating Agencies exclusively, or grant right of first refusal to any Registry Program or Participating Agencies, (b) boycott, exclude, refuse to deal with, or discriminate against Non-Participating Agencies, or (c) meet any minimum requirements for use of Participating Agencies, or (c) meet any minimum requirements for use of Participating Agencies; except that the Defendants may promote features of the Registry Program to Participating Hospitals, Participating Agencies, and other persons, provided such promotion does not include rebates or other financial incentives for participation;

2. Require, encourage, or induce Participating Agencies to deal with Participating Hospitals through the Registry Program;

3. Encourage, facilitate, induce, participate in, or undertake any understanding or agreement among AzHHA members or Participating Hospitals (a) to adopt the Program Contract or participate in the Registry Program, or (b) regarding Competitively Sensitive Contract Terms;

4. Provide any rebates or other direct financial incentives to Participating Hospitals to encourage or increase their participation in the Registry Program or use of Participating Agencies, except that, if the Defendants change the Registry Program so that fees are paid by Participating Hospitals rather than by Participating Agencies, then the fee structure may recognize Participating Hospitals' volume of usage of the Register Program;

5. Receive, gather, or collect Competitively Sensitive Contract Terms, except for such Competitively Sensitive Contract Terms as are necessary to operate the Register Program, provided access to the Competitively Sensitive Contract Terms obtained is restricted to those AzHHA employees performing ministerial tasks for the Register Program;

6. Communicate, convey, announce, share, or disseminate to any AzHHA member, Participating Hospital, or Participating Agency; the Competitively Sensitive Contract Terms of any other AzHHA member, Participating Hospital Participating Agency;

7. Select, or consider selection of, agencies for participation in the Registry Program, directly or indirectly, on the basis of Competitively Sensitive Contract Terms;

8. Select, or consider selection of, agencies for participation in the Registry Program based on the amount of hours provided to Participating Hospitals through Registry Program before or after the entry of this Final Judgment, except that the Defendants may establish a required annual minimum volume of commerce, measured by the aggregate fees paid to the Defendants by a Participating Agency, which agencies must meet to continue their participation in the Registry Program, provided that those requirements are uniformly applied to all Participating Agencies and are based on the objective costs of operating the Registry Program; or,

9. Communicate, convey, announce, share, or disseminate information regarding Registry Program usage by Participating Hospitals or Participating Agencies, except that the Defendants may tabulate and disseminate the total annual usage of the Registry Program by all Participating Hospitals.

V. Mandated Conduct

The Final Judgment is effective upon entry, except that the Defendants shall have ninety days (90) days from entry to amend the Program Contract to comply with Section IV(A)(1)–(6) of this Final Judgment.

VI. Permitted Conduct

A. Subject to Sections IV and V of this Final Judgment, the Program Contract may:

1. Establish definitions of nurse types, e.g., ''specialty'' and ''non-specialty'';

2. Establish payment terms between the Registry Program and Participating Agencies, including any participation fees;

3. Establish a credentialing program, including auditing and file retention requirements required of Participating Agencies;

4. Establish requirements for personnel hired from Participating Agencies, including background checks, drug panel screens, and prior experience;

5. Establish insurance and indemnification requirements to be met by Participating Agencies; and

6. Allow Participating Hospitals and Participating Agencies to independently and individually negotiate and reach agreement on Competitively Sensitive Contract Terms.

B. The Defendants may:

1. Solicit information and views from Participating Hospitals about the Registry Program or the Program Contract, so long as the Defendants do so consistently with Sections IV and V of this Final Judgment, and do not share any Participating Hospital's information or views about any Competitively Sensitive Contract Terms with any other Participating Hospital;

2. Establish the terms of the Program Contract, and create mechanisms for its administration, consistently with Sections IV, V and VI(A) of this Final Judgment;

3. Meet with Participating Hospitals to choose criteria for selecting Participating Agencies, provided those criteria conform with the requirements given in Section IV(A) of this Final Judgment and the meetings are conducted in accordance with the prohibitions found in Section IV(B) of this Final Judgment;

4. Communicate with Participating Hospitals the results of audits of file reviews performed on Participating Agencies; and

5. Communicate to Participating Hospitals or Participating Agencies any information or message from a Participating Hospital or Participating Agency, provided that the communication does not otherwise violate Section IV of this Final Judgment.

C. Nothing in this Final Judgment shall prohibit AzHHA or its members, the AzHHA Service Corporation, Participating Agencies, or Participating Hospitals, from advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965), and their progeny, any legislative, judicial, or regulatory actions, or other governmental policies or actions.

VII. Antitrust Compliance and Notification

A. AzHHA shall establish an Antitrust Compliance Office, including appointment of an Antitrust Compliance Officer (''Antitrust Compliance Officer'') within thirty (30) days of entry of this Final Judgment, and a successor within thirty (30) days of entry of this Final Judgment, and a successor within thirty (30) days of a predecessor's vacating the appointment. Each Antitrust Compliance Officer appointed shall not have had previous involvement with the Registry Program prior to the entry of this Final Judgment.

B. Each Antitrust Compliance Officer appointed pursuant to Section VII(A) shall be responsible for establishing and implementing an antitrust compliance program for the Defendants and ensuring the Defendants' compliance

with this Final Judgment, including the following:

1. The Defendants shall furnish a copy of this Final Judgment (a) within thirty (30) days of entry of this Final Judgment to each of Defendants' directors and officers, and each employee of the Defendants who is involved in the Registry Program, and (b) within thirty (30) days of their appointment to each person who succeeds to any such position.

2. Within thirty (30) days of furnishing a copy of this Final Judgment to any person pursuant to Section VII(B)(1), the Defendants shall obtain from such person a signed certification that the person has read, understands, and agrees to comply with the provisions of this Final Judgment, to the best of his/her knowledge at the time the certification is made is not aware of any violations of this Final Judgment by Defendants that has not already been reported to the Antitrust Compliance Officer, and understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court.

3. Upon learning of any potential violation of any provision of this Final Judgment, the Antitrust Compliance Officer shall forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment. Any such action shall be reported in the annual compliance report required by Section VII(B)(4) of this Final Judgment.

4. For each year during the term of this Final Judgment, on or before the anniversary date of this Final Judgment, the Antitrust Compliance Officer shall file with the Plaintiffs a report as to the fact and manner of its compliance with the provisions of this Final Judgment.

5. The defendants shall furnish a copy of this Final Judgment to each current Participating Hospital and current Participating Agency, and shall in the future furnish a copy of this Final Judgment to new Participating Hospitals or Participating Agencies within thirty (30) days of their agreement to the Program Contract. The Defendants shall require all Participating Hospitals to furnish a copy of this Final Judgment to managerial employees involved in hiring or contracting Temporary Nursing Personnel within thirty (30) days of entry of this Final Judgment or of succeeding to the position. Within forty-five (45) days of entry of this Final Judgment, the Defendants shall require each Participating Hospital to certify that it has received copy of this Final Judgment and has furnished a copy of this Final Judgment to managerial employees then involved in temporary nurse hiring or contracting.

VIII. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the Plaintiffs, including consultants and other persons retained by the United States or the State of Arizona, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of the State of Arizona, and on reasonable notice to the Defendants be permitted:

1. Access during the Defendants' office hours to inspect and copy, or at the option of the Plaintiffs, to require the Defendants to provide copies of all documents, as defined by Rule 34 of the Federal Rules of Civil Procedure, in the possession, custody, or control of the Defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, the Defendants' officers, employees, agents, or other representatives, who may have their individual counsel present, regarding such matters. Any interview shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the antitrust Division, or the Attorney General of the State of Arizona, the Defendants shall submit written reports and interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment, as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. No information or documents obtained by the means provided in this section shall be divulged by the State of Arizona to any person other than an authorized representative of the executive branch of the State of Arizona, except in the course of legal proceedings to which the State of Arizona is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

E. When information or documents are furnished by the Defendants to the Plaintiffs, if the Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the Plaintiffs shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding other than a grand jury proceeding.

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of this provisions.

X. Term

This Final Judgment shall expire ten (10) years after the date of its entry.

XI. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' response to comments. Based upon the record before this Court, which includes the Competitive Impact Statement and any comments and response to comments filed with this Court, entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge

Ryan Danks, Steven Kramer, Seth Grossman, Rebecca Perlmutter,

U.S. Department of Justice Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0001,

Attorneys for the United States.

United States of America and the State of Arizona, Plaintiffs, v. Arizona Hospital and Healthcare Association and AzHHA Service Corporation, Defendants.

[Case No. CV07–1030–PHX]

Competitive Impact Statement

Plaintiff United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding. The Plaintiffs in this case lodged the proposed Final Judgment with this Court on May 22, 2007, for eventual entry in this civil antitrust proceeding, following the parties' compliance with the APPA, and if this Court determines, pursuant to the APPA, that the proposed Final Judgment is in the public interest.

I. Nature and Purpose of the Proceeding

The United States, accompanied by the State of Arizona, filed a civil antitrust complaint on May 22, 2007, alleging that Defendants Arizona Hospital and Healthcare Association and AzHHA Service Corporation (collectively ''AzHHA''), by operation of their Registry for hospitals' purchases of temporary nursing services, violated Section 1 of the Sherman Act, 15 U.S.C. § 1. The State of Arizona has also alleged that the Defendants violated Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402. Through the Registry, AzHHA and participating member hospitals agreed to set uniform bill rates and other competitively sensitive contract terms for the purchase of temporary nursing services from nurse staffing agencies.

The United States, the State of Arizona, and AzHHA have stipulated that this court may enter the proposed Final Judgment after compliance with the APPA. Entry of the proposed Final Judgement would terminate the action, except that this Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of it.

II. Description of Events Giving Rise to the Alleged Violation

A. The Market for Temporary Nursing Services in Arizona

Nurses providing services on a temporary basis generally fall into two categories, per diem nurses and travel nurses. Per diem nurses are local nurses who typically work on short notice to fill the immediate needs of nearby hospitals. Travel nurses work for hospitals for longer periods, usually thirteen weeks, and generally live outside Arizona. They usually receive short-term housing near the hospital where they work. Although all hospitals use temporary nursing services to cover needs created by illness, census fluctuations, and planned absences, Arizona hospitals have a particular need for temporary nursing services because of an annual influx of wintertime tourists and residents into the state.

Hospitals purchase temporary nursing services through nurse staffing agencies, which are the per diem and travel nurses' direct employers. A hospital will convey its needs for temporary nurse staffing to agencies, which in turn try to fill those needs with available nurses.

Besides acting as clearinghouses, agencies recruit nurses, conduct background checks, maintain administrative and employment-related records, and compensate nurses.

Agencies bill hospitals hourly for work done by the agencies' nurses. Agencies pass most of the bill rates directly to their nursing personnel as wages and benefits, and use the remainder for overhead and profit.There is a direct correlation between bill rates and nurse wages: when bill rates change, so do wages.

B. The Formation and Operation of the AzHHA Registry

AzHHA started the AzHHA Registry in 1988 to help member hospitals impose minimum quality standards on temporary nursing personnel hired from nurse staffing agencies. AzHHA began with the Per Diem Registry, which focused on credentialing per diem nursing personnel in two distinct regions: Northern Arizona (for participating hospitals around Phoenix) and Southern Arizona (for participating hospitals around Tucson). The next year AzHHA began the Travel Registry, which focused on credentialing travel nursing personnel and worked with participating hospitals throughout Arizona.

Hospitals that participate in the AzHHA Registry met once a year or more to discuss its operation and select which nurse staffing agencies would participate. In addition, AzHHA staff have talked with employees of participating hospitals about bill rates and other competitively sensitive contract terms, and shared the results of those conversations with employees of other hospitals. AzHHA employees sought agreement among participating hospitals before changing the Registry's operations or its contract terms.

The Registry focused on quality-assurance and credentialing activities for its first ten years. It required nurse staffing agencies to, among other things, keep updated records of nurses' certifications, perform drug tests, and conduct background checks. AzHHA monitored the agencies' compliance through annual audits performed by AzHHA employees. To pay for these activities, AzHHA has charged agencies participating in the Per Diem Registry a fee of two percent of their sales to participating hospitals. (The Travel Registry has charged a similar fee, but allows for discounts depending on the amount of sales agencies make to participating hospitals.)

Between 1988 and 1997, the AzHHA Registry allowed participating agencies to set their own bill rates, provided that they agreed to offer the same bill rates to every hospital. In 1997, with the approval of participating hospitals, AzHHA restructured the Per Diem Registry to further coordinate bill rates and other contract terms with its member hospitals. Under the new system, the Per Diem Registry and its participating hospitals agreed to require all participating agencies to accept the same maximum bill rate from all participating hospitals, which it established through an annual three-step process. First, AzHHA surveyed the participating agencies' desired rates and averaged their responses. AzHHA then forwarded those averages to the participating hospitals and asked what prices they were willing to pay. Finally, AzHHA averaged the hospitals' responses and imposed those averages as the new bill rates for the Per Diem Registry. In 1998, AzHHA and the participating hospitals extended this new pricing scheme to the Travel Registry.

Between 1998 and 2005, AzHHA attempted to keep participating hospitals and participating agencies from negotiating deals outside the Registry or abandoning the Registry entirely. AzHHA always required participating hospitals to try to purchase nursing services first from participating agencies, and deal with other agencies only after participating agencies failed to meet their needs. But this requirement did not stop some participating hospitals from reaching agreements with agencies outside the Registry; and in 2002, to prevent the Registry's collapse, AzHHA and its participating hospitals agreed to expel any participating hospital that did not use the Per Diem Registry for at least 50 percent of its per diem nursing services needs. At the participating hospitals' request, AzHHA monitored compliance

with this rule, including gathering and distributing reports detailing each member hospital's usage. These reports revealed that after 2002 participating hospitals purchased 70 percent of their per diem nursing needs through the Per Diem Registry.

AzHHA's member hospitals may choose to participate in the Per Diem Registry, the Travel Registry, or both. Over time, more hospitals joined the AzHHA Registry: By 2005, 65 hospitals participated in either the Travel or Per Diem Registry, or both. The hospitals participating in the Per Diem Registry that year controlled about 80 percent of the hospital beds in the Phoenix area and about 84 percent of the hospital beds in the Tucson Area. Hospitals participating in the Travel Registry that year controlled about 78 percent of hospital beds statewide. Through the Per Diem Registry, hospitals purchased about 850,000 nursing hours annually, totaling approximately $43 million; through the Travel Registry, hospitals purchased about 2.3 million nursing hours annually, totaling approximately $116 million.

In 2005, after AzHHA and participating hospitals imposed new bill rate structures on agencies participating in the Per Diem Registry, including reduced overtime and weekend shift pay, many of the largest participating agencies left the Per Diem Registry. Finally, in 2006, while under investigation by the United States and the State of Arizona, and facing a private antitrust lawsuit, AzHHA returned the Per Diem Registry to its pre-1997 pricing model. To date, AzHHA has not revised the Travel Registry's pricing model. The Per Diem Registry's current pricing system, like the one in effect until 1997, has allowed some price comeptition among agencies, but it still has reduced price competition among participating hospitals purchasing temporary nursing services.

C. The Relevant Markets for Temporary Nursing Personnel

''Per diem nursing'' is a relevant service market. Per diem work offered to nurses by nurse staffing agencies is distinct from work offered directly to nurses by hospitals. Because of the distinctive appeal of per diem work, when the Per Diem Registry caused bill rates to be lower, per diem nurses in Phoenix and tucson accepted the resulting stagnant or lower wages and did not switch to other types of work in sufficient quantities to render such a reduction in wages unprofitable.

There are at least two relevant geographic markets for per diem nursing services in Arizona. Phoenix and Tucson are the center of two separate geographic markets for per diem nursing services because nurses selling per diem services are commonly hired on short notice, for one or perhaps several days of work, and so will not commute more than about 75 miles.

''Travel nursing'' is a relevant service market. Travel work offered to nurses is distinct from all other types of work available. Because of the distinctive nature of travel work, when the Travel Registry caused bill rates to be lower, travel nurses in Arizona accepted the resulting stagnant or lower wages and did not switch to other types of work in sufficient quantities to render such a reduction in wages unprofitable.

Arizona is the relevant geographic market for travel nursing services. Travel nurse agencies have not been able to defeat AzHHA's collectively imposed bill rates because of the number of travel nurses who strongly prefer Arizona hospitals, whether due to climate, location of friends and family, previous work experience, or other factors. In addition, Arizona, unlike the two other states with the largest demand for travel nurses, California and Florida, is a member of a multistate nurse licensing compact. This compact allows nurses licensed in compact states to accept a thirteen week assignment in Arizona without the licensure hurdles imposed by California and Florida. Travel nurse agencies incur lower margins to contract with participating hospitals through the Travel Registry, and have not been able to steer travel nurses to other states in sufficient numbers to defeat AzHHA's collectively imposed bill rates. One of the nation's largest travel nurse agencies left the Travel Registry in 1998, but was unable over the following two years to redirect sufficient numbers of nurses to assignments outside Arizona to sustain the withdrawal.

D. The Competitive Effects of the AzHHA Registry

Because most Arizona hospitals participated in the AzHHA Registry, it has been able, by acting collectively, to exercise market power in both the per diem and travel nurse markets. The Per Diem Registry has accounted for about 70 percent of participating hospitals' purchases of per diem nursing services, and the Travel Registry has accounted for about 90 percent of travel nurse agency sales of travel nursing services to hospitals in Arizona. The Registry and its participating hospitals have imposed on nurse staffing agencies contract terms, including but not limited to lower bill rates, that those agencies would otherwise have been able to successfully resist.

AzHHA has lowered bill rates for temporary nursing services below competitive levels and allowed participating hospitals to impose lower bill rates on participating agencies than the hospitals would have been able to negotiate on their own. AzHHA has recognized and promoted these reduced bill rates as a benefit of participating in the Registry. Participating hospitals have recognized and viewed these reduced bill rates as a reason to join or stay in the Registry, in addition to the benefits they claim to receive from the Registry's quality-assurance process. As an immediate consequence of reducing bill rates below the competitive level, AzHHA has also caused the wages paid to temporary nurses to decrease below competitive levels.

AzHHA has enforced participation in the price-setting function of the Registry. It tried initially to do so through its ''first use'' policy, which required participating hospitals to deal with participating agencies before non-participating ones. This met with limited success, but ultimately proved inadequate to restrain some participating hospitals' purchases outside the Per Diem Registry. As a result, the Registry then adopted a rule that each participating hospital had to use the Per Diem Registry for at least 50 percent of its per diem nurse purchases. Thus, hospitals cannot freely make additional purchases outside the Registry because they must maintain a 50-percent usage rate—for every purchase outside the Registry they must make another purchase within it. Finally, AzHHA expels hospitals that fail to meet and maintain the 50-percent usage level, thus depriving the hospitals of access to the reduced rates negotiated with the agencies and also of participation in the Registry's quality-assurance process, which the hospitals assert they value. Two years after one of the nation's largest travel nurse agencies left the Travel Registry in 1998, it rejoined the Travel Registry when it found that it lost significant market share in Arizona and was hurt in its national efforts to recruit travel nurses because it could not offer sufficient opportunities for those nurses to work in Arizona.

The absence of efficiencies corroborates the anticompetitive nature of this suppression of bill rates for temporary nursing services. ''Volume discounts'' do not explain the lower prices the AzHHA Registry has commanded because it has not created any substantial volume-related efficiencies that allow agencies to

significantly reduce their per unit (or per nurse-hour) costs. Participating agencies have not generated significant cost savings related to the volume of services they have provided through the Registry.

Nor do the efficiencies AzHHA has claimed for the AzHHA Registry generally explain or justify the rate reductions it has imposed on agencies. To the extent there are savings from negotiating and administering contract terms that are not competitively sensitive, such savings are minor. Moreover, any savings agencies have accrued from their participation in AzHHA's quality-assurance process do not justify the anticompetitive rate agreements: AzHHA's operations in both the Per Diem and Travel Registry before 1997, and the Per Diem Registry since November 2006, have demonstrated that agreements on competitively sensitive terms, including bill rates, are not reasonably necessary for AzHHA, participating hospitals, or participating agencies to create quality assurance savings. In addition to evidence showing that these various specific efficiencies do not justify the reduction in bill rates, there is generally no evidence of any increase in the availability of temporary nurse services in the relevant markets as a result of the Registry. All relevant evidence has pointed in the opposite direction.

In short, the cost savings accruing to participating agencies have not accounted for the reduction in bill rates imposed by the concerted action of the Registry and its participating hospitals, nor for the reduction in the wages paid to temporary nurses.

E. The Antitrust Laws Apply to Agreements Among Buyers

Buyers as well as sellers may violate the antitrust laws. ''Conceptually, monopsony power is the mirror image of monopoly power.'' Department of Justice Antitrust Division & Federal Trade Commission, Improving Health Care: A Dose of Competition, ch. 6, at 13 (2004). As Judge Posner has explained, ''[j]ust as a sellers' cartel enables the charging of monopoly prices, a buyers' cartel enables the charging of monopsony prices; and monopoly and monopsony are symmetrical distortions of competition from an economic standpoint.'' *Vogel* v. *American Soc. of Appraisers*, 744 F.2d 598, 601 (7th Cir. 1984). And as the Supreme Court has recently recognized, similar legal standards apply to these same basic economic principles. *Weyerhaeuser Co.* v. *Ross-Simmons Hardwood Lumber Co.*, 549 U.S. —, 127 S.Ct. 1069, 1076 (2007) (noting the ''close theoretical connection between monopoly and monopsony'' and that ''[t]he kinship between monopoly and monopsony suggests that similar legal standards should apply to claims of monopolization and to claims of monopsonization''); *see also North Jackson Pharmacy, Inc.* v. *Caremark RX, Inc.*, 385 F. Supp. 2d 740, 747 (N.D. III. 2005); Blair & Harrison, *Antitrust Policy and Monopsony*, 76 Cornell Law Rev. 297, 300 (1991).

The Supreme Court has also recognized that agreements among buyers do not necessarily violate the antitrust laws, and, in some cases, they may promote consumer welfare. In *Northwest Wholesale Stationers*, in the context of reviewing a non-price agreement among buyers, the Court recognized that the agreement could help create economies of scale in purchasing and logistics, and help smaller buyers compete more effectively with larger stores by ensuring access to inventory that otherwise might not be available when it was needed *Northwest Wholesale Stationers, Inc.* v. *Pacific Stationery and Printing Co.*, 472 U.S. 284, 295 (1985).

Some group purchasing agreements may lower the price participating buyers pay for goods and services without creating deadweight losses. For example, the purchasing agreement may guarantee a specific volume of purchases that allows sellers to realize economies of scale and lower their average cost of production. Because the sellers' costs are lower, they can accept a lower price from the buyers taking part in the group purchasing agreement without reducing production. Thus both the buyers and sellers may benefit from the buyers' agreement, or at least be no wore off than they were previously. *Cf. Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U.S. 1, 21 (1979) (noting that the substantially lowered costs created by blanket licensing is ''potentially beneficial to both buyers and sellers''); see also Blair & Harrison, *Public Policy: Cooperative Buying, Monopsony Power, and Antitrust Policy*, 86 Nw. U. Law Rev. 331, 338 (1992) (concluding that both buyers and sellers should benefit from an efficiency-enhancing buying cooperative).

On the other hand, a buyers' cartel forces sellers to accept prices below that those sellers would receive in a competitive market, or are otherwise not explained by sellers' efficiencies, because the cartel members collectively exercise market power. *See, e.g., Telcor Communications, Inc.* v. *Southwestern Bell Telephone Co.,* 305 F.3d 1124, 11347–36 (10th Cir. 2002). Just as the collective exercise of seller-side market power absent sufficient countervailing efficiencies will violate section 1 of the Sherman Act, the Act prohibits the collective exercise of buyer-side monopsony power.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will prohibit AzHHA and persons with notice of the Final Judgment acting in concert with AzHHA, including hospitals, from reaching agreement on bill rates and other competitively sensitive contract terms. It will also prohibit AzHHA and such persons acting in concert with AzHHA from boycotting, discriminating against, or excluding hospitals or agencies that choose not to participate in the Registry, or from boycotting or discriminating against hospitals based on the extent of their participation in the Registry. While accomplishing these goals, the proposed Final Judgment will allow AzHHA to continue is quality-assurance activities.

Sections III–VII of the proposed Final Judgment prescribe what conduct by AzHHA and others is prohibited, and what is permitted.

Section III applies the proposed Final Judgment, when entered, to AzHHA and the AzHHA Service Corporation. The language found in Section III tracks that found in Federal Rule of Civil Procedure 65(d), which governs the scope of injunctions entered by this Court. It confirms that the applicability of the proposed Final Judgment extends to the limits of this Court's jurisdiction, and includes in its reach any person or company *not a party,* with notice of the Final Judgement, who acts in concert with AzHHA to violate the terms of the proposed Final Judgment.

Section IV(A) prohibits AzHHA from including in the Registry contracts any competitively sensitive contract terms, including those relating to bill rates, rate structures, payment terms between hospitals and agencies, cancellation policies, bonuses paid to nurses, and ''first use'' policies. These prohibitions will prevent AzHHA and its participating hospitals from jointly negotiating bill rates or other competitively sensitive contract terms.

Section IV(B) prohibits AzHHA and those acting in concert with AzHHA from circumventing the proposed Final Judgment, engaging in other anticompetitive activity, or exercising market power through the Registry. Section IV(B) prohibits exclusionary behavior or boycotts and stops AzHHA from establishing minimum usage levels for the Registry. It also prohibits AzHHA from collecting competitively sensitive

information, except to the extent that such information is required to operate the Registry, and flatly prohibits AzHHA from sharing a Registry participant's competitively sensitive information with any hospital, agency, or other third party. Finally, Section IV(B) requires that AzHHA select participating agencies on the basis of their compliance with the quality assurance activities and not on the basis of any competitively sensitive information, like bill rates.

Section V requires AzHHA to comply with the proposed Final Judgment upon entry by this Court, except for Section IV(A)(1)–(6). The proposed Final Judgment grants AzHHA ninety (90) days from entry of the proposed Final Judgment to comply with Section IV(A)(1)–(6) by amending the Registry's contract to remove competitively sensitive contract terms. The 90-day setback will allow AzHHA to make an orderly transition to a compliant contracting system while still enabling relief much more reliably, quickly, and inexpensively than would result from litigation.

Section IV of the proposed Final Judgment clarifies the scope of the prohibitions in Sections IV and V by identifying specified activities that those sections do not prohibit. Section VI(A) lists terms that AzHHA may include in the Registry contracts, and Section VI(B) describes actions AzHHA may take to operate the Registry. Section VI(A) and (B) are not intended to be exclusive lists of actions permitted to AzHHA.

Section VII of the proposed Final Judgment establishes an antitrust compliance and notification scheme. It requires AzHHA to appoint an Antitrust Compliance Officer, and ensure that AzHHA's officers and employees, as well as participating hospitals and agencies, receive copies of the proposed Final Judgment after it has been entered.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, the State of Arizona, and Defendants have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impace Statement, whichever is later. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to this Court's entry of judgment. The comments and the United States' response to them will be filed with this Court and published in the Federal Register.

Written comments should be submitted to: Joseph M. Miller, Acting Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street NW., Suite 4000, Washington, DC 20530

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a continuing investigation and potential full trial on the merits. The United States could also have sought preliminary and permanent injunctions against the operation of the entire Registry. The United States is satisfied, however, that the prohibitions and requirements required by the proposed Final Judgment will reestablish competition in the markets for temporary nursing services.

The United States also considered, as an alternative to the proposed Final Judgment, continuing the investigation and naming the participating hospitals as defendants. The United States is satisfied, however, that the proposed Final Judgment, including Section III, will adequately reestablish competition in the relevant markets for temporary nursing services.

The United States also considered requiring the Defendants comply with Section IV(A) of the proposed Final Judgment within sixty (60) days. Ultimately, the United States concluded that it was reasonable to allow the Defendants 90 days to make an orderly transition to a new Program Contract, and that giving immediate effect to the prohibitions on cartel maintenance found in Section IV(B) was adequate immediate relief.

Entry of the proposed Final Judgment will avoid the time, expense, and uncertainty of litigation or a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In 2004, Congress amended the APPA to ensure that courts take into account the above-quoted list of relevant factors when making a public interest determination. Compare 15 U.S.C. § 16(e) (2004) with 15 U.S.C. § 16(e)(1) (2006) (substituting ''shall'' for ''may'' in directing relevant factors for court to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment

terms). On the points next discussed, the 2004 amendments did not alter the substance of the Tunney Act, and the pre-2004 precedents cited below remain applicable.

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel 648 F.2d at 666 (emphasis added) (citations omitted); Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); see generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ''). In making its public interest determination, a district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requries a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F.Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 1459–60.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trail or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); *see also United States* v. *SBC Commc'ns, Inc.,* Nos. 05–2102 and 05–2103, 2007 WL 1020746, at *9 (D.D.C. Mar. 29, 2007) (confirming that 2004 amendments to the APPA ''effected minimal changes[ ] and that th[e] Court's scope of review remains sharply proscribed by precedent and the nature of [APPA] proceedings.'').

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: May 22, 2007.

Respectfully submitted,

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Seth Grossman,
Rebecca Perlmutter,
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United States Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0001.

Certificate of Service

I hereby certify that on May 22, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Nancy Bonnell, *Antitrust Unit Chief, ID #016382, Consumer Protection and Advocacy Section, Department of Law Building, Room #259, 1275 West Washington Street, Phoenix, AZ 85007–2997, (602) 542–7728, Attorney for the State of Arizona.*

Andrew S. Gordon, *Coppersmith Gordon Schermer & Brockelman PLC, 2800 North Central Avenue, Suite 1000, Phoenix, AZ 85004, (602) 381–5460, Facsimile: (602) 224–6020, Attorney for the Defendants.*

Ryan Danks,

United States Department of Justice, Antitrust Division.

[FR Doc. 07–2686 Filed 6–1–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 21, 2006, and published in the **Federal Register** on December 1, 2006, (71 FR 69592), Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003

Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Methadone (9250)	II
Methadone Intermediate (9254)	II

The company plans to use the Methadone Intermediate to produce the Methadone HCL for sale to its customers who are final dosage manufacturers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: May 29, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–10692 Filed 6–1–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07–19]

CRJ Pharmacy, Inc. and YPM Total Care Pharmacy, Inc.; Revocation of Registrations

This is a consolidated proceeding involving two pharmacies under common ownership. On February 2, 2007, I issued an Order to Show Cause and Immediate Suspension of DEA Certificates of Registration, BC9458539, issued to CRJ Pharmacy, Inc., and BY9713276, issued to YPM Total Care Pharmacy, both of Lakeland, Florida. I immediately suspended each Respondent's registration based on my preliminary finding that they had ''diverted and continue to divert massive amounts of controlled substances in violation'' of federal law ''thereby creating an imminent danger to public health or safety.'' Show Cause Order at 5. The Show Cause Order further sought the revocation of each Respondent's registration on the ground that its continued registration would be ''inconsistent with the public interest.'' *Id.* at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

With respect to CRJ Pharmacy, the Show Cause Order alleged that it was the fourteenth largest retail purchaser of hydrocodone-combination products in the State of Florida, and that ''[f]rom January through November 2006, CRJ purchased 1,416,320 dosage units of brand name and generic hydrocodone combination products,'' a schedule III controlled substance. *Id.* The Show Cause Order further alleged that on March 30, 2006, DEA investigators had inspected CRJ and determined that it filled controlled substance orders placed through a Web site, *yourpainmanagement.com;* that the orders were for persons throughout the United States; and that the orders were authorized by only two physicians. *Id.* at 2. According to the allegations, one of the physicians was licensed to practice only in Florida; the other was licensed only in Minnesota. *Id.*

The Show Cause Order further alleged that on January 22, 2007, DEA investigators executed an administrative search warrant at CRJ and obtained records showing that between July 3, 2006, and January 22, 2007, CRJ had ''filled approximately 19,223 controlled substance drug orders and shipped them to customers throughout the United States.'' *Id.* The Show Cause Order also alleged that these prescriptions were authorized by physicians located in Texas, Wisconsin, Puerto Rico, New York, California, Kansas, and Florida, for persons who did not reside in the same States as the physicians, that the prescriptions were disproportionately for ''one or two types of highly addictive and abused controlled substances,'' that ''CRJ filled large quantities of prescriptions per day, per physician,'' and thus CRJ knew or should have known that the prescriptions it dispensed ''were not issued 'for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.' '' *Id.* at 4 (quoting 21 CFR 1306.04(a)).

The Show Cause Order alleged that CRJ's owner, Mr. Chris Larson, had admitted to investigators that he owned bestrxcare.com. *Id.* at 2. According to the Show Cause Order, Mr. Larson told investigators that persons seeking controlled substances completed an on-line questionnaire and then faxed their medical records to bestrxcare.com, where they were scanned into a database for review by either a physician or a physician's assistant (PA). *Id.* Mr. Larson allegedly told investigators that if the records were ''ok,'' a physician or a PA would then consult with the customer by telephone. *Id.* According to the Show Cause Order, after the customer had paid the Web site and the phone consultation was completed, a ''prescription'' was issued which CRJ then downloaded from the Internet and dispensed. *Id.*

The Show Cause Order further alleged that a physician employed by Larson had admitted to investigators that Larson was using his DEA ''license for pain pills.'' *Id.* at 3. According to the Show Cause Order, the physician further admitted that ''he does not speak with any of the Internet customers or their primary care physicians,'' and that he ''does not diagnose the Internet customers or provide after care services for the Internet customers.'' *Id.*

With respect to YPM, the Show Cause Order alleged that it was dispensing controlled substances that were ordered through another Web site, yourpainmanagment.com, which was also owned by Larson. *Id.* at 4. The Show Cause Order alleged that on August 17, 2005, Larson stated to DEA investigators that a person could order controlled substances for pain management through this Web site by completing a form on which they provided their name, address, billing information, general biographic details and medical complaint. *Id.* Larson allegedly also told investigators that the customers would then fax their medical records to the Web site where they were then reviewed by a PA; if the records appeared ''in order,'' either a physician or the PA would conduct a telephone consultation with the customer. *Id.* The Show Cause Order further alleged that during this interview, one of Larson's employees told DEA investigators that the Web site does not order further testing of its customers and does not contact the physicians named on the customers' medical records. *Id.*

The Show Cause Order also alleged that from May 2006 through November 2006, YPM had purchased 841,800 units of hydrocodone-combination products. *Id.* Relatedly, the Show Cause Order alleged that YPM records showed that it had dispensed 17,336 controlled substance orders to internet customers throughout the United States and that

98 percent of the orders were authorized by three physicians. *Id.* The Show Cause Order further alleged that two of these physicians were licensed to practice medicine in Florida; moreover, between June 1, 2006, and January 19, 2007, the third physician, who was licensed in Minnesota, had authorized 15,050 orders. *Id.* The Show Cause Order thus alleged that YPM ''knew or should have known that the 'prescriptions' [it] dispensed were not issued 'for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice''' and violated federal law. *Id.* at 4 (quoting 21 CFR 1306.04(a)).

On February 5, 2007, both CRJ and YPM were served with the Order to Show Cause and Immediate Suspension of Registrations. On February 22, 2007, both Respondents, who were represented by the same counsel, requested a hearing on the allegations. The matters were assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner.

On March 12, 2007, the Government moved for summary disposition. The basis for the Government's motion was that Respondents had closed their businesses on February 12, 2007, and had ''transferred all prescription records, inventory, and required DEA records to other DEA registrants.'' Gov. Mot. for Summ. Disp. at 1. The Government's motion further asserted that on February 27, 2007, Respondent CRJ had surrendered its Florida Board of Pharmacy License to the Florida Board of Pharmacy. *Id.* The Government further asserted that Respondent YPM had ''signified its intent to surrender its Florida Board of Pharmacy License in its letter to DEA dated February 22, 2007.'' *Id.* at 2. The Government thus asserted that both ''Respondents are currently without authority under Florida law to dispense controlled substances'' and therefore are not entitled to maintain their DEA registrations. *Id.*

In support of its motion, the Government attached copies of letters from both YPM (dated Feb. 27, 2007) and CRJ (dated Feb. 28, 2007) to the DEA Miami Office; each letter advised that the pharmacy had closed, that it was in the process of surrendering its state license, and sought permission to act as a one-time wholesaler to sell the controlled substances (which apparently were still in their possession) to another pharmacy. *See* Appendices I & II to Gov. Mot. The Government also attached a copy of the letter from CRJ to the Florida Board of Pharmacy, by which it surrendered its state license. *See* Appendix III to Gov. Mot. The Government's submission did not, however, include a similar letter from YPM.

Respondent did not oppose this motion. Response to Gov. Motion for Summ. Disp. at 1. However, on March 16, 2007, the Government had also filed a motion to supplement the motion for summary disposition. The Government based its motion on my decision in *William R. Lockridge, M.D.,* 71 FR 77,791 (2006). In *Lockridge,* I reviewed the propriety of an immediate suspension in a case in which the Respondent's registration had expired, in part, because of the collateral consequences which attached with the issuance of the suspension. The Government thus moved to submit several affidavits of DEA investigators to support ''the basis for the immediate suspensions.'' Gov. Mot. to Supp. at 1.

Thereafter, on March 19, 2007, the ALJ afforded Respondents the opportunity to respond to the Government's motion by April 2, 2007. Subsequently, on March 22, 2007, the ALJ granted the Government's motion for summary disposition to the extent it sought the revocation of Respondents' DEA registrations on the ground that CRJ and YPM were without authority under Florida law to handle controlled substances and therefore were not entitled to maintain their DEA registrations. ALJ Dec. at 3. The ALJ thus recommended that Respondents' registrations be revoked. *Id.*

The ALJ also granted the Government's motion to supplement its original motion for summary disposition and submit into the record the two affidavits. The ALJ, however, also afforded Respondents the opportunity to submit additional documents including affidavits.[1]

On April 2, 2007, Respondents filed their response which vigorously opposed the Government's motion. Respondents contended that there is ''no dispute'' that they ''can no longer hold DEA registrations.'' Response at 3. Respondents maintained, however, that the Government's reliance on *Lockridge* was misplaced because in there, a full hearing had been held and ''[m]ootness was implicated only when the respondent's registration expired *after the hearing.*'' *Id.* at 4.

Respondents further argued that ''[t]he Government itself has claimed that this case is moot and therefore no hearing should be held,'' and that this precludes a ''ruling on the immediate suspension as the Government seeks.'' *Id.* Respondents also contended that because of the collateral consequences that attach with the issuance of an immediate suspension, ''to the extent the Deputy Administrator seeks to uphold the suspension, CRJ and YPM have a right to a hearing.'' *Id.* Respondents thus maintained that granting the Government's supplemental motion would ''violate [their] hearing rights'' because the Government's affidavits are ''conclusory'' and cannot support the ''factual findings'' sought by the Government. *Id.* at 4–5 (citing 21 CFR 1316.41). Finally, Respondent contended that *Lockridge* ''does not, and cannot, hold that a decision on the merits may issue after a summary disposition.'' *Id.* at 5. Respondents did not, however, submit any affidavits of their own.

Neither party filed exceptions to the ALJ's decision. Thereafter, the ALJ forwarded the record to me for final agency action. Having considered the record as a whole, I hereby issue this final order. I adopt the ALJ's recommendation that each Respondent's registration be revoked on the ground that it no longer has authority to handle controlled substances in the State of Florida and thus is not entitled to hold a DEA registration in that State. I further conclude that my decision in *Lockridge* is not controlling and that the issue of the validity of the immediate suspensions is now moot because each Respondent has surrendered its Florida pharmacy license and closed its business. Moreover, neither the Government nor Respondents have pointed to any non-speculative collateral consequence which a ruling on the merits of the immediate suspension order would resolve. I make the following findings.

Findings

On April 21, 2006, Respondent YPM Total Care Pharmacy, Inc., was issued DEA Certificate of Registration, BY9713276, as a retail pharmacy, with an expiration date of May 31, 2009. On some date not specified in the record, Respondent CRJ Pharmacy, Inc., was issued DEA Certificate of Registration, BC9458539, with an expiration date of August 31, 2008.

On February 7, 2007, DEA investigators served both YPM Total Care Pharmacy, Inc., and CRJ Pharmacy, Inc., with the above described Order to Show Cause and Immediate Suspension of Registration. Shortly thereafter, on February 12, 2007, YPM closed its pharmacy. Moreover, on February 26, 2007, YPM transferred its prescription records to another DEA registrant, and

[1] The ALJ did not, however, rule on the Government's alternative basis for summary disposition.

on February 28, 2007, YPM transferred its records and inventory of controlled substances (with the Agency's approval) to that registrant. YPM subsequently surrendered its Florida Pharmacy License. I take official notice of the online records of the Florida Department of Health which confirm that YPM Total Care Pharmacy has closed.[2]

According to the record, on February 12, 2007, CRJ Pharmacy, Inc., also closed its pharmacy. On February 26, 2007, CJR transferred its prescription records to another DEA registrant, and on February 28, 2007, transferred its records and inventory of controlled substances to that registrant. CJR subsequently surrendered its Florida Pharmacy License. I also take official notice of the online records of the Florida Department of Health which confirm that CRJ Pharmacy has closed.

Discussion

Under the Controlled Substances Act, a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which [it] practices'' in order to maintain its DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a * * * pharmacy * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which [it] practices * * * to * * * dispense a controlled substance in the course of professional practice''). *See also id.* section 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which [it] practices.''). As numerous agency orders have held, ''a registrant may not hold a DEA registration if it is without authority under the laws of the state in which it does business.'' *Bourne Pharmacy, Inc.,* 72 FR 18273, 18274 (2007) (quoting *Oakland Medical Pharmacy,* 71 FR 50100, 50102 (2006)). *Accord Rx Network of South Florida,* LLC, 69 FR 62,093 (2004); *Wingfield Drugs, Inc.,* 52 FR 27,070 (1987).

Each Respondent having surrendered its State license, neither now disputes ''that summary disposition and revocation are appropriate.'' Response to Gov. Mot. to Supplement at 3. Respondents do, however, object to the Government's submission of the two affidavits and my ruling on the merits of the immediate suspension.

Respondents assert that *Lockridge* is distinguishable because there, a full evidentiary hearing had been held, and here, no such hearing has been held. Respondents further argue that the validity of the immediate suspensions is now a moot issue although they contend—inconsistently—that they are entitled to a hearing ''before bearing the adverse collateral consequences'' that would arise were I to issue a ruling upholding the immediate suspension orders.

I conclude that *Lockridge* is not controlling and that the issue of the validity of the immediate suspensions in this case is now moot. It is fundamental that the issuance of an immediate suspension imposes a deprivation of a property interest which gives rise to the protections of the Due Process Clause. *See, e.g., FDIC* v. *Mallen,* 486 U.S. 230, 240 (1988). Subsequent events may nonetheless make clear that there is no longer a live controversy between the parties even when the Government has yet to provide the constitutionally required process. *Cf. City News and Novelty, Inc.,* v. *City of Waukesha,* 531 U.S. 278 (2001).

In *Lockridge,* I held that the proceeding was not moot notwithstanding that the practitioner had allowed his registration to expire following the hearing and there was no existing registration to act upon. In so holding, I relied on several factors. These included the collateral consequences that attached with the issuance of the immediate suspension, in particular the harm to the practitioner's reputation, and the additional disability imposed by the Agency's requirement to report the suspension on any subsequent application for a DEA registration.

I also noted that the practitioner had not moved to dismiss the proceeding on mootness grounds and that he had submitted no evidence showing that he ''intend[ed] to permanently cease the practice of medicine.'' 71 FR at 77797. I thus concluded that Respondent might apply for a new registration and seek to engage in the same practices which had prompted the immediate suspension. Thus, it was not '' 'absolutely clear that [the practitioner's] allegedly wrongful behavior could not reasonably be expected to recur.' '' *Id.* (quoting *Friends of the Earth, Inc.,* v. *Laidlaw Env. Servs., Inc.,* 528 U.S. 167, 189 (2000) (other quotations and citations omitted)).[3]

Here, by contrast, the record establishes that each Respondent has not only surrendered its State license, but has also gone out of business. Moreover, in contrast to the registrant in *Lockridge*, each Respondent has not only engaged in affirmative acts showing that it was ending its business activities, it has also expressly communicated these facts to the Agency. Relatedly, neither Respondent opposes the revocation of its registration nor seeks to litigate the validity of the suspension orders.

Finally, neither Respondent has asserted that it plans to re-enter the business of pharmacy at some future date. The speculative possibility that either Respondent will seek a new registration at some point in the future is not enough to conclude that sufficient collateral consequences exist to render the issue of the suspension orders' validity a live dispute. *See, e.g., City News,* 531 U.S. at 285; *Spencer* v. *Kemna,* 523 U.S. 1, 16 (1998). Indeed, were either Respondent to apply for a new registration in the future, it would nonetheless be required to disclose on its application the revocation being ordered below. Under these circumstances, the suspension orders impose on Respondents no additional consequence beyond what they will be required to disclose because of the revocations of their registrations.[4] Accordingly, the issue is now moot.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BC9458539, issued to CRJ Pharmacy, Inc., and DEA Certificate of Registration, BY9713276, issued to YPM Total Care Pharmacy, Inc., be, and they hereby are, revoked. I further order that pending applications for renewal or modification of either registration be, and they hereby are, denied. This order is effective July 5, 2007.

[2] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding-even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). Respondent can dispute these facts by filing a properly supported motion for reconsideration within fifteen days of service of this order, which shall begin on the date this order is mailed.

[3] I also noted the extensive resources committed by both parties in litigating the case and the potential prejudice to the public interest were I to dismiss the proceeding without making findings.

[4] Finally, in this proceeding, the Government apparently did not place under seal the controlled substances possessed by either Respondent at the time of the suspensions. *See* 21 U.S.C. 824(f). Accordingly, title to the controlled substances is not a collateral issue which would be resolved in this proceeding.

Dated: May 21, 2007.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06–4]

Trinity Health Care Corp., D/B/A/ Oviedo Discount Pharmacy; Affirmance of Immediate Suspension

On August 19, 2005, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Trinity Healthcare Corporation, d/b/a/ Oviedo Discount Pharmacy (Respondent) of Oviedo, Florida. The Order immediately suspended Respondent's Certificate of Registration, BT2863668, as a retail pharmacy, based on my preliminary finding that Respondent was filling large quantities of prescriptions for controlled substances that were issued through an internet site, iPharmacy.MD, by physicians who did not have a legitimate doctor-patient relationship with the individuals who ordered the drugs. See Show Cause Order at 5–10. Based on my preliminary finding that Respondent was ''responsible for the diversion of large quantities of controlled substances,'' and that its participation in this scheme ''invites the fraudulent procurement of controlled substances on a vast scale,'' I concluded that Respondent's continued registration pending these proceedings ''would constitute an imminent danger to the public health and safety,'' and therefore immediately suspended its registration. *Id.* at 10.

More specifically, the Show Cause Order alleged that Respondent was filling prescriptions for phentermine, a schedule IV controlled substance, which were issued to the customers of iPharmacy.MD by Richard Carino, a physician located in Port Richey, Florida. *Id.* at 5. The Show Cause Order alleged that Dr. Carino issued prescriptions for phentermine to persons located ''throughout the country'' based solely on a questionnaire. *Id.* The Show Cause Order further alleged that DEA investigators interviewed various individuals who had been prescribed controlled substances by Dr. Carino; each of these persons stated that they were not patients of Dr. Carino and had not provided him with their medical records. *Id.* at 6.

The Show Cause Order also alleged that on May 6, 2004, DEA investigators conducted an inspection of Respondent during which they obtained its prescription records for the period January 1 through May 6, 2004. *Id.* at 7. The Show Cause Order alleged that between January and May 5, 2004, Respondent had filled 2,196 internet prescriptions for phentermine issued by Dr. Carino to persons located throughout the United States. *Id.* at 7–8.

Finally, the Show Cause Order alleged that on April 15, 2005, a DEA Special Agent (S/A) had accessed the iPharmacy.MD Web site, completed a questionnaire, and ordered 90 tablets of phentermine. *Id.* at 9. The Show Cause Order further alleged that on April 21, 2005, the S/A received a bottle of phentermine which had been filled by Respondent.

Respondent, through its counsel, requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who conducted a hearing on May 30 through June 2, 2006, in Arlington, Virginia. At the hearing, both parties called witnesses to testify and introduced documentary and/or demonstrative evidence. Following the hearing, both parties submitted briefs containing their proposed findings of fact, conclusions of law, and argument.

On October 2, 2006, the ALJ issued her decision. In that decision, the ALJ concluded that Respondent's continued registration would be inconsistent with the public interest and recommended that I revoke Respondent's registration and deny any pending applications for renewal or modification. ALJ Dec. (hereinafter ALJ) at 32. Neither party filed exceptions.

On November 13, 2006, the ALJ forwarded the record to me for final agency action. Having carefully reviewed the record as a whole, I hereby issued this decision and final order. I adopt the ALJ's findings of fact and conclusions of law except as noted herein. Furthermore, while Respondent's registration expired on November 30, 2006, and Respondent did not submit a renewal application, I nonetheless conclude that this case is not moot. *See William R. Lockridge,* 71 FR 77791, 77797 (2006). Accordingly, while I do not adopt the ALJ's recommendation that Respondent's registration be revoked, I will review the propriety of the immediate suspension under section 304(a) of the Controlled Substances Act, 21 U.S.C. 824(a), and make the following findings.

Findings of Fact

Respondent is a corporation, which is owned and operated by Mr. Obi Enemchukwu, a pharmacist, and does business as Oviedo Discount Pharmacy in Oviedo, Florida. ALJ at 2; ALJ Ex. at 3. Respondent held DEA Certificate of Registration, BT2863668, which authorized it to dispense controlled substances in Schedules II through V, from September 1991 until the expiration of its registration on November 30, 2006. ALJ Ex. 3, at 1. Respondent last renewed its registration on October 24, 2003. *Id.* I take official notice of the fact that Respondent did not submit a renewal application prior to the expiration of its registration.[1] Accordingly, I find that Respondent is no longer registered with the Agency. *See* 5 U.S.C. 558(c).

DEA's 2001 Policy Statement on Internet Prescribing and Dispensing

In April 2001, several years before the events at issue here, DEA published in the **Federal Register** a guidance document entitled ''Dispensing and Purchasing Controlled Substances over the Internet.'' 66 FR 21181 (2001); *see also* Gov. Ex. 18. DEA issued this document to advise ''the public concerning the application of current laws and regulations as they relate to the use of the Internet for dispensing [and] purchasing * * * controlled substances.'' 66 FR at 21181.

More specifically, the guidance document advised that ''[o]nly practitioners acting in the usual course of their professional practice may prescribe controlled substances. * * * A prescription not issued in the usual course of professional practice * * * is not considered valid. Both the practitioner and the pharmacy have a responsibility to ensure that only legitimate prescriptions are written and filled.'' *Id.*

The guidance document also discussed the legality under existing law of prescribing controlled substances based on an on-line questionnaire. After noting DEA's regulation that a prescription for a controlled substance is not effective unless it is '' 'issued for

[1] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding—even in final decision.'' U.S. Dept. of Justice *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Respondent the opportunity to refute this fact, Respondent may file a motion for reconsideration within fifteen days of service of this order which shall commence with the mailing of the order.

a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice,'' ' the document further explained that ''[u]nder Federal and state law, for a doctor to be acting in the usual course of professional practice, there must be a bona fide doctor/patient relationship.'' *Id.* at 21182 (quoting 21 CFR 1306.04(a)). The guidance document also explained that the factors typically necessary under existing law to establish the existence of a legitimate doctor-patient relationship include: That the ''patient has a medical complaint''; ''[a] medical history has been taken [and a] physical examination has been performed''; and that there must be ''[s]ome logical connection * * * between the medical complaint, the medical history, the physical examination, and the drug prescribed.'' *Id.* at 21182–83. Relatedly, the guidance document advised that ''[c]ompleting a questionnaire that is then reviewed by a doctor hired by the Internet pharmacy could not be considered the basis for a doctor/patient relationship.'' *Id.* at 21183

Finally, the guidance document advised that ''[s]ome internet pharmacy sites do not require that you have a prescription from your doctor[,]'' but rather, ''require the customer to complete a medical questionnaire,'' which then ''will be reviewed by a doctor, and the drug will be prescribed and sent to you, if appropriate.'' *Id.* The guidance document further stated that these types of internet pharmacy sites ''operate in a manner that is not consistent with state laws regarding standards of medical practice and may be engaging in illegal sales of controlled substances.'' *Id.*

The Investigation of Respondent

At some date not specified in the record, but likely in the fall of 2003, Mr. Terry Butler, the owner and president of iPharmacy.MD (hereinafter iPharmacy) and Drug-storemd, called Mr. Enemchukwu to recruit his pharmacy to fill prescriptions for his business. Tr. 807–08, ALJ at 3. According to Mr. Enemchukwu, Mr. Butler told him that iPharmacy had a Web site ''which would screen patients, and if they qualified * * * would refer them to physicians who wrote them prescriptions,'' and ''that he would like [him] to fill these prescriptions and * * * send them to the patient.'' Tr. 808. In late December 2003, Mr. Enemchukwu met with Mr. Butler to discuss the proposed arrangement and asked him whether the physicians who would do the prescribing were qualified. *Id.* at 810–11. Butler told him that the doctors were qualified and would be ''acting ethically.'' *Id.* at 811. Mr. Enemchukwu further testified, however, that he did not do any research into the background of iPharmacy. *Id.* at 818.

On January 7, 2004, Mr. Enemchukwu and Mr. Butler entered into a contract through their respective entities (Oviedo Discount Pharmacy and Drug-storemd). ALJ at 4, Gov. Ex. 95, at 1. Under the contract, Drug-storemd engaged Respondent ''to provide medicinal products to Drug-storemd's customers.'' Gov. Ex. 95, at 1. Drug-storemd further agreed to provide to Respondent ''[a]n electronic * * * prescription for medication, properly, legally, and ethically authorized by a licensed physician in good standing in Florida or any other relevant state.'' Gov. Ex. 95, at 3. Drug-storemd also agreed to pay Respondent $8.00 for each order filled and to reimburse Respondent for the cost of the drugs it dispensed. *Id.* at 4.

The contract also included several provisions which Mr. Enemchukwu proposed as an addendum. *See id.* at 7. These included a requirement that the prescribing physicians supply Respondent ''with copies of their credentials including their location, address and other pertinent information,'' that Respondent ''be able to communicate with the prescribing physician,'' and that it ''reserve[d] the right to use [the] professional judgment of the pharmacist according to law to deem a prescription not to be filled.'' *Id.* 7–8. IPharmacy did not, however, provide Respondent with copies of its physicians' credentials; Mr. Enemchukwu did not insist that it do so because it provided him with other information such as the numbers of the physicians' DEA registrations and state medical licenses. Tr. 817, 820

According to the record, Respondent was given a password which allowed it to access a webpage at the iPharmacy Web site and obtain a list of the prescriptions it was to fill. *Id.* at 737–38, 757. According to the testimony, Mr. Enemchukwu would print out both the prescriptions and the shipping labels, which had been prepared in advance by iPharmacy.MD. *Id.* at 738, 757, 768. Mr. Enemchukwu would then enter the customer's name and information into a computer and perform a drug utilization review. *Id.* at 763.

On January 6, 2004, (even before the contract was apparently signed), Respondent began by filling fifteen prescriptions which were written by Dr. Richard Carino—a physician based in Port Richey, Florida, Gov. Ex. 15—and allocated to it by iPharmacy. *See* Gov. Ex. 77, at 1. Of these prescriptions, twelve of them were for either phentermine or Adipex-P. *Id.*

The Government's evidence established that early on in the arrangement (in early March 2004), it should have been obvious that many of Dr. Carino's ''patients'' resided in other States and thus were not likely to be patients at all. More specifically, the Government produced copies of controlled substance prescriptions, which showed that the ''patients'' resided in such far-flung places as Houston, Texas (Rx# 44122); Martinsville, Indiana (Rx# 44131); Dallas, Texas (Rx# 43947); Corbin, Kentucky (Rx# 43948); Woodward, Oklahoma (Rx# 43949); Cliffside Park, New Jersey (Rx# 43950); Cincinnati, Ohio (Rx# 43951); Hanahan and Greenville, South Carolina (Rx#s 44012 & 44016); Carver, Massachusetts (Rx# 44013); Pocono Lake, Pennsylvania (Rx# 44015); and Berwyn, Illinois (Rx# 43953).[2] See Gov. Ex. 81.[3]

Notwithstanding that many of the prescriptions were for persons who resided at a great distance from Port Richey, Florida (the location of Dr. Carino)—thus rendering it highly improbable that the patients were ever physically examined by Carino—Respondent proceeded to fill an ever increasing number of prescriptions issued by this physician. For example, on March 9, 2004, Respondent filled 82 prescriptions for controlled substances that were issued by Dr. Carino. *See* Gov. Ex. 77, at 42–45. The prescriptions were for phendimetrazine and Didrex (benzphetamine), both schedule III stimulants, *see* 21 CFR 1308.13(b), and phentermine, a highly abused schedule IV controlled substance in both generic and branded drugs such as Adipex-P. *See id.* at 21 CFR 1308.14(e); Tr. 583–844, 596. On May 26, 2004, Respondent filled 182 prescriptions issued by Dr. Carino for controlled substances including Didrex, phendimetrazine, diethylpropion (another schedule IV

[2] The prescriptions also indicated the date and time of approval. While these records are not complete, and represent only a small portion of the prescriptions written by Dr. Carino, they do suggest that he approved prescriptions in a rapid-fire manner. *See, e.g., id.* at 4–9 (indicating that Dr. Carino approved six prescriptions in a period of less than ninety seconds); *see also* Gov. Ex. 76 (prescriptions issued by Drs. Duncan and Mercado-Francis).

[3] *See also* Gov. Ex. 61 (providing copies of prescriptions issued by Carino and filled by Respondent for persons living in Tulsa, Oklahoma (Rx# 45291); Seattle, Washington (Rx# 45296); Manchester, Kentucky (Rx# 45297); New Orleans, Louisiana (Rx# 45299); Jacksonville, Florida (Rx# 45302); Morrow, Ohio (Rx# 45306); Prestonburg, Kentucky (Rx# 45311); Statesville, North Carolina (Rx# 45314); Westerville, Ohio (Rx# 45315); Concord, Virginia (Rx# 45317); Houston, Texas (Rx# 45318); and Cape May, NJ (Rx# 45325)).

stimulant, *see* 21 CFR 1308.14(e)), and, of course, branded and generic phentermine. *See* Gov. Ex. 77, at 174–79. And on July 30, 2004, Respondent filled 337 prescriptions issued by Dr. Carino for controlled substances including Didrex, phendimetrazine, diethylpropion, and phentermine. *Id.* at 421–30.[4]

For some reason not established by the record, in late August/early September 2004, Respondent apparently stopped receiving prescriptions that were issued by Dr. Carino. *See* Gov. Ex. 77, at 554; Tr. 856. Respondent, however, began filling controlled substance prescription issued by two other physicians retained by iPharmacy, Dr. Michael Duncan, who was based in Nashville, Tennessee, and Dr. Jose Mercado-Francis, who was based in Isla Verde, Puerto Rico. *See* Gov. Ex. 77, at 554, 641–42; Gov. Ex. 73.

On September 10, 2004, Respondent filled 134 controlled substance prescriptions issued by Dr. Duncan for phentermine, phendimetrazine, benzphetamine, and diethylpropion. *See* Gov. Ex. 77, at 554–557. Less than a week later, on September 16, 2004, Respondent filled 272 controlled substance prescriptions issued by Dr. Duncan for these same drugs. *See id.* at 574–81. And on September 29, 2004, Respondent filled 107 controlled substance prescriptions for these same drugs that were issued by Dr. Mercado-Francis. *Id.* at 642–48. Respondent continued to fill large quantities of controlled substances prescriptions issued by both physicians until early May 2005. *See generally id.* at 582–1172.

With respect to these physicians, the Government introduced copies of the controlled substance prescriptions issued by them during the period April 20–26, 2005. *See* Gov. Ex. 76, at 1–404. Here, again, the prescriptions were for persons in such far flung locations as Sherman Oaks, California (Rx# 84929); Westfield, Massachusetts (Rx# 84932); Beaumont, Texas (Rx# 84933); Isanti, Minnesota (Rx# 84938); Watertown, South Dakota (Rx# 84939); Lockport, Louisiana (Rx# 84940) and Oklahoma City, Oklahoma (Rx# 84943). *See id.* at 2, 6, 7,10, 11, 12, 15. The ALJ also found that between January 2004 and May 3, 2005, ''Respondent filled at least 43,203 prescriptions, the vast majority of them [being] for controlled substances.'' ALJ at 22; *see also* Gov. Ex. 77. This finding is supported by substantial evidence.

On July 19, 2005, DEA investigators executed a search warrant at Dr. Duncan's residence and interviewed him. Tr. 39–41. During the interview, Dr. Duncan stated that in September 2004, he had entered into a contract with iPharmacy.MD, under which he reviewed questionnaires submitted by iPharmacy's customers and either approved or did not approve a prescription for the drug (typically phentermine, but also including other stimulants which are controlled substances) requested by its customers. Tr. 45–47. More specifically, Duncan told investigators that he would approve the prescriptions if the person indicated that they had a Body Mass Index greater than thirty and indicated that they were in good health. *Id.* at 47. Duncan would then e-mail the prescription to either Respondent or another pharmacy that filled prescriptions for iPharmacy. *Id.*

Duncan told investigators that he reviewed approximately 1100 questionnaires each week (for which he was paid $ 3.00 each). *Id.* at 47–48. Duncan further admitted that he never saw any of the ''patients'' or talked with a patient, and that he did not review any document other than the on-line questionnaire which was submitted by iPharmacy's customers.[5] *Id.* While Dr. Duncan held a DEA registration, it did not authorize him to dispense schedule IV controlled substances such as phentermine. *See* Gov. Ex. 16.

The ALJ found that between January 2004 and April 2005, Respondent had purchased a total of 2,002,700 dosage units of phentermine which was comprised of 58,700 (15 mg.) tablets, 374,200 (30 mg.) tablets, and 1,569,800 (37.5 mg.) tablets. Gov. Ex. 57 & 98; ALJ at 21. On a monthly basis, Respondent thus purchased an average of approximately 125,168 tablets of the drug.

To demonstrate the excessiveness of these purchases, the Government obtained data regarding the dispensing of phentermine by forty Walgreens' stores in the metropolitan Orlando area during the period September 1, 2004, through July 30, 2005. *See* Gov. Ex. 65. This data showed that the forty stores combined filled 6,317 phentermine prescriptions and dispensed a total of 188,541 dosage units. *Id.* On a monthly basis, the stores dispensed an average of 14.3 prescriptions per month and 428 tablets. In contrast, between January 2004 and May 2005, Respondent dispensed approximately 43,200 prescriptions for various controlled substances which predominately included phentermine for an average of 2700 prescriptions per month. *See* Gov. Ex. 77.

The Government also elicited testimony from several expert witnesses. The first of these was Dr. Carmen Catizone, a registered pharmacist and the Executive Director of the National Association of Boards of Pharmacy. Gov. Ex. 89. Dr. Catizone testified that ''[a] valid prescription is one where the pharmacy or pharmacist has ascertained that there is a bona fide patient/doctor relationship, and the prescription is within the scope of practice * * * and * * * is legitimate for the patient, and the patient's condition, and does not contraindicate * * * with any other medications that the patient is taking.'' Tr. 479. Dr. Catizone further testified as to the State of Florida's regulations pertaining to the prescribing of weight loss drugs which include reviewing the patient's body mass index, conducting a physical examination,[6] and the physician's obligation to personally present the prescription to the[7] patient. *Id.* at 480. Dr. Catizone also stated that while it is not illegal for a physician to prescribe for a patient in another State,

[4] The above are only representative samples to show the growth and the extent of Respondent's dispensing pursuant to its contract with iPharmacy. Respondent filled increasing and frequently extraordinary quantities of controlled substance prescriptions issued by Dr. Carino on numerous other days until August 27, 2004. *See* Gov. Ex. 77, at 1–554.

[5] Among the phentermine prescriptions which Duncan issued were two obtained by a DEA Special Agent (acting in an undercover capacity) on January 7, 2005, and April 14, 2005. *See* Tr. at 128; Gov. Exs. 37, 47, 101, 102. Respondent filled the second of these prescriptions. Gov. Exs. 62 & 102. With respect to this prescription, Mr. Enemchukwu testified that he did not knowingly fill a fraudulent prescription. Tr. 782.

The iPharmacy questionnaire expressly stated that ''To order *weight loss products* (i.e. Phentermine) your BMI (Body Mass Index) must be over 30. Your body mass index is automatically calculated to the right based on the values you enter above.'' Gov. Ex. 40, at 2. Obviously, iPharmacy's customers could enter any values they wanted because there was no verification of the information as would occur in a physical exam. Indeed, the Special Agent testified that to obtain the prescription she entered her height as 5'1'' and her weight as 160 lbs. Tr. 93–94. While the Special Agent entered her correct height, her actual weight was 130 lbs. *Id.; see also* Gov. Ex. 45.

[6] While the Florida rule pertaining to the prescribing of anti-obesity drugs allows a physician to delegate the performance of the physical exam to a trained licensed physician's assistant or a licensed advanced registered nurse practitioner, the rule requires that ''the delegating physician must personally review the resulting medical records prior to the issuance of an initial prescription.'' Fla. Admin. Code R. 64B8–9.012(3), Respondent produced no evidence to show that Dr. Carino practiced in this manner. Beyond that, as found above, the raw number of prescriptions being issued by Dr. Carino was staggering and should have at least triggered some inquiry of Dr. Carino as to how he could issue so many prescriptions on a daily basis.

[7] Dr. Catizone further testified as to the dangers posed by illegitimate Internet pharmacies including the ease in which persons are able to obtain controlled substances without having to undergo a physical examination and the potential for fraud. Tr. 485–91.

''that patient would have had to have an in-person examination by that physician''; in other words, a ''face-to-face'' physical exam.[8] *Id.* at 538–39.

Based upon his review of Respondent's prescription records, and more specifically, the records pertaining to Dr. Carino's prescribing, *see* Gov. Ex. 77, Dr. Catizone further testified that ''as a pharmacist [it] would be very unusual to see that many prescriptions sequentially for this type of practice.'' Tr. 504. With respect to the prescriptions issued by Dr. Duncan (who was in Tennessee) and filled by Respondent, Dr. Catizone opined that ''[t]he pattern there again does not follow traditional practice.'' *Id.* at 505. Noting that ''in this case, you have a physician located in a completely different State, and the patient is located in a completely different State than the pharmacy,'' Dr. Catizone concluded that ''[t]here appears to be no relationship between the prescriber and the patient, and the pharmacy.'' *Id.* Dr. Catizone concluded by testifying that Respondent's dispensing of controlled substances to Internet customers was not in compliance with accepted standards of pharmacy practice. *Id.* at 508.

On cross-examination, Dr. Catizone was asked a series of questions regarding how a pharmacist would know whether a prescription was suspicious and had not been issued for a legitimate medical purpose. *Id.* at 516–17. More specifically, Respondent's counsel asked Dr. Catizone how a pharmacist is ''to know that the prescription was generated from an on-line questionnaire or cyberspace evaluation?'' *Id.* at 517. Dr. Catizone answered that if a pharmacist ''received one prescription from a physician, [he] probably wouldn't have a suspicion. But if [he] receive[s] multiple prescriptions from a physician, and that physician is writing for controlled substances, that would invoke a suspicious relationship.'' *Id.* When pressed by Respondent's counsel as to what number of prescriptions ''would invoke a suspicion,''? Dr. Catizone explained that ''any more than 10 prescriptions per day for a physician would invoke a suspicion.'' *Id.* at 517–18. I credit all of Dr. Catizone's testimony.

The Government also called to testify Dr. George J. Van Komen, the former President of The Federation of State Medical Boards of the United States and former Chairman of the State of Utah's Physicians Licensing Board. Gov. Ex. 88, at 3. Based upon his review of Respondent's prescription records, (compiled in Government Ex. 77), Dr. Van Komen concluded that Dr. Carino was engaged in ''a rogue practice, because there is no way that a physician in a normal setting could see anywhere from fifty to a hundred patients, and appropriately and properly manage their weight.'' Tr. 602–03. After noting that Carino was writing prescriptions for patients located all over the country, Dr. Van Komen further testified that:

> The prescribing behavior and practices for Dr. Carino and Dr. Duncan were identical. Both of them wrote large numbers of prescriptions, far larger than one would expect anyone to be able to take care of [in the] normal appropriate safe practice of medicine. And his [Dr. Duncan's] behavior also shows that his prescriptions were going to patients all over the United States as well.

Id. at 604.

Finally, Dr. Van Komen testified that the manner in which Drs. Carino and Duncan were prescribing controlled substances over the Internet ''was totally against any conceivable standard'' of medical practice. *Id.* at 605. On cross-examination, however, Dr. Van Komen acknowledged that it was possible that a physician who had four physician assistants working for him could write over one hundred valid prescriptions a day. *Id.* at 612–13.

Mr. Enemchukwu testified that he stopped filling controlled substance prescriptions from iPharmacy in May 2005, after receiving various materials regarding Internet prescribing which were sent by the DEA Miami office in April 2005 including the 2001 guidance document. *Id.* at 732; Gov. Ex. 18. Mr. Enemchukwu stated, however, that he had no knowledge that iPharmacy was engaged in improper activity. Tr. 733. Mr. Enemchukwu further testified that ''the reason why [he] decided to stop filling those controlled substance prescriptions was not because [he] knew that the doctor was not doing what he was supposed to do,'' i.e., enter into a valid patient-doctor relationship with iPharmacy's customers. *Id.* at 736. Rather, the reason was that if ''the DEA might in any way frown on this, I [didn't] want to be a part of it.'' *Id.*

Mr. Enemchukwu further claimed that he did not obtain knowledge that the iPharmacy prescriptions were not issued in the course of a legitimate patient-doctor relationship until ''[i]n these proceedings.'' *Id.* Mr. Enemchukwu also claimed that he never went to the iPharmacy webpages that were used by its customers and thus ''did not know'' that its customers could select their drugs, the dosage, and count, before submitting their requests to the physicians. *Id.* at 739–40.

Mr. Enemchukwu further testified that he was not familiar with regulations issued by the State of Florida governing the prescribing of obesity drugs. *Id.* at 782; *see also* Gov. Ex. 86. Under these regulations, an initial evaluation must ''be conducted prior to the prescribing, * * * dispensing, or administering of any drug * * * and such evaluation shall include an appropriate physical and complete history; appropriate tests related to medical treatment for weight loss; * * * all in accordance with general medical standards of care.'' Fla. Admin. Code Ann. R.64B8–9.012(3) (reproduced at Gov. Ex. 86, at 2). Moreover, while an initial evaluation can be ''delegated to either a physician's assistant or to an advanced registered nurse practitioner, * * * the delegating physician must personally review the resulting medical records prior to the issuance of an initial prescription.'' *Id.* Furthermore, under the Florida rule, ''[a]t the time of delivering the initial prescription or providing the initial supply of such drugs to a patient, the prescribing physician must personally meet with the patient and personally obtain an appropriate written informed consent from the patient.'' *Id.* R64B8–9.012(5).

Mr. Enemchukwu further maintained that ''[p]harmacists are not mini-doctors,'' and what a pharmacist does ''is completely separate from what the doctor does.'' Tr. 796. When asked on cross-examination how he would know that iPharmacy was ''not a fly-by-night operation that [was] only interested in getting money?,'' Mr. Enemchukwu answered: ''I was filling prescriptions that I believed were valid prescriptions, and prescribed by qualified physicians.'' *Id.* at 819–20. When asked, however, whether as a pharmacist he had a corresponding obligation ''to ensure that the prescriptions are filled properly?,'' Mr. Enemchukwu answered: ''[t]hat the prescriptions are filled properly and prescribed properly, yes.'' *Id.* at 820. Later, when asked whether a pharmacist is ''just as responsible if they filled an unlawful prescription'' as the physician who issued it?, Mr. Enemchukwu answered: ''No.'' *Id.* at 824. Mr. Enemchukwu further maintained that ''[it] would not be fair to hold [a pharmacist] responsible for what somebody else did if they did not know that the prescription was not authorized.'' *Id.* at 824–25.

[8] Dr. Catizone acknowledged that a second physician could rely on the medical records created by another physician who conducted a physical exam or a physical exam conducted by another physician and observed by video conferencing. Tr. 539–40. Respondent did not, however, produce any evidence to show that the three iPharmacy physicians issued prescriptions based on physical exams they observed via video conferencing or their review of a medical record of an exam performed by another physician.

Notwithstanding that he was filling numerous prescriptions for phentermine which were issued by Dr. Carino, Mr. Enemchukwu admitted that he never spoke with Carino and never inquired in to whether he ran a diet practice. *Id.* at 829–30. Mr. Enemchukwu further maintained that it was his understanding that Carino could prescribe to patients in different parts of the country but admitted that he did not inquire as to whether Carino actually could. *Id.* at 830–31. Mr. Enemchukwu justified this stating that he did not know ''what the medical boards of other States are allowing. I don't know what doctors are authorized to do * * * as far as prescribing outside Florida.'' *Id.* at 831.

Later, the Government asked Mr. Enemchukwu whether a physician could issue a legitimate prescription based solely on a questionnaire and without performing a physical examination. *Id.* at 843–44. Mr. Enemchukwu answered: ''I would not approve that, and if I know that as a pharmacist, I would not fill the prescription.'' *Id.* at 844. When asked whether he was ''aware that Dr. Carino was doing examinations on a patient prior to your pharmacy dispensing or issuing a prescription?,'' Mr. Enemchukwu stated: ''[i]t was my impression that he was doing these examinations himself or doing what a physician practicing good medicine would do.'' *Id.* at 844. Mr. Enemchukwu then tried to justify his filling the Carino prescriptions on the grounds that the ''patients'' could have been physically examined by physician assistants or other physicians, or Carino could have ''had offices in multiple States.'' *Id.* at 844–45. Mr. Enemchukwu admitted, however, that he never inquired with Carino as to whether the latter had persons in other parts of the country who were doing physical examinations for him. *Id.* at 849.

Relatedly, Mr. Enemchukwu testified that the frequency of the prescriptions he was filling did not raise his suspicion even though none of the local physicians whose prescriptions he filled for walk-in customers prescribed at the rate of Dr. Carino. *Id.* at 850. When pressed by the Government as to how Carino's rate of prescribing compared to that of local physicians, Mr. Enemchukwu asserted that ''everything we are looking at now is from hindsight.'' *Id.* Mr. Enemchukwu further testified that ''[t]here were questions that I did not ask because I thought everything was okay.'' *Id.* at 852.

Likewise, Mr. Enemchukwu testified that he had had only one conversation with Dr. Duncan, which was about a particular prescription, and that he never asked Duncan about his practice because it was ''obvious'' that he operated a diet practice. *Id.* at 858. When asked whether he had assumed that Duncan had authority ''to practice in different parts of the country,'' Mr. Enemchukwu answered: ''I did not know what his prescribing rights was [sic].'' *Id.* at 858–59. Mr. Enemchukwu then added that ''[i]n Florida, we are allowed to fill prescriptions prescribed by out-of-state doctors.'' *Id.* at 859. Here, too, Mr. Enemchukwu insisted that he ''had no reason to believe that'' the prescriptions issued by Drs. Duncan and Carino were unlawful. *Id.* at 864.

The ALJ specifically declined to credit Mr. Enemchukwu's testimony that he believed that the prescriptions he filled for iPharmacy were issued by its physicians pursuant to a legitimate doctor-patient relationship and that he had no reason to believe to the contrary. *See* ALJ at 29. As the ALJ reasoned, ''it defies [the] imagination to believe that [Mr. Enemchukwu] did not think that something might be wrong when a physician in one state issued prescriptions—thousand of them—to purported patients in other states.'' *Id.* at 30. As the ALJ further explained, ''between January 2004 and May 2005, Respondent filled more than 43,000 prescriptions, or more than 2,700 prescriptions per month, the vast majority of which were for controlled substances and issued by only [three] [9] physicians to individuals all over the United States.'' *Id.* The ALJ thus further found that ''Mr. Enemchukwu knew but refused to acknowledge that the prescriptions he filled were not issued pursuant to a legitimate physician-patient relationship.'' *Id.*

I adopt both of the ALJ's findings. With respect to the finding that Mr. Enemchukwu's testimony (that he had no reason to believe that the iPharmacy prescriptions were invalid) was disingenuous, the ALJ personally observed Mr. Enemchukwu's testimony and was in the best position to evaluate his credibility on this issue of historical fact. *See Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 496 (1951).

Indeed, Mr. Enemchukwu's testimony is implausible. As found above, early on in Trinity's relationship with iPharmacy it was apparent that the prescriptions were illegal. Even under Respondent's theory that it would be possible for a physician using four physician assistants to write over one hundred valid prescriptions a day, as early as May 26, 2004, Respondent filled, on a single day, 182 prescriptions for controlled substances issued by Carino. And by July 30, 2004, Respondent filled, on a single day, 337 prescriptions issued by this same doctor. Moreover, the prescriptions were for ''patients'' located throughout the United States. Notwithstanding this information, Mr. Enemchukwu made no inquiry as to the legitimacy of Carino's prescriptions. Nor did Mr. Enemchukwu inquire as to the legitimacy of Dr. Duncan's prescriptions.

Substantial evidence thus supports the conclusion that Mr. Enemchukwu knew early on in his company's relationship with iPharmacy that the prescriptions were not the result of a legitimate doctor-patient relationship. I therefore also adopt the ALJ's further finding that Mr. Enemchukwu knew that the iPharmacy prescriptions were invalid. Relatedly, I reject as disingenuous Mr. Enemchukwu's testimony that he did not recognize that the prescriptions were illegal until this proceeding.

Discussion

Mootness

At the outset, this case presents the question as to whether this proceeding is now moot. As found above, Respondent's registration expired on November 30, 2006 (shortly after the record was forwarded to me), and Respondent has not submitted a renewal application. Therefore, Respondent no longer has a registration and there is no application to either grant or deny. *See Lockridge*, 71 FR at 77796; *Ronald J. Riegel*, 63 FR 67132, 67133 (1998).

This proceeding began, however, with the immediate suspension of Respondent's registration. As *Lockridge* noted, the issuance of an order of immediate suspension may impose collateral consequences which preclude a finding of mootness. As several courts have noted in cases involving licensed professionals, ''even a temporary suspension followed by a reinstatement does not moot a challenge to the initial suspension because the action 'is harmful to a [professional's] reputation, and the mere possibility of adverse collateral consequences is sufficient to preclude a finding of mootness.' '' *Lockridge,* 71 FR at 77797 (quoting *In re Surrick*, 338 F.3d 224, 230 (3d Cir. 2003) (quoting *Dailey* v. *Vought Aircraft Co.*, 141 F.3d 224, 228 (5th Cir. 1998))). *See also Kirkland* v. *National Mortgage Network, Inc.*, 884 F.2d 1367, 1370 (11th Cir. 1989) (attorney's appeal of the revocation of his *pro hac vice* status was not moot following dismissal of the

[9] As found above, in fact, Respondent filled prescriptions written by three iPharmacy physicians (Carino, Duncan, and Mercado-Francis).

underlying case because ''the brand of disqualification on grounds of dishonesty and bad faith could well hang over his name and career for years to come'').

It is indisputable that an immediate suspension harms a registrant's reputation. Moreover, were Respondent to apply for a new DEA registration in the future, it would be required to disclose the suspension. *See* DEA Form–224, at Section 5. And Respondent may also be required to report this suspension to state authorities. Given that Respondent remains in business,[10] and under DEA's regulations, can apply for a new registration at any time, it is not pure speculation to conclude that Respondent may be impacted by the collateral consequences that attached with the issuance of the immediate suspension order. Moreover, under federal law, title to any controlled substances seized when the immediate suspension was served is dependent upon the outcome of this proceeding. 21 U.S.C. 824(f).

Besides these collateral consequences, I note that neither party has moved to dismiss the proceeding as moot. Moreover, given the resources that both the Government and Respondent have invested in this proceeding, it makes little sense to dismiss this case without issuing a ruling on the merits even if that ruling is limited to assessing whether the suspension of Respondent's registration was warranted under section 304(a), 21 U.S.C. 824(a). I therefore conclude that this case is not moot.

The Statutory Factors

Section 304(a) of the Controlled Substance Act provides that ''[a] registration * * * to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). Section 304(d) further provides that ''[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety.'' 21 U.S.C. 824(d).

In determining the public interest, the Act directs that the Attorney General consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. section 823(f).

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). In this case, I conclude that the suspension of Respondent's registration was justified under factors two and four.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Its Compliance With Applicable Federal, State, and Local Laws

As explained above, under DEA's regulation, a prescription for a controlled substance is unlawful unless it has been ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). While ''[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, * * * a corresponding responsibility rests with the pharmacist who fills the prescription.'' *Id.* ''[T]he person knowingly filling such a purported prescription, as well as the person issuing it, [is] subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id.*

DEA has consistently interpreted this provision as prohibiting a pharmacist from filling a prescription for controlled substances when he either ''knows or has reason to know that the prescription was not written for a legitimate medical purpose.'' *Medic-Aid Pharmacy*, 55 FR 30043, 30044 (1990); *see also Frank's Corner Pharmacy*, 60 FR 17574, 17576 (1995); *Ralph J. Bertolino*, 55 FR 4729, 4730 (1990). *See also United States* v. *Seelig*, 622 F.2d 207, 213 (6th Cir. 1980). This Agency has further held that ''[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.'' *Bertolino*, 55 FR at 4730 (citations omitted). This is also apparently the standard applicable under Florida law. *See* Fla. Stat. § 465.016(s) (dispensing drug when ''pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship'' is grounds for discipline).

Respondent concedes that the iPharmacy prescriptions were not legitimate. *See* Resp. Br. at 13. Respondent contends, however, that the Government did not meet its burden of proof because various government witnesses ''testified that it was possible for these prescriptions to have been legally and properly issued (although they were not) through the use of physician assistants or referring physicians.'' *Id.* According to Respondent, the Government failed to show ''that Respondent knew or had reason to believe that the prescriptions were improper.'' *Id.*

The Government did, however, prove that it was more likely than not that Respondent knew that these prescriptions were illegitimate.[11] While it is true that one of the Government's witnesses acknowledged that it would be possible for a physician using four physician assistants to write over one hundred valid prescriptions a day, the dispensing records showed that Respondent was filling prescriptions far in excess of this figure. As found above, on May 26, 2004, Respondent filled 182 controlled substance prescriptions issued by Dr. Carino, and on July 30, 2004, Respondent filled 337 controlled substance prescriptions issued by Carino. Moreover, on September 16, 2004, shortly after Dr. Duncan began issuing prescriptions, Respondent filled 272 of them on a single day. These are only representative examples; the dispensing log is replete with evidence showing that through May 2005, Respondent dispensed a similar volume of prescriptions issued by iPharmacy's

[10] The case thus stands in contrast to one where a registrant has either gone out of business or ceased professional practice.

[11] *See Metropolitan Stevedore Co.* v. *Rambo*, 521 U.S. 121, 137 n.9 (1997) (other citation omitted) (preponderance standard requires only that the ultimate factfinder ''believe that the existence of a fact is more probable than its nonexistence before * * * find[ing] in favor of the party who has the burden to persuade the [factfinder] of the fact's existence'').

physicians on almost every other day it was open for business.

As recognized in other cases, the sheer volume of prescriptions thus establishes that it more likely than not that Respondent's owner knew that the prescriptions were illegitimate and intentionally ignored this. *See, e.g., Bertolino*, 55 FR 4729, 4730. Beyond that, the prescriptions were being sent to persons in every part of the country. Moreover, there is also some evidence that the iPharmacy physicians performed their reviews in rapid-fire fashion. Yet none of this prompted Respondent's owner to question the legality of the prescriptions. Contrary to Mr. Enemchukwu's assertion that ''everything we are looking at now is from hindsight,'' Tr. 850, shortly into the relationship with iPharmacy, Mr. Enemchukwu was receiving abundant evidence—on a nearly daily basis—to know that iPharmacy (and its doctors) were engaged in illegal activity.[12]

I thus conclude that Respondent is responsible for the dispensing of more than 43,000 illegal prescriptions and the diversion of more than two million dosage units of various controlled substances. Not only is this a violation of federal law, *see* 21 U.S.C. 841(a), and appears to be a violation of Florida law,[13] *see* Fla. Stat. 465.016(s), it is manifest that diversion on this scale creates an extraordinary threat to the public health and safety. Respondent's experience in dispensing controlled substances and its record of compliance with applicable laws thus provide abundant reason to conclude that Respondent committed acts which rendered its registration ''inconsistent with the public interest'' and thus warranted the suspension of its registration under section 304(a). 21 U.S.C. 824(a)(4).[14]

Order

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 28 CFR 0.100(b) & 0.104, the order of immediate suspension of DEA Certificate of Registration, BT2863668, issued to Trinity Health Care Corporation, d/b/a/ Oviedo Discount Pharmacy, is hereby affirmed.

Dated: May 21, 2007,

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–10627 Filed 6–1–07; 8:45 am]

BILLING CODE 4410–09–P

[12] Respondent's owner makes no claim that it was reasonable for him to rely on the representations made by Mr. Butler both orally and in the contract regarding the legality of internet prescribing and dispensing. This is rightly so for three reasons: (1) Mr. Enemchukwu is a licensed professional and is responsible for knowing the rules applicable to the practice of his profession, (2) in April 2001, nearly three years before he entered into the contract with Mr. Butler, DEA published guidance which explained the application of existing federal laws and regulations to the proposed arrangement, and (3) other bodies such as the AMA and Federation of State Medical Boards had published information regarding the invalidity of internet prescribing under both ethical and legal standards. *See* Gov. Exs. 3 & 4.

[13] The Government also argues that Respondent violated various state laws by dispensing to persons in States where it was not licensed to do so. *See* Gov. Br. at 48. In its brief, the Government did not, however, cite to specific laws establishing the licensure requirements of various States. Moreover, the Government's proof was largely confined to an e-mail in which Respondent sought reimbursement for the fees it paid to obtain the permits. The Government's evidence did not cite to specific instances in which Respondent dispensed in violation of a particular State's law. *See* Tr. 361–62.Therefore, I conclude that this allegation had not been proved with substantial evidence.

[14] Based on Mr. Enemchukwu's insistence that he did not know and had no reason to believe that the iPharmacy prescriptions were unlawful, the ALJ further concluded that he had failed to acknowledge his wrongdoing and thus was not ''willing to accept the responsibilities inherent in a DEA registration.'' ALJ at 31. While I agree with the ALJ's view of the evidence, there is neither an existing registration to revoke nor a pending application to deny. As this case is now limited to a review of the validity of the suspension, there is no need to considerer this finding and weigh it against the slight mitigating evidence in the case.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Dale L. Taylor, M.D.; Revocation of Registration

On February 2, 2007, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Dale L. Taylor (Respondent) of Winter Haven, Florida. The Order immediately suspended Respondent's Certificate of Registration, BT8732631, as a practitioner, based on my preliminary finding that Respondent was diverting large quantities of controlled substances through an internet-prescribing scheme. Show Cause Order at 2. I therefore concluded that Respondent's ''continued registration during the pendency of these proceedings would constitute an imminent danger to the public health and safety because of the substantial likelihood that [he would] continue to divert controlled substances to drug abusers.'' *Id.* at 3.

The Show Cause Order also alleged that Respondent's ''continued registration is inconsistent with the public interest.'' *Id.* at 1. More specifically, the Show Cause Order alleged that beginning in May 2004, Respondent had been issuing prescriptions for controlled substances over the Internet ''without the benefit of a legitimate doctor-patient relationship and outside the course of professional practice.'' *Id.* The Show Cause Order alleged that Respondent had admitted to DEA investigators that he had done such prescribing for three different internet entities including Pacific MD, Norco Worldwide, and *BestRxCare.com. Id.* at 1–2.

The Show Cause Order further alleged that Respondent had admitted that he would log onto a Web site and view a list of customers, review their medical records, and then contact each person by telephone. *Id.* at 2. The Show Cause Order alleged that Respondent had admitted that his ''role was simply to make sure that the type of medication, strength and quantity were consistent with the online customers' alleged medical need,'' and he had ''never called patients after authorizing their drug orders to provide aftercare.'' *Id.* Relatedly, the Show Cause Order alleged that Respondent told investigators that he took ''the on-line patient's word when determining their need for hydrocodone.'' *Id.*

The Show Cause Order alleged that BestRxCare.com's orders were filled by CRJ Pharmacy and that the pharmacy's records for the period from July 3, 2006, to January 22, 2007, showed that it had dispensed ''approximately 6,000 [i]nternet drug orders that [Respondent] authorized.'' *Id.* The Show Cause Order alleged that ''approximately 85% of these [i]nternet drug orders were for hydrocodone combination products.'' *Id.*

Finally, the Show Cause Order alleged that Respondent had admitted to investigators that he had ''authorized controlled substance [prescriptions] for online customers throughout the United States'' even though he acknowledged that he was ''only licensed to practice medicine in'' Florida. *Id.* The Show Cause Order thus alleged that Respondent had violated various state laws that prohibit ''unlicensed, out-of-state physicians issuing controlled substance prescriptions to state residents.'' *Id.*

On February 6, 2007, DEA Investigators served the Show Cause Order and Immediate Suspension, which notified Respondent of his right to a hearing, by leaving it at his residence with his wife. *Cf.* F.R.C.P. 4(e). Since that time, neither Respondent, nor anyone purporting to represent him, has responded. Because (1) more than thirty days have passed since service of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived his right to a hearing. *See* 21

CFR 1301.43(d). I therefore enter this final order without a hearing based on relevant material in the investigative file and make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BT8732631, as a practitioner, with an expiration date of November 30, 2006. On October 11, 2006, Respondent, however, applied for a renewal of his registration via the Internet. Therefore, in accordance with the Administrative Procedure Act, Respondent's registration remains in existence pending the issuance of a final order in this matter. *See* 5 U.S.C. 558(c).

According to the investigative file, on January 26, 2007, DEA investigators interviewed Respondent regarding his participation in various schemes involving the dispensing of controlled substance over the Internet. Respondent told the investigators that in early to mid 2004, he answered an advertisement placed by an entity known as Pacific MD in a Gainesville, Florida newspaper which sought physicians to perform internet consultations. In May 2004, Pacific MD engaged Respondent to review patient records and if the records were not more than two years old, contact the ''patient'' and authorize a prescription which was typically for either combination products containing hydrocodone, a schedule III controlled substance, *see* 21 CFR 1308.13(e), or Xanax (alprazolam), a schedule IV controlled substance. *See* 21 CFR 1308.14(c). Respondent related that in June 2005, he quit working for Pacific MD because it owed him money.

At some date not specified in the investigative file, Respondent submitted his credentials to a temporary employment service that specialized in medical staffing. Thereafter, Respondent was contacted by another entity, Norco Worldwide, and began working for it. Norco gave Respondent a password which enabled him to review medical records submitted by Norco's customers. According to Respondent, a physician's assistant would contact and talk to the patients and authorize a prescription for a controlled substance using his DEA registration. Respondent further admitted that he wrote prescriptions on a computer program, which were then submitted electronically to a pharmacy which filled them. Respondent stated that he worked for Norco from October 2004 through December 2004 and authorized approximately forty prescriptions per day. Respondent further told investigators that he quit Norco because he wasn't comfortable with the fact that a physician's assistant was authorizing controlled substance prescriptions using his DEA registration.

Shortly thereafter, Respondent was contacted by one Chris Larson. Larson had also formerly worked for Norco and had started two Web sites, BestRx.com, and your painmanagement.com, which allowed persons to order controlled substances over the Internet by completing a questionnaire and submitting their ''medical records.'' Larson also owned several pharmacies that filled prescriptions for his Web sites.

Respondent told investigators that he would log onto the *BestRx.com* Web site and obtain a list of ''patients'' with ''appointments.'' Respondent would then review the ''patient's'' medical records before telephoning the person. Respondent asserted that he required the records to be on the previous physician's letterhead and be signed. Respondent further maintained that he reviewed the records to determine whether the drug sought was consistent with the customer's medical condition.

When asked by investigators whether he had ever contacted any of the customer's prior physicians, Respondent claimed that he had but could not recall their names. Respondent further admitted that he was not authorized to require that a customer undergo additional testing and that the customer had to go to their original physician to obtain such tests.

Respondent admitted that he simply trusted that the records submitted by the website's customers were not fraudulent and took the customer's word during the phone consultation. Based on the medical records and the phone conversation, Respondent would prescribe controlled substances. Respondent further admitted that he never called a customer to follow up. Respondent also admitted that on numerous occasions, customers would call him seeking more drugs.

One of the investigators then asked Respondent if he maintained any patient files. Respondent claimed that he kept meticulous record for all of his ''patients'' at his residence in a plastic storage bin located in his office. Respondent's wife, however, told investigators that the bin did not contain any medical records but merely the names and addresses of persons Respondent had spoken with.

Respondent admitted that he had authorized controlled substances prescriptions for persons located throughout the United States even though he held only a Florida medical license. Respondent further admitted that he authorized as many as twenty to twenty-five prescriptions a day while working for *BestRxCare.com.*

The investigators asked Respondent to voluntarily surrender his DEA registration. Respondent refused and stated that he intended to continue authorizing prescriptions through the Internet because on-line medicine is the wave of the future. Respondent acknowledged that absent use of a webcam, it was not possible to verify the validity of a ''patient'' and his or her medical needs. Respondent stated that until then, he would continue to take online patients at their word and accept their records as authentic.

On January 22, 2007, DEA personnel executed an Administrative Inspection Warrant at CRJ Pharmacy and YPM Total Care Pharmacy, two of the businesses owned by Chris Larson. During the search, DEA obtained each pharmacy's dispensing records; the records were then reviewed by a DEA intelligence analyst. According to the records of CRJ Pharmacy, between July 2006 and January 2007, Respondent authorized 6,069 prescriptions for 1,098 persons who resided in forty-six States and the District of Columbia. Of the prescriptions, 5,156 were for hydrocodone-combination products, and 526 were for alprazolam.

The records for YPM showed that from November 27, 2006, through January 17, 2007, Respondent authorized prescriptions for another 171 patients who resided in thirty-six States. More specifically, Respondent authorized 367 orders for hydrocodone-combination products and thirty-three orders for alprazolam. The records also showed that on a single day, Respondent had written as many as fifty-six orders which were filled by YPM.

Discussion

Section 304(a) of the Controlled Substances Act provides that a registration to ''dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the

manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

• ''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); see also *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

Finally, section 304(d) provides that ''[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety.'' 21 U.S.C. 824(d). In this case I conclude that Factors Two and Four establish that allowing Respondent to continue to dispense controlled substances would be inconsistent with the public interest and therefore will order the revocation of Respondent's registration and the denial of his pending application for renewal.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Respondent's Compliance With Applicable Laws

The central issue in this case is whether the prescriptions Respondent issued pursuant to his employment with the Web sites *BestRx.com* and *yourpainmanagement.com* complied with Federal law. As explained below, the evidence conclusively demonstrates that Respondent used his prescribing authority to act as a drug pusher; the only difference between him and a street dealer was that he did not physically distribute the drugs to the customers of the aforementioned websites.

Under DEA regulations, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.'' *Id.* As the Supreme Court recently explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon*, 126 S.Ct. 904, 925 (2006) (citing *Moore*, 423 U.S. 122, 135 (1975)).

It is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to be acting ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' Under the State of Florida's regulations, a physician ''shall not provide treatment recommendations, including issuing a prescription, via electronic or other means, unless the following elements have been met:

(a) A documented patient evaluation, including history and physical examination to establish the diagnosis for which any legend drug is prescribed.

(b) Discussion between the physician * * * and the patient regarding treatment options and the risks and benefits of treatment.

(c) Maintenance of contemporaneous medical records meeting the requirements of [Florida regulations].

Fla. Admin. Code R. 64B8–9.014.

Relatedly, the American Medical Association's *Guidance for Physicians on Internet Prescribing* has explained that to establish a bonafide doctor-patient relationship, a ''physician shall'':

i. Obtain a reliable medical history and perform a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying conditions and/or contraindications to the treatment recommended/provided; ii. have sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment(s); iii. as appropriate, follow up with the patient to assess the therapeutic outcome; iv. maintain a contemporaneous medical record that is readily available to the patient and * * * to his * * * other health care professionals; and v. include the electronic prescription information as part of the patient medical record.

(quoted in *William R. Lockridge*, 71 FR 77791,77798 (2006)).

To similar effect are the guidelines issued by the Federation of State Medical Boards of the United States, Inc. *See Model Guidelines for the Appropriate Use of the Internet in Medical Practice*. According to the Guidelines, ''[t]reatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (face-to-face) settings. *Treatment, including issuing a prescription, based solely on an online questionnaire or consultation does not constitute an acceptable standard of care.*'' Id. at 4 (emphasis added). Cf. DEA, *Dispensing and Purchasing Controlled Substances over the Internet*, 66 FR 21181, 21183 (2001) (guidance document) (''Completing a questionnaire that is then reviewed by a doctor hired by the Internet pharmacy could not be considered the basis for a doctor/patient relationship.'').[1]

Under the Florida rule and standards of the medical profession, it is clear that Respondent did not prescribe controlled substances pursuant to a bonafide doctor-patient relationship and thus did not comply with federal law. Respondent did not physically examine the ''patients.'' Nor did he ever act in a consultative capacity ''with another physician who ha[d] an ongoing relationship with the patient, and who ha[d] agreed to supervise the patient's treatment, including the use of any prescribed medications.'' Fla. Admin. Code R. 64B8–9.014(4).

Moreover, Respondent admitted that he was not authorized by his employer to order that a customer undergo additional testing. Respondent also admitted that he never called a ''patient'' to follow-up on whether the treatment was successful. Finally, notwithstanding his statement to investigators that he kept meticulous records, the evidence establishes that Respondent did not maintain medical records on his purported patients. Thus, it is clear that under Florida law as well as existing professional standards, Respondent did not establish a bonafide doctor-patient relationship with the persons he prescribed controlled substances for. *See*, *e.g.*, Fla. Admin. Code R. 64B8–9.014.

Moreover, the investigative file establishes that Respondent issued thousands of prescriptions for controlled substances and did so notwithstanding the potential for fraud that was inherent in the scheme and his admission that on numerous occasions, customers called him requesting more controlled substances. As recognized in *Lockridge* and other agency orders, '''[le]gally there is absolutely no

[1] The guidance document reflects this Agency's understanding of what constitutes a bonafide doctor-patient relationship under state laws and existing professional standards. 66 FR 21182–83.

difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription.'" 71 FR at 77800 (quoting *Mario Avello, M.D.*, 70 FR 11695, 11697 (2005)). See also *Floyd A. Santner, M.D.*, 55 FR 37581 (1990). In short, Respondent was not engaged in the legitimate practice of medicine, but rather, was dealing drugs.

Accordingly, Respondent's experience in dispensing controlled substances and his record of compliance with applicable laws makes plain that his continued registration would "be inconsistent with the public interest." 21 U.S.C. 824(a)(4). Moreover, for the same reasons which led me to find that Respondent posed "an imminent danger to the public health or safety," *id.* section 824(d), I conclude that the public interest requires that his registration be revoked effective immediately and his pending application for renewal be denied. *See* 21 CFR 1316.67.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate Registration, BT8732631, issued to Dale L. Taylor, M.D., be, and it hereby is, revoked. I further order that Respondent's pending application for renewal of his registration be, and it hereby is, denied. This order is effective immediately.

Dated: May 21, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–10622 Filed 6–1–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

May 29, 2007.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures specified in 5 CFR 1320.13, for the Office of Management and Budget (OMB) review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by June 19, 2007. A copy of this ICR, with applicable supporting documentation, from *RegInfo.gov at http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov.*

Comments and questions about the ICR listed below should be submitted to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316) (this is not a toll-free number), and received 5 days prior to the requested OMB approval date.

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Office of the Assistant Secretary for Administration and Management.

Title: Contractor Data Collection Form.

OMB Number: 1225–0NEW.

Frequency: On occasion.

Affected Public: Individuals.

Number of Respondents: 5,000.

Estimated Time per Respondent: 12 minutes.

Total Burden Hours: 1,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: Under Homeland Security Presidential Directive 12 (HSPD–12), federal agencies are required to comply with a standard for identification issued to Federal employees and contractors known as FIPS–201 Personal Identity Verification (PIV) of Federal Employees and Contractors. In order to comply with the directive and issue the new federal credential to contractor personnel, the DOL must collect certain data required for the creation of an applicant record in its Personal Identity Verification II (PIV–II) system and for issuance of the PIV–II badge.

The information will be used to determine suitability for the issuance of DOL credentials. The information will be used to identity proof and register applicants as part of the Personal Identity Verification process. Providing this information is voluntary; however, failure to submit this information may result in denial of a DOL credential. Without this form, DOL contractors are not reviewed with the same rigor applied to its Federal staff with respect to HSPD–12/PIV–II credentialing standards.

Edward C. Hugler,

Deputy Assistant Secretary for Administration and Management.

[FR Doc. E7–10649 Filed 6–1–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: Under Title I of the Workforce Investment Act (WIA) of 1998 (Pub. L. 105–220), the Secretary of Labor annually determines the Lower Living Standard Income level (LLSIL) for uses described in the law. WIA defines the term "Low Income Individual" as one who qualifies under various criteria, including an individual who received income for a six-month period that does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2007 and references the current 2007 Health and Human Services "Poverty Guidelines."

DATES: *Effective Date:* This notice is effective on the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to: Mr. Evan Rosenberg, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4464, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Evan Rosenberg, telephone 202–693–3593; fax 202–693–3532 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION: It is the purpose of the Workforce Investment Act of 1998 "to provide workforce investment activities, through statewide and local workforce investment systems,

that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation.''

The LLSIL is used for several purposes under WIA. Specifically, WIA Section 101(25) defines the term ''low income individual'' for eligibility purposes, and Sections 127(b)(2)(C) and 132(b)(1)(B)(v)(IV) define the terms ''disadvantaged youth'' and ''disadvantaged adult'' in terms of the poverty line or LLSIL for state formula allotments. The Governor and state/local workforce investment boards (WIBs) use the LLSIL for determining eligibility for youth, eligibility for employed adult workers for certain services and for the Work Opportunity Tax Credit (WOTC). We encourage the Governors and state/local WIBs to consult WIA regulations and the preamble to the WIA Final Rule (published at 65 FR 49294 August 11, 2000) for more specific guidance in applying the LLSIL to program requirements. The Department of Health and Human Services (HHS) published the annual 2007 update of the poverty-level guidelines in the **Federal Register** at 72 FR 3147–3148 on January 24, 2007. The HHS 2007 Poverty guidelines may also be found on the Internet at: *http://aspe.hhs.gov/poverty/07fedreg.htm.* ETA plans to have the 2007 LLSIL available on its Web site at *http://www.doleta.gov/llsil/.*

WIA Section 101(24) defines the LLSIL as ''that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the Secretary.'' The most recent lower living family budget was issued by the Secretary in the fall of 1981. The four-person urban family budget estimates, previously published by the Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data to ETA through which it develops the LLSIL tables.

ETA published the 2006 updates to the LLSIL in the **Federal Register** of June 1, 2006, at 71 FR 31215. This notice again updates the LLSIL to reflect cost of living increases for 2006, by applying the percentage change in the December 2006, Consumer Price Index for All Urban Consumers (CPI-U), compared with the December 2005, CPI–U to each of the June 1, 2006, LLSIL figures. Those updated figures for a family-of-four are listed in Table 1, by region for both metropolitan and non-metropolitan areas. Figures in all of the accompanying tables are rounded up to the nearest tenth. Since low income individuals, ''disadvantaged adult'' and ''disadvantaged youth'' may be determined by family income at 70 percent of the LLSIL, pursuant to WIA Sections 101(25), 127(b)(2)(C), and 132(b)(1)(B)(v)(IV), respectively, those figures are listed below as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virgin Islands.

Midwest

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

South

Alabama, American Samoa, Arkansas, Delaware, District of Columbia, Florida, Georgia, Northern Marianas, Oklahoma, Palau, Puerto Rico, South Carolina, Kentucky, Louisiana, Marshall Islands, Maryland, Micronesia, Mississippi, North Carolina, Tennessee, Texas, Virginia, and West Virginia.

West

Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2.

For Alaska, Hawaii, and Guam, the year 2006 figures were updated from the June 1, 2006, ''State Index'' based on the ratio of the urban change in the state (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional metropolitan change.

Data on 23 selected MSAs are also available. These are based on semiannual CPI–U changes for a 12-month period ending in December 2006. The updated LLSIL figures for these MSAs and 70 percent of the LLSIL are reported in Table 3.

Table 4 below lists each of the various figures at 70 percent of the updated 2007 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses. Table 5, 100 percent of LLSIL, is used to determine self-sufficiency as noted at 20 CFR 663.230 of WIA Regulations and WIA Section 134(d)(3)(A)(ii).

Use of These Data

Governors should designate the appropriate LLSILs for use within the state from Tables 1 through 3. Tables 4 and 5 may be used with any of the levels designated. The Governor's designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan areas within the state, or it may involve further calculations. For example, the State of New Jersey may have four or more LLSIL figures for Northeast metropolitan, Northeast non-metropolitan, portions of the State in the New York City MSA, and those in the Philadelphia MSA. If a workforce investment area includes areas that would be covered by more than one figure, the Governor may determine which is to be used.

Under 20 CFR 661.110, a state's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with the WIA and the WIA regulations.

Disclaimer on Statistical Uses

It should be noted, the publication of these figures is only for the purpose of meeting the requirements specified by WIA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI–U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under WIA as defined in the law and regulations.

Lower Living Standard Income Level for 2007

Under Title I of the Workforce Investment Act of 1998 (Pub. L. 105–220) (WIA), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL). This Notice announces the LLSIL Tables for 2007. WIA requires the Department of Labor to update and publish the LLSIL tables annually. The LLSIL tables are used for several purposes under WIA, determining eligibility for youth and for the Work Opportunity Tax Credit.

Signed at Washington, DC, this 29th day, of May, 2007.

Emily Stover DeRocco,

Assistant Secretary, ETA.

Attachments

TABLE 1.—LOWER LIVING STANDARD INCOME LEVEL (FOR A FAMILY OF FOUR PERSONS) BY REGION [1]

Region [2]	2007 adjusted LLSIL	70 percent LLSIL
Northeast:		
Metro	$36,070	$25,250
Non-Metro [3]	34,630	24,240
Midwest:		
Metro	32,110	22,480
Non-Metro	30,450	21,320
South:		
Metro	30,790	21,550
Non-Metro	29,700	20,790
West:		
Metro	35,220	24,660
Non-Metro [4]	34,080	23,860

[1] For ease of use, these figures have been rounded to the next highest ten dollars.

[2] Metropolitan area measures were calculated from the weighted average CPI–Us for city size classes A and B/C. Non-metropolitan area measures were calculated from the CPI–Us for city size class D.

[3] Non-metropolitan area percent changes for the Northeast region are no longer available. The Non-metropolitan percent change was calculated using the U.S. average CPI–U for city size Class D.

[4] Non-metropolitan area percent changes for the West region are unpublished data.

TABLE 2.—LOWER LIVING STANDARD INCOME LEVEL (FOR A FAMILY OF FOUR PERSONS)—ALASKA, HAWAII AND GUAM [1]

Region	2007 adjusted LLSIL	70 percent LLSIL
Alaska:		
Metro	$43,340	$30,340
Non-Metro [2]	42,760	29,930
Hawaii, Guam:		
Metro	46,370	32,460
Non-Metro [2]	45,650	31,960

[1] Rounded to next highest ten dollars.

[2] Non-Metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI–Us for city size Class D in the Western Region.

TABLE 3.—LOWER LIVING STANDARD INCOME LEVEL (FOR A FAMILY OF FOUR PERSONS) 23 MSAS [1]

Metropolitan statistical areas (MSAs)	2007 Adjusted LLSIL	70 percent LLSIL
Anchorage, AK	$43,340	$30,340
Atlanta, GA	30,470	21,330
Boston-Brockton-Nashua, MA/NH/ME/CT	39,520	27,670
Chicago-Gary-Kenosha, IL/IN/WI	33,580	23,510
Cincinnati-Hamilton, OH/KY/IN	32,410	22,690
Cleveland-Akron, OH	33,020	23,120
Dallas-Ft. Worth, TX	29,510	20,660
Denver-Boulder-Greeley, CO	34,040	23,830
Detroit-Ann Arbor-Flint, MI	31,710	22,200
Honolulu, HI	46,370	32,460
Houston-Galveston-Brazoria, TX	28,700	20,090
Kansas City, MO/KS	31,250	21,870
Los Angeles-Riverside-Orange County, CA	37,220	26,050
Milwaukee-Racine, WI	31,860	22,300
Minneapolis-St. Paul, MN/WI	32,350	22,640
New York-Northern NJ-Long Island, NY/NJ/CT/PA	38,160	26,710
Philadelphia-Wilmington-Atlantic City, PA/NJ/DE/MD	35,230	24,660
Pittsburgh, PA	38,510	26,960
St. Louis, MO/IL	30,920	21,650
San Diego, CA	39,980	27,990
San Francisco-Oakland-San Jose, CA	37,480	26,240
Seattle-Tacoma-Bremerton, WA	37,810	26,470
Washington-Baltimore, DC/MD/VA/WV [2]	38,290	26,800

[1] Rounded to next highest ten dollars.

[2] Baltimore and Washington are now calculated as a single metropolitan statistical area.

Table 4.—Seventy Percent of Updated 2007 Lower Living Standard Income Level (LLSIL), by Family Size

To use the seventy percent LLSIL value, where it is stipulated for WIA programs, individuals must begin by locating the region or metropolitan area where they reside. These are listed in Tables 1, 2 and 3. Individuals must locate their region or metropolitan statistical area and then find the seventy percent LLSIL amount for that location. The seventy percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a family of four. Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult the table below.

To use Table 4, locate the seventy percent LLSIL value that applies to the

individual's region or metropolitan area from Tables 1, 2 or 3. Find the same number in the ''family of four'' column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure appears in a shaded block. Individuals from these size families may consult the 2007 HHS poverty guidelines found in the **Federal Register**, Vol. 72, No. 15, January 24, 2007, pp. 3147–3148 (on the Internet at *http://aspe.hhs.gov/poverty/07fedreg.htm*) to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their states.

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
$7,240	$11,860	$16,280	$20,090	$23,710	$27,730
7,440	12,190	16,740	20,660	24,380	28,520
7,490	12,270	16,840	20,790	24,540	28,700
7,680	12,580	17,270	21,320	25,160	29,430
7,680	12,590	17,280	21,330	25,170	29,440
7,760	12,720	17,460	21,550	25,430	29,740
7,800	12,780	17,540	21,650	25,550	29,880
7,880	12,910	17,720	21,870	25,810	30,190
8,000	13,100	17,990	22,200	26,200	30,640
8,030	13,160	18,070	22,300	26,320	30,780
8,100	13,270	18,210	22,480	26,530	31,030
8,160	13,360	18,340	22,640	26,720	31,250
8,170	13,390	18,380	22,690	26,780	31,320
8,330	13,650	18,730	23,120	27,290	31,910
8,470	13,880	19,050	23,510	27,750	32,450
8,580	14,060	19,310	23,830	28,120	32,890
8,590	14,080	19,330	23,860	28,160	32,930
8,730	14,310	19,640	24,240	28,610	33,460
8,880	14,550	19,980	24,660	29,100	34,040
9,090	14,900	20,460	25,250	29,800	34,850
9,380	15,370	21,110	26,050	30,740	35,950
9,450	15,490	21,260	26,240	30,970	36,220
9,530	15,620	21,450	26,470	31,240	36,530
9,620	15,760	21,640	26,710	31,520	36,860
9,650	15,820	21,710	26,800	31,630	36,990
9,710	15,910	21,840	26,960	31,820	37,210
9,970	16,330	22,420	27,670	32,660	38,190
10,080	16,520	22,680	27,990	33,030	38,630
10,780	17,660	24,250	29,930	35,320	41,310
10,930	17,910	24,580	30,340	35,810	41,870
11,510	18,860	25,890	31,960	37,720	44,110
11,690	19,160	26,300	32,460	38,310	44,800

Table 5.—Updated 2007 LLSIL (100%), by Family Size

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the state or local level, begin by locating the metropolitan area or region from Table 1, 2 or 3. The individual must locate their region or metropolitan statistical area and then find the 2007 Adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of four in the column below. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the minimum figure States must set for determining whether employment leads to self-sufficiency under WIA programs.

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
$10,340	$16,940	$23,250	$28,700	$33,870	$39,610
10,630	17,420	23,910	29,510	34,830	40,730
10,700	17,530	24,060	29,700	35,050	40,990
10,970	17,970	24,670	30,450	35,940	42,030
10,970	17,980	24,690	30,470	35,960	42,050
11,090	18,170	24,940	30,790	36,340	42,500
11,140	18,250	25,050	30,920	36,490	42,670
11,250	18,440	25,320	31,250	36,880	43,130
11,420	18,710	25,690	31,710	37,420	43,760
11,470	18,800	25,810	31,860	37,600	43,970
11,560	18,950	26,010	32,110	37,890	44,320
11,650	19,090	26,210	32,350	38,180	44,650
11,670	19,130	26,260	32,410	38,250	44,730
11,890	19,490	26,750	33,020	38,970	45,570
12,090	19,820	27,200	33,580	39,630	46,350
12,260	20,090	27,580	34,040	40,170	46,980
12,270	20,110	27,610	34,080	40,220	47,040

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
12,470	20,440	28,060	34,630	40,870	47,790
12,680	20,780	28,530	35,220	41,560	48,610
12,690	20,790	28,540	35,230	41,580	48,620
12,990	21,290	29,220	36,070	42,570	49,780
13,400	21,960	30,150	37,220	43,920	51,370
13,500	22,120	30,360	37,480	44,230	51,730
13,620	22,310	30,630	37,810	44,620	52,180
13,740	22,520	30,910	38,160	45,030	52,670
13,790	22,600	31,020	38,290	45,190	52,850
13,870	22,730	31,200	38,510	45,450	53,150
14,230	23,320	32,020	39,520	46,640	54,540
14,400	23,590	32,390	39,980	47,180	55,180
15,400	25,230	34,640	42,760	50,460	59,010
15,610	25,580	35,110	43,340	51,150	59,810
16,440	26,940	36,980	45,650	53,870	63,000
16,700	27,360	37,560	46,370	54,720	64,000

[FR Doc. E7–10662 Filed 6–1–07; 8:45 am]

BILLING CODE 4510–FT–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice; Correction

May 23, 2007.

TIME AND DATE: 10 a.m., Thursday, May 31, 2007.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Jaxun* v. *Asarco, LLC,* Docket No. WEST 2006–416–DM. (Issues include whether the Administrative Law Judge erred in requiring a miner pursuing a claim under section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(3), to obtain representation or risk dismissal of his claim.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subjects to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 07–2785 Filed 5–31–07; 11:28 am]

BILLING CODE 6735–01–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

High Intensity Drug Trafficking Areas; Petitions for Designation

AGENCY: Office of National Drug Control Policy.

ACTION: Notice.

SUMMARY: Pursuant to the Office of National Drug Control Policy Reauthorization Act of 2006, Public Law 109–469, section 707(c), the Director, National Drug Control Policy is establishing regulations under which interested coalitions of law enforcement agencies from an area may petition for designation as a high intensity drug trafficking area.

DATES: Comments must be received by ONDCP on or before August 3, 2007.

ADDRESSES: Written comments may be submitted through electronic mail at *ondcp_hidta@ondcp.eop.gov*, or via facsimile at (202) 395–6721 to Executive Office of the President, Office of National Drug Control Policy, Office of State, Local and Tribal Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Grayson, Policy Analyst, Office of State, Local, and Tribal Affairs, Executive Office of the President, Office of National Drug Control Policy, 750 17th Street, NW., Washington, DC 20503; *DGrayso@ondcp.eop.gov;* (202) 395–4582 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Anti-Drug Abuse Act of 1988, the ONDCP Reauthorization Act of 1998, and the ONDCP Reauthorization Act of 2006 authorize the Director of the Office of National Drug Control Policy (ONDCP) to designate areas within the United States that exhibit serious drug trafficking problems and harmful impact of other areas of the country as High Intensity Drug Trafficking Areas (HIDTA). The HIDTA Program provides federal resources to those areas to help eliminate or reduce drug trafficking and its harmful consequences. Law enforcement organizations within HIDTAs assess drug trafficking problems and design specific initiatives to reduce of eliminate the production, manufacture, transportation, distribution, and use of illegal drugs and money laundering.

When designating a new HIDTA or adding counties to existing HIDTAs, the Director of ONDCP consults with the Attorney General, Secretary of Homeland Security, Secretary of Treasury, heads of national drug control agencies, and the appropriate governors, and considers the extent to which—

(1) The area is a significant center of illegal drug production, manufacturing, importation, or distribution;

(2) State, local, and tribal law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem;

(3) Drug-related activities in the area are having a significant harmful impact in the area, and in other areas of the country; and

(4) A significant increase in allocation of Federal resources is necessary to respond adequately to drug-related activities in the area.

The HIDTA Program helps improve the effectiveness and efficiency of drug control efforts by facilitating cooperation among drug control organizations through resource and information sharing, collocation, and implementing joint initiatives. HIDTA funds help Federal, State, local, and tribal law enforcement organizations invest in infrastructure and joint initiatives to confront drug trafficking organizations.

Each HIDTA is governed by its own executive board comprised of Federal, State and local law enforcement officials from the designated HIDTA region. The executive boards facilitate interagency drug control efforts to eliminate or reduce drug threats.

HIDTA-designated counties comprise approximately 13 percent of U.S. counties, and are present in 43 states, Puerto Rice, the U.S. Virgin Islands, and the District of Columbia. The following 28 areas are designated HIDTAs:

1990: Houston, Los Angeles, New York/New Jersey, South Florida, and Southwest Border (California, Arizona, New Mexico, and South and West Texas)

1994: Washington/Baltimore (Maryland, Virginia, and District of Columbia) and Puerto Rico/U.S. Virgin Islands

1995: Atlanta, Chicago, and Philadelphia/Camden

1996: Rocky Mountain (Colorado, Montana, Utah, and Wyoming), Gulf Coast (Alabama, Louisiana, and Mississippi), Lake County (Indiana), Midwest (Iowa, Kansas, Missouri, Nebraska, North Dakota, and South Dakota) and Northwest (Washington)

1997: Michigan and Northern California

1998: Appalachia (Kentucky, Tennessee, and West Virginia), Central Florida, Milwaukee, and North Texas (Texas and Oklahoma)

1999: Central valley California, Hawaii, New England (Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont), Ohio, and Oregon

2001: North Florida and Nevada

To date, counties seeking HIDTA designation have communicated their interest to ONDCP in a variety of manners. Currently, no formal process or regulation exists outlining the application and selection process. Historically, law enforcement coalitions interested in obtaining designation as HIDTAs have submitted drug-related threat assessments for their counties which typically include a narrative analysis of the drug threat and statistical information related to the four statutory criteria. The proposed rule is intended to create a better coordinated and more meaningful process for reviewing applications. The rule sets forth a general process that enables interested coalitions of law enforcement agencies to submit petition for designation as a HIDTA. The criteria by which ONDCP will evaluate the petitions are set forth in this regulation. In addition, the proposed rule requires ONDCP to review submitted petitions of a regular basis.

Sec. 1 General Provisions

(a) This regulation contains the rules that the Office of National Drug Control Policy (Office) follows in processing petitions for designation as a High Intensity Drug Trafficking Area (HIDTA), in accordance with the ONDCP Reauthorization Act of 2006, Public Law No. 109–469.

(b) Establishment—

(1) In General—There is established in the Office a program known as the High Intensity Drug Trafficking Areas Program (in this regulation referred to as the ''Program'').

(2) Purpose—The purpose of the Program is to reduce drug trafficking and drug production in the United States by—

(A) Facilitating cooperation among Federal, State, local, and tribal law enforcement agencies to share information and implement coordinated enforcement activities;

(B) Enhancing law enforcement intelligence sharing among Federal, State, local, and tribal law enforcement agencies;

(C) Providing reliable law enforcement intelligence to law enforcement agencies needed to design effective enforcement strategies and operations; and

(D) Supporting coordinated law enforcement strategies which maximize use of available resources to reduce the supply of illegal drugs in designated areas and in the United States as a whole.

(c) Designation—

(1) In General—The Director, in consultation with the Attorney General, the Secretary of the Treasury, the Secretary of Homeland Security, heads of the National Drug Control Program agencies, and the Governor of each applicable State, may designate any specified area of the United States as a high intensity drug trafficking area.

(2) Activities—After making a designation under paragraph (1) and in order to provide Federal assistance to the area so designated, the Director may—

(A) Obligate such sums as are appropriated for the Program;

(B) Direct the temporary reassignment of Federal personnel to such area, subject to the approval of the head of the department or agency that employs such personnel;

(C) Take any other action authorized under the Office of National Drug Control Policy Reauthorization Act of 2006 to provide increased Federal assistance to those areas; and

(D) Coordinate activities under this section (specifically administrative, recordkeeping, and funds management activities) with State, local, and tribal officials.

(3) Factors for Consideration—In considering whether to designate an area as a high intensity drug trafficking area, the Director shall consider, in addition to such other criteria as the Director considers to be appropriate, the extent to which—

(1) The area is a significant center of illegal drug production, manufacturing, importation, or distribution;

(2) State, local, and tribal law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem;

(3) Drug-related activities in the area are having a significant harmful impact in the area, and in other areas of the country; and

(4) A significant increase in allocation of Federal resources is necessary to respond adequately to drug-related activities in the area.

Sec. 2 Instructions for Petitions

(a) A coalition of interested law enforcement agencies from an area may petition for designation as a HIDTA.

(b) Petitions must specify the geographical area for which HIDTA designation is requested. Areas are designated by county, therefore, such areas must be identified in the petition.

(c) Petitions must state specifically which law enforcement agencies are making the petition, a responsible official for each agency making the petition, and a point of contact for the coalition of interested law enforcement agencies.

(d) Petitions must include an assessment of the threat of illegal drugs in the area for which HIDTA designation is requested and must specifically respond to each of the following four requirements:

(1) The area is a significant center of illegal drug production, manufacturing, importation, or distribution;

(2) State, local, and tribal law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem;

(3) Drug-related activities in the area are having a significant harmful impact in the area, and in other areas of the country; and

(4) A significant increase in allocation of Federal resources is necessary to respond adequately to drug-related activities in the area.

(e) Each of the requirements in Section 2(d) must be addressed and

justified with sufficient information/documentation for each county proposed in the petition.

(f) If the petition proposes to designate additional counties to an already established HIDTA region, the petition shall include a letter from the Chairman of that HIDTA's Executive Committee indicating that the Executive Committee has reviewed the petition and sets forth its position related to the petition for designation.

(g) Petitions may be submitted to the Executive Office of the President, Office of National Drug Control Policy, Office of State, Local and Tribal Affairs, Washington, DC 20503 via facsimile at (202) 395–6721 or electronic mail at *ondcp_hidta@ondcp.eop.gov*.

Comments or questions regarding this notice should be directed to Mr. Daniel Grayson, ONDCP Policy Analyst at (202) 395–4582.

Sec. 3 Processing of Petitions

(a) Acknowledgements of Petitions. Upon receipt of a petition, the Office shall send an acknowledgement letter to the requester to confirm receipt of the petition and provide an assigned number for further reference.

(b) Petitions will be reviewed by the Office on a regular basis. The review will include a recommendation regarding the merit of the petition to the Director by a panel of qualified, independent experts who are designated by the Director.

(c) Notification of merit of petition. After the review is completed the requestor will be notified in writing regarding the disposition of the petition.

(d) The Director, Office of National Drug Control Policy, is solely responsible for making designation and funding decisions relating to the HIDTA Program.

Edward H. Jurith,

General Counsel, Office of National Drug Control Policy.

[FR Doc. E7–10640 Filed 6–1–07; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

[EA 07–019]

In the Matter of All Licensees Authorized To Manufacture or Initially Transfer Items Containing Radioactive Material for Sale or Distribution and Possess High-Risk Radioactive Material of Concern; Order Imposing Additional Security Measures (Effective Immediately)

I

The Licensees identified in Attachment 1 [1] to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State authorizing them to manufacture or initially transfer items containing radioactive material for sale or distribution. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement States regulations require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by Licensees as prudent measures to address the current threat environment. Therefore, the Commission is imposing the requirements set forth in Attachment 2 [2] on certain Manufacturing and Distribution licensees identified in Attachment 1 of this Order who currently possess, or have near term plans to possess, high-risk radioactive material of concern. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. Attachment 3 of this Order contains the requirements for fingerprinting and criminal history record checks for individuals when licensee's reviewing official is determining access to Safeguards Information or unescorted access to the radioactive materials. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that Licensees may have already initiated many measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe use and storage of the sealed sources. Although the additional security measures implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. Furthermore, the Commission has determined that some of the security measures contained in Attachment 2 of this Order contain Safeguards Information and will not be released to the public as per the NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–06–241 or EA–06–289

[1] Attachment 1 contains sensitive information and will not be released to the public.

[2] Attachment 2 contains some requirements that are SAFEGUARDS INFORMATION, and cannot be released to the public, and have therefore been redacted. The remainder of the requirements contained in Attachment 2 that are not SAFEGUARDS INFORMATION will be released to the public.

as applicable), regarding the protection of Safeguards Information. The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 2 to the NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–06–241 or EA–06–289 as applicable), applicable to the handling and unauthorized disclosure of Safeguards Information as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–242 or EA–06–290 as applicable). A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–242 or EA–06–290 as applicable) do not need to be fingerprinted again for purposes of being considered for unescorted access.

To provide assurance that Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, Manufacturing and Distribution Licensees identified in Attachment 1 to this Order shall implement the requirements identified in Attachments 2 and 3 to this Order. In addition, pursuant 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, and 10 CFR Part 32, *It Is Hereby Ordered,* effective immediately, that all licensees identified in Attachment 1 to this order shall comply with the requirements of this order as follows:

A. The Licensee shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachments 2 and 3 to this Order. The Licensee shall immediately start implementation of the requirements in Attachments 2 and 3 to the Order and shall complete implementation by November 18, 2007, or the first day that radionuclides of concern at or above threshold limits (*i.e.*, high-risk radioactive material), also identified in Attachment 2, are possessed, whichever is later.

B.1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachments 2 or 3, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachments 2 or 3 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 2 or 3 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–242 or EA–06–290 as applicable), only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to radioactive materials that equal or exceed the quantities in Attachment 2 to this Order. Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the Energy Policy Act of 2005 fingerprinting requirement and need not be fingerprinted again for purposes of being considered for unescorted access.

2. No person may have access to Safeguards Information or unescorted access to radioactive materials if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to a utilization facility or radioactive material or other property subject to regulation by the NRC.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under Order EA–06–242 or EA–06–290 as applicable, do not need to be fingerprinted again for purposes of being considered for unescorted access.

E. The Licensee may allow any individual who currently has unescorted access to radioactive materials, in accordance with this Order, to continue to have unescorted access without being fingerprinted, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthy and reliability determination) that the individual may continue to have unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment 2. The licensee shall complete implementation of the requirements of Attachments 2 and 3 to this Order by November 18, 2007.

F.1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachments 2 and 3.

2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachments 2 and 3.

G. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, F.1, and F.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain specific physical protection or security information considered to be Safeguards Information shall be put in a separate enclosure or attachment and, marked as ''SAFEGUARDS INFORMATION—MODIFIED HANDLING'' and mailed (no electronic transmittals *i.e.*, no e-mail or FAX) to the NRC.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 22nd day of May 2007.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: Service List of Materials Licensees—Redacted

Attachment 2: Additional Security Measures for Manufacturing and Distribution Materials Licensees (U)—(Revision 1)

These Additional Security Measures (ASMs) and new requirements are established to delineate licensee responsibility in response to the current threat environment. The following security measures apply to Radioactive Material Manufacturing and Distribution Licensees who, at any given time, possess greater than or equal to the quantities of concern of radioactive material defined in Table 1 (unless the licensee documents the basis for concluding that radioactive material possessed cannot be easily aggregated into quantities in excess of the limits defined in Table 1). As with the additional security measures previously provided to other licensees who possess risk significant radioactive sources, these increased security measures and requirements address licensees who are authorized to possess high-activity radioactive material which poses a high risk to human health if not managed safely and securely.

1. Establish a security zone (or zones). A security zone is an area, determined by the licensee, that provides for both isolation of radioactive material and access control.

a. Only use and store the radioactive material within the established security zone(s); and

b. The licensee shall demonstrate for each security zone, a means to deter, detect and delay any attempt of unauthorized access to licensed material. The security zone is not required to be the same as the restricted area or controlled area, as defined in 10 CFR Part 20 or equivalent agreement state regulations; and

c. Security zones can be permanent or temporary to meet transitory or intermittent business activities (such as during periods of maintenance, source delivery, source replacement, and temporary job sites.). Different isolation/access control measures may be used for periods during which the security zone is occupied versus unoccupied.

2. Control access at all times to the security zone and limit admittance to those individuals who are approved and require access to perform their duties.

3. Implement a system to monitor, detect, assess and respond to

unauthorized entries into or activities in the security zone.

a. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

b. Provide a positive measure to detect unauthorized removal of the radioactive material from the security zone; and

c. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

4. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

5. Licensees shall document the basis for concluding that there is reasonable assurance that individuals granted access to safeguards information or unescorted access to the security zone are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the regulated material. ''Access'' means that an individual could exercise some physical control over the material or device containing radioactive material.

a. The trustworthiness and reliability of individuals shall be determined based on a background investigation. The background investigation shall address at least the past 3 years and, as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history check, verification of work or education references as appropriate to the length of employment, and confirmation of employment eligibility.

b. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order.

c. A reviewing official that the licensee nominated and has been approved by the NRC, in accordance with NRC ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' is the only individual that may make trustworthiness and reliability determinations.

d. Individuals for whom the licensee has not made a determination of trustworthiness and reliability, based on the appropriate background investigation above, shall be escorted within the security zone to prevent unauthorized access or actions to the licensed radioactive material. The licensee shall also ensure these individuals are clearly identifiable as needing an escort while in the security zone.

6. Before transfer of radioactive materials that exceed the quantities in Table 1, Licensees shall:

a. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

b. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

c. Assure that the material is shipped to an address authorized in the license and that the address is valid,

d. Verify the address for deliveries to temporary job site, and

e. Document the verification or validation process.

7. For domestic highway and rail shipments of materials in quantities greater than or equal to the quantities in Table 1, per conveyance, the licensee shall:

a. Only use carriers who:

(1) Use established package tracking systems,

(2) Implement methods to assure trustworthiness of drivers,

(3) Maintain constant control and/or surveillance during transit, and

(4) Have the capability for immediate communication to summon appropriate response or assistance.

The licensee shall verify and document that the carrier employs the measures listed above.

b. Coordinate departure and arrival times with the recipient.

c. Immediately initiate an investigation with the carrier and intended recipient If the shipment does not arrive by close of business on the day of the previously coordinated arrival time. Not later than one hour after the time when, through the course of the investigation, it is determined the shipment has become lost or stolen, the licensee shall notify the appropriate local law enforcement agency, the NRC Operations Center at (301) 816–5100, and the appropriate Agreement State regulatory agency. If after 24 hours of initiating the investigation, the radioactive material cannot be located, it shall be presumed lost and the licensee shall immediately notify the NRC Operations Center and, for Agreement State licensees, the appropriate Agreement State regulatory agency.

d. In addition to a and b above, for highway and rail shipments of material in quantities greater than or equal to 100 times the quantities in Table 1, per conveyance, the licensee shall implement the NRC Order for Additional Security Measures on the Transportation of Radioactive Material Quantities of Concern.

8. For imports and exports of material in quantities greater than the quantities in Table 1, per conveyance, the licensee shall follow the requirements in the Final Rule 10 CFR Part 110, July 1, 2005, (70 FR 37985 and 46066) Export and Import of Radioactive Materials: Security Policies.

9. The licensee shall protect pre-planning, coordinating, and reporting information required by ASM 7 related to shipments of radioactive material, and the radioisotopes identified in Table 1 as sensitive information (proprietary business financial or confidential). Licensees shall restrict access to this information to those licensee and contractor personnel with a need to know. Licensees shall require all parties receiving this information to protect it similarly. Information may be transmitted either in writing or electronically and shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

10. The licensee shall maintain all documentation required by these ASMs for a period of not less than three (3) years after the document is superceded or no longer effective.

TABLE 1.—RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern [1] (TBq)	Quantity of concern [2] (Ci)
Am-241	0.6	16
Am-241/BE	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000

TABLE 1.—RADIONUCLIDES OF CONCERN—Continued

Radionuclide	Quantity of concern [1] (TBq)	Quantity of concern [2] (Ci)
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226 [3]	0.4	11
Se-75	2	54
Sr-90 (Y–90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above [4]	See Footnote Below [5].	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] The Atomic Energy Act, as amended by the Energy Policy Act of 2005, authorizes NRC to regulate Ra-226 and NRC is in the process of amending its regulations for discrete sources of Ra-226.

[4] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (*e.g.*, a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[5] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, i of radionuclide, n, $\mathbf{A}_{(i,n)}$, to the quantity of concern for radionuclide n, $\mathbf{Q}_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) _ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) _ (quantity of concern for radionuclide B)] + etc. . . . . ≥1.

Guidance for Aggregation of Sources

NRC supports the use of the International Atomic Energy Association's (IAEA) source categorization methodology as defined in IAEA Safety Standards Series No. RS–G–1.9, ''Categorization of Radioactive Sources,'' (2005) (see *http://www-pub.iaea.org/MTCD/publications/ PDF/Pub1227_web.pdf*) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004 (see *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1.) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1.). Additional security measures apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement additional security measures. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement additional security measures.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes, ''When are sources considered collocated for purposes of aggregation?'' For purposes of the additional controls, sources are considered collocated if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf–252, 0.12 TBq (3.2 Ci); Co–60, 0.18 TBq (4.9 Ci), and Pu–238, 0.3 TBq (8.1 Ci). Application of the unity rule yields: (0.12__0.2) + (0.18__0.3) + (0.3__0.6) = 0.6 + 0.6 + 0.5 = 1.7. Therefore, the sources would require additional security measures.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs–137 source and a 0.8 TBq (22 Ci) Am–241 source. In this case, the sources would require additional security measures, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir–192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require additional security measures while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (*e.g.*, a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage—''operations'' (active source usage) and ''shutdown'' (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require additional security measures for each location.

Use the following method to determine which sources of radioactive material require implementation of the Additional Security Measures (ASMs):

- Include any single source equal to or greater than the quantity of concern in Table
- Include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern
- For combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A)__(quantity of concern of radionuclide A)] + [(amount of radionuclide B)__(quantity of concern of radionuclide B)] + etc.....≥1

Attachment 3: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information or Unescorted Access to Radioactive Materials

General Requirements

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to safeguards information (SGI) or unescorted access to radioactive materials equal to, or greater than, the quantities listed in Attachment 2 to this Order. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in this Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for access to SGI or unescorted access need not be taken if an employed individual (*e.g.*, a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to SGI or 10 CFR 73.61 for unescorted access, has a favorably-decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided for either of the latter two cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI or unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of this Order, in making a determination whether to grant, or continue to allow, access to SGI or unescorted access to radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged

deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.*, law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order, the Licensee shall provide the individual its documented basis for denial. Access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial to access SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

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NUCLEAR REGULATORY COMMISSION

[EA–07–003]

In the Matter of Certain Licensees Authorized To Possess and Transfer Items Containing Radioactive Material Quantities of Concern; Order Imposing Additional Security Measures (Effective Immediately)

I

The Licensees identified in Attachment A [1] to this Order, hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State, in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 30, 32, 70 and 71, or equivalent Agreement State regulations. The licenses authorize them to possess and transfer items containing radioactive material quantities of concern. This Order is being issued to all such Licensees who may transport radioactive material quantities of concern under the NRC's authority to protect the common defense and security, which has not been relinquished to the Agreement States. The Orders require compliance with specific additional security measures to enhance the security for transport of certain radioactive material quantities of concern.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on this regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of the current security measures. In addition, the Commission commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain security measures are required to be implemented by Licensees as prudent, interim measures to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment B [2] of this Order, on all Licensees identified in Attachment A of this Order. These additional security measures, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. Attachment C of this

[1] Attachment A contains sensitive information and will not be released to the public.

[2] Attachment B contains some requirements that are SAFEGUARDS INFORMATION, and can not be released to the public, and have therefore been redacted. The remainder of the requirements contained in Attachment B that are not SAFEGUARDS INFORMATION will be released to the public.

Order contains the requirements for fingerprinting and criminal history record checks for individuals when licensee's reviewing official is determining access to Safeguards Information or unescorted access to the radioactive materials. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that Licensees may have already initiated many of the measures set forth in Attachment B to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of radioactive material quantities of concern, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of radioactive material quantities of concern.

Although the security measures implemented by Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the continuing threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. The Commission has determined that some of the security measures contained in Attachment B of this Order contain Safeguards Information and will not be released to the public as per Order entitled, ''Issuance of Order Imposing Requirements for Protecting Certain Safeguards Information,'' issued specifically to the Licensees identified in Attachment A to this Order. Access to Safeguards Information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–155). A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–155) do not need to be fingerprinted again for purposes of being considered for unescorted access.

To provide assurance that Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all Licensees identified in Attachment A to this Order shall implement the requirements identified in Attachments B and C to this Order. In addition, pursuant to 10 CFR § 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health and safety require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 53, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR § 2.202 and 10 CFR Parts 30, 32, 70 and 71, *It is hereby ordered*, effective immediately, that all licensees identified in Attachment A to this order shall comply with the following:

A. All Licensees shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachments B and C to this Order. The Licensees shall immediately start implementation of the requirements in Attachments B and C to the Order and shall complete implementation by November 18, 2007, or before the first shipment of radioactive material quantities of concern, whichever is sooner. This Order supersedes the additional transportation security measures prescribed in Attachment 2, Section 7.d. of the Manufacturer and Distributor Order issued January 12, 2004.

B.1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachments B or C, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensees justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachments B or C to this Order would adversely impact the safe transport of radioactive material quantities of concern must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment B or requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–155) issued on August 21, 2006, only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment B to this Order. Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the Energy Policy Act of 2005 fingerprinting requirement and need not be fingerprinted again for purposes of being considered for unescorted access.

2. No person may have access to Safeguards Information or unescorted access to radioactive materials if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to a utilization facility, or radioactive material or other

property subject to regulation by the NRC.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment C to this Order. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under Order EA–06–155 do not need to be fingerprinted again for purposes of being considered for unescorted access.

E. The Licensee may allow any individual who currently has unescorted access to radioactive materials, in accordance with this Order, to continue to have unescorted access without being fingerprinted, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthy and reliability determination) that the individual may continue to have unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment B to this Order. The licensee shall complete implementation of the requirements of Attachments B and C to this Order by November 18, 2007.

F.1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachments B and C.

The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachments B and C.

G. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, F.1, and F.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with Licensees' Safeguards Information or Safeguards Information—Modified Handling program.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR § 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, *ATTN:* Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Office of Enforcement at the same address, to the Regional Administrator for NRC Region I, II, III, or IV, at the respective addresses specified in Appendix A to 10 CFR Part 73, appropriate for the specific facility, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR § 2.202(c)(2)(I), the Licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 22nd day of May 2007.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment A: List of Licensees—Redacted

Attachment B: Additional Security Measures for Transportation of Radioactive Material Quantities of Concern—Revision 2

A. General Basis Criteria

These Additional Security Measures (ASMs) are established to delineate licensee responsibility in response to the current threat environment. The following security measures apply to Nuclear Regulatory Commission (NRC) and Agreement States licensees, who ship Radioactive Material Quantities of Concern (RAMQC) as defined in Section A .1. Shipments of RAMQC that do not fall within the NRC's jurisdiction under the Atomic Energy Act of 1954, as amended, are not subject to the provisions of these ASMs.

1. Licensees who are subject to this Order shall ensure that the requirements listed in Section B below are in effect when they ship radioactive materials that meet the following criterion:

a. Radionuclides listed in Table A, greater than or equal to the quantities specified,

b. For mixtures of radionuclides listed in Table A, the sum of the fractions of

those radionuclides if greater than or equal to 1, or

c. For shipments of spent nuclear fuel containing greater than or equal to 1000 Terabecquerels (TBq) (27,000 Curies) but less than or equal to 100 grams of spent nuclear fuel.

For shipments containing greater than 100 grams of spent nuclear fuel, licensees shall follow the ASMs for ''Transportation of Spent Nuclear Fuel Greater than 100 Grams,'' dated October 3, 2002.

These ASMs supercede Safeguards Advisories SA–01–01, Rev. 1, and SA–03–02. For radioactive materials shipments containing radionuclides not addressed by this ASM guidance will be provided by Safeguards Advisory.

2. The requirements of these ASMs apply to a conveyance (i.e., the requirements apply irrespective of whether the RAMQC is shipped in a single package or in multiple packages in a single conveyance).

3. Licensees are not responsible for complying with the requirements of these ASMs if a carrier aggregates, during transport or storage incident to transport, radioactive material from two or more conveyances from separate licensees which individually do not exceed the limits of Paragraph A.1. but which together meet or exceed any of the criteria in Paragraph A.1.

4. The requirements of these ASMs only apply to RAMQC shipments using highway or rail modes of transportation. For multi-mode shipments, the requirements of these ASMs apply only to the portion of shipments that are made using highway or rail modes of transportation, as appropriate.

5. For domestic highway and rail shipments of materials in quantities greater than or equal to the quantities in Paragraph A.1. per conveyance, the licensee shall ensure that:

a. Only carriers are used which:

(1) Use established package tracking systems,

(2) Implement methods to assure trustworthiness and reliability of personnel associated with the transportation of RAMQC,

(3) Maintain constant control and/or surveillance during transit, and

(4) Have the capability for immediate communication to summon appropriate response or assistance.

b. The licensee shall verify and document that the carrier employs the measures listed above.

6. The preplanning, coordination, and tracking requirements of these ASMs are intended to reduce unnecessary delays and shipment duration and to facilitate the transfer of the RAMQC shipment and any escorts at State borders.

7. Unless specifically noted otherwise, the requirements of these ASMs do not apply to local law enforcement agencies' (LLEA) personnel performing escort duties.

8. The requirements of these ASMs apply to RAMQC domestic shipments within the United States (U.S.), imports into the U.S., or exports from the U.S. The requirements of these ASMs do not apply to transshipments through the U.S. Licensees are responsible for complying with the requirements of Section B for the highway and rail shipment portion of an import or export which occurs inside of the U.S.

For import and export RAMQC shipments, while located at the port or shipments on U.S. navigable waterways, the U.S. Coast Guard Maritime Transportation security regulations will be in effect and these ASMs are not applicable. For RAMQC shipments while located at the air freight terminal, security requirements will be performed in accordance with the Transportation Security Administration security regulations.

For import and export RAMQC shipments, the licensee shall ensure that the requirements of these ASMs are implemented after the transportation package has been loaded onto the highway or rail vehicle (except for the advance notification requirements in section B.4) and the package begins the domestic portion of the shipment to or from the U.S. port of entry (i.e., the package(s) departs for or from the port of entry facility or the airfreight terminal).

B. Specific Requirements

Licensees who ship RAMQC in quantities that meet the criteria of Paragraph A.1. shall ensure that carriers used have developed and implemented transportation security plans that embody the additional security measures imposed by this Order.

1. Licensee Verification

Before transfer of radioactive materials in quantities which meet the criterion of Paragraph A.1, per conveyance, the licensee shall:

a. For new recipient(s), verify that the intended recipient's license authorizes receipt of the regulated material by direct contact with the regulatory authority that issued the license (NRC Region or Agreement State) prior to transferring the material,

b. Verify the validity of unusual orders or changes (if applicable) that depart from historical patterns of ordering by existing recipients,

c. Verify the material is shipped to an address authorized in the license and that the address is valid,

d. Verify the address for a delivery to a temporary job site is valid,

e. Document the verification and validation process, and

f. Coordinate departure and arrival times with the recipient.

2. Background Investigations

a. Background investigations are intended to provide high assurance that individuals performing assigned duties associated with the transport of RAMQC, are trustworthy and reliable, and do not constitute an unreasonable risk to the common defense and security, including the potential to commit radiological sabotage.

b. For highway shipments only, the licensee shall ensure background investigations for all drivers, accompanying individuals, communications center managers, and other appropriate communications center personnel have been performed. The NRC only has the authority to impose a Federal Bureau of Investigation (FBI) criminal history check, which includes fingerprinting, on those individuals who seek access to Safeguards Information (SGI) or unescorted access to licensed material.

c. For rail shipments, the licensee shall ensure background investigations for employees filling the positions of communications center managers and other appropriate communications center personnel have been performed. The NRC only has the authority to impose a Federal Bureau of Investigation (FBI) criminal history check, which includes fingerprinting, on those individuals who seek access to SGI or unescorted access to licensed material.

d. Licensees shall document the basis for concluding that there is high assurance that individuals granted access to safeguards information or unescorted access to licensed material are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the regulated material. ''Access'' means that an individual could exercise some physical control over the material or device containing radioactive material.

(1) The trustworthiness, reliability, and verification of an individual's true identity shall be determined based on a background investigation. The background investigation shall address at least the past three (3) years, and as a minimum, include fingerprinting and an FBI criminal history check, verification of employment history, education, employment eligibility, and

personal references. If an individual's employment has been less then the required three (3) years period, educational references may be used in lieu of employment history.

(2) Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment C to this Order.

(3) A reviewing official that the licensee nominated and has been approved by the NRC, in accordance with NRC ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' is the only individual that may make trustworthiness and reliability determinations.

e. Licensees' background investigation requirements may also be satisfied for an individual that has:

(1) current access authorization permitting unescorted access to a power reactor facility or access to Safeguards Information,

(2) current U.S. government-issued security clearance (based upon a national agency check, at a minimum), or

(3) satisfactorily completed a background investigation under an NRC-approved access authorization program.

f. Individuals shall not perform assigned duties associated with the transport of RAMQC until the licensee has confirmed that a determination of trustworthiness and reliability, based on the appropriate background investigation requirements in B.2.d. and B.2.e., has been performed and documented.

3. Preplanning and Coordination

a. As part of the shipment planning process, the licensee shall ensure that appropriate security information is provided to and is coordinated with affected States through which the shipment will pass to ensure minimal delays. These discussions shall include whether a State intends to provide escorts for a shipment.

b. The licensee shall ensure States are provided with position information on a shipment (see Paragraph B.5.a), if requested and practical.

c. For shipments by highway, the licensees's coordination required in Paragraph B.3.a. shall include identification of Highway Route Controlled Quantity (HRCQ) shipments of material and safe havens.3

4. Notifications

a. The licensee shall ensure an advance notification of a shipment is provided, or of a series of shipments, of RAMQC to the NRC. The licensee shall ensure the notification is submitted sufficiently in advance to ensure it is received by NRC at least seven (7) days, where practicable, before the shipment commences physically within the U.S.

For written notifications, the notice should be addressed to: (10 CFR 2.390) U.S. Nuclear Regulatory Commission, *ATTN:* Director, Division of Nuclear Security *M/S:* T–4–D–8. Office of Nuclear Security and Incident Response. 11555 Rockville Pike. Rockville, MD 20852–2738.

Notifications may also be submitted electronically via e-mail to *RAMQC_SHIPMENTS@nrc.gov* or via fax to (301) 816–5151. (10 CFR 2.390)

b. The advance notification shall contain the following information:

(1) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(2) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(3) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(4) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(5) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(6) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(7) [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

Refer to Paragraph B.7.c. for determination of information designation of advance notifications during preplanning, coordinating, and reporting information activities.

c. The licensee shall ensure the information required by Paragraph B.4.b. is provided to each State through which the shipment will pass. The licensee shall ensure that the notification is received at least seven (7) days, where practicable, before the U.S. highway or railroad portion of a shipment commences.

d. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

5. Communications

a. (1) For highway shipments, monitor each RAMQC shipment with a telemetric position monitoring system that communicates with a communication center or is equipped with an alternative tracking system that communicates position information to a communications center.

(2) For rail shipments, monitor each RAMQC shipment with either: (i) a telemetric position monitoring system that communicates with a licensee or third-party communication center, (ii) a railroad track-side car location monitoring systems tracking system that relays a car's position to a railroad communications center (which can provide position information to any separate licensee communications center per Paragraph B.5.b), or (iii) alternate licensee monitoring system. Additionally, licensees may use a railroad communications center to monitor the rail portion of a shipment, in lieu of using a separate communications center.

b. (1) For highway shipments, provide for a communication center that has the capability to continuously and actively monitor in-progress shipments to ensure positive confirmation of the location, status, and control over the shipment and implement pre-planned procedures in response to deviations from the authorized route or notification of actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. These procedures shall include identification of the designated LLEA contact(s) along the shipment route.

(2) For rail shipments, provide for a communication center that has the capability to periodically monitor in-progress shipments to ensure positive confirmation of the location of the shipment and implement pre-planned procedures in response to notification of actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. These procedures shall include identification of the designated LLEA contact(s) along the shipment route. Licensees may use a railroad communications center in lieu of establishing a separate communications center.

c. (1) For highway shipments, ensure that a two-way telecommunication capability is available for the transport and any escort vehicles allowing them to communicate with each other with the communications center, and with designated LLEAs along the route. The communications center must be capable of contacting the designated authorities along the shipment route.

(2) For rail shipments, ensure that a two-way telecommunication capability is available between the train and the communications center and between any escort vehicles and the communications center. The communications center must be capable of contacting the designated authorities along the shipment route.

d. A licensee may utilize a carrier or third-party communications center in

lieu of establishing such a facility itself. A commercial communications center must have the capabilities, necessary procedures, training, and personnel background investigations to meet the applicable requirements of these ASMs.

e. (1) For highway shipments, provide a backup means for the transport and any escort vehicle to communicate with the communications center, using a diverse method not subject to the same interference factors as the primary capability selected for compliance with Paragraph B.5.c. (e.g., two-way radio or portable telephone).

(2) For rail shipments, provide a backup means for the train to talk with the communications center, using a diverse method not subject to the same interference factors as the primary capability selected for compliance with Paragraph B.5.c. (e.g., two-way radio or portable telephone).

f. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

(1) Not later than one hour after the time when, through the course of the investigation, it is determined the shipment is lost or stolen, the licensee shall ensure the appropriate local law enforcement agency, the NRC Operations Center at (301) 816–5100, and the appropriate Agreement State regulatory agency, if any, are notified.

(2) If after 24 hours of initiating the investigation, the radioactive material cannot be located, licensee shall ensure the NRC Operations Center and, for Agreement State licensees, the appropriate Agreement State regulatory agency are immediately notified.

g. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

6. Drivers and Accompanying Individuals

a. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

b. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

c. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

d. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

7. Procedures, Training, and Control of Information

a. (1) For highway shipments the licensee shall ensure that normal and contingency procedures have been developed, including, for example: notifications, communications protocols, loss of communications, and response to actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. Communication protocols must include a strategy for use of authentication and duress codes, provision for refueling or other stops, detours, and locations where communication is expected to be temporarily lost.

(2) For rail shipments, the licensee shall ensure that normal and contingency procedures have been developed, including, for example: notifications, communications protocols, loss of communications, and response to actual, attempted, or suspicious activities related to theft, loss, diversion, or radiological sabotage of a shipment. Communication protocols must include a strategy for use of authentication and duress codes, provision for stops, and locations where communication is expected to be temporarily lost.

b. (1) For highway shipments, the licensee shall ensure that personnel, including drivers, accompanying individuals, responsible communication center managers, and other appropriate communication center personnel are trained in and understand the normal and contingency procedures.

(2) For rail shipments, the licensee shall ensure that personnel, including the appropriate train crew members and responsible railroad communication center managers, and other appropriate railroad communication center personnel are trained in and understand the normal and contingency procedures.

c. Information to be protected as Safeguards Information—Modified Handling, shall include, but is not limited to:

(1) Integrated transportation physical security plans.

(2) Schedules and itineraries for shipments. For shipments that are not inherently self disclosing, schedule and itineraries information may be decontrolled 2 days after a shipment is completed. For shipments that are inherently self disclosing, schedule may be released as necessary after departure.

(3) Details of alarm and communications systems, communication protocols and duress codes, and security contingency response procedures.

(4) Arrangements with designated LLEA (*i.e.*, Federal, State Police, and/or local police departments) and information on whether a State intends to provide armed escorts for a shipment.

For preplanning; coordinating, for example with States (organizations and carriers); reporting information as described in B.1., B.4., and B.5. related to shipments of radioactive material, and the radionuclides identified in Paragraph A.1, the licensee shall ensure the information is protected at least as sensitive information (for example, proprietary or business financial information). Licensees shall ensure access is restricted to this information to those licensee and contractor personnel with a need to know. Licensees shall ensure all parties receiving this information protect it similarly. Information may be transmitted either in writing or electronically and shall be marked as ''Sensitive Information—Not for Public Disclosure.''

C. Implementation Schedule

1. Licensees shall implement the requirements of this ASM within 180 days of the date of issuance of the Order or before the first shipment of RAMQC, whichever is sooner.

TABLE A.—RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern (TBq) threshold limit	Quantity of concern (Ci) information only—rounded after conversion
Am-241	60	1,600
Am-241/Be	60	1,600
Cf-252	20	540
Cm-244	50	1,400
Co-60	30	810
Cs-137	100	2,700
Gd-153	1,000	27,000
Ir-192	80	2,200
Pm-147	40,000	1,100,000
Pu-238	60	1,600
Pu-239/Be	60	1,600
Ra-226 [1]	40	1,100
Se-75	200	5,400
Sr-90 (Y-90)	1000	27,000
Tm-170	20,000	540,000
Yb-169	300	8,100

[1] The Atomic Energy Act, as amended by the Energy Policy Act of 2005, authorizes NRC to regulate Ra-226 and NRC is in the process of amending its regulations for discrete sources of Ra-226.

Notes:

1. The regulatory standard values to be used are given in Terabecquerels (TBq). Curie (Ci) values are provided for practical usefulness only and are rounded after conversion.

2. If several radionuclides are present, the sum of the fractions of the activity of each radionuclide must be determined. Using the equation below calculate the ratio by inserting the actual activity of each radionuclide as the numerator and the corresponding activity limit in Table A as the denominator. Ensure the numerator and the denominator are in Terabecquerels.

R1 = activity for radionuclide number 1.
R2 = activity for radionuclide number 2.

R3, R4, R5.....etc.
AR1 = activity limit for radionuclide number 1.
AR2 = activity limit for radionuclide number 2.
AR3, AR4, AR5.....etc.
R1 + R2 + R3 + Rn 1.
AR1 AR2 AR3 ARn.

Attachment C: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information or Unescorted Access to Radioactive Materials

General Requirements

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to safeguards information (SGI) or unescorted access to RAMQC. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in this Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for access to SGI or unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to SGI or 10 CFR 73.61 for unescorted access, has a favorably-decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided for either of the latter two cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI or unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of this Order, in making a determination whether to grant, or continue to allow, access to SGI or unescorted access to radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI or unescorted access to RAMQC.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, access to SGI or unescorted access to RAMQC.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI or unescorted access to RAMQC, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404.] Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures

include either direct application by the individual challenging the record to the agency (*i.e.*, law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR Part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on access to SGI or unescorted access RAMQC based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI or unescorted access to RAMQC, the Licensee shall provide the individual its documented basis for denial. Access to SGI or unescorted access to RAMQC shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI or unescorted access to RAMQC. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial to access SGI or unescorted access to RAMQC. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

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NUCLEAR REGULATORY COMMISSION

[EA 07–002]

In the Matter of all Panoramic and Underwater Irradiators Authorized To Possess Greater Than 370 Terabecquerels (10,000 Curies) Byproduct Material in the Form of Sealed Sources; Order Imposing Compensatory Measures (Effective Immediately)

I

The Licensees identified in Attachment 1 to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 and 10 CFR part 36 or comparable Agreement State regulations by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State authorizing possession of greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources either in panoramic irradiators that have dry or wet storage of the sealed sources or in underwater irradiators in which both the source and the product being irradiated are under water. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations, require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement States regulations, require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Licensees as prudent measures to address the current threat environment. Therefore, the Commission is imposing the requirements, as set forth in Attachment 2 [1] on all Licensees identified in Attachment 1 [2] of this Order who currently possess, or have near term plans to possess, greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment.

Attachment 3 of this Order contains the requirements for fingerprinting and criminal history record checks for individuals when licensee's reviewing official is determining access to Safeguards Information or unescorted

[1] Attachment 2 contains some requirements that are SAFEGUARDS INFORMATION, and can not be released to the public, and have therefore been redacted. The remainder of the requirements contained in Attachment 2 that are not SAFEGUARDS INFORMATION will be released to the public.

[2] Attachment 1 contains sensitive information and will not be released to the public.

access to the panoramic or underwater irradiator sealed sources. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that Licensees may have already initiated many measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe use and storage of the sealed sources.

Although the additional security measures implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. Some of the security measures contained in Attachment 2 of this Order contain Safeguards Information and will not be released to the public. The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to ''issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information * * *.'' This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information contained in Attachment 2 to the NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–06–241). The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 2 to the NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–06–241), applicable to the handling and unauthorized disclosure of Safeguards Information as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–242). A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–242) do not need to be fingerprinted again for purposes of being considered for unescorted access.

In order to provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all Licensees who hold licenses issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing possession greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources in a panoramic or underwater irradiator shall implement the requirements identified in Attachments 2 and 3 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30 and Part 36, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER SHALL COMPLY WITH THE REQUIREMENTS OF THIS ORDER AS FOLLOWS:

A. The Licensees shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachments 2 and 3 to this Order. The licensee shall immediately start implementation of the requirements in Attachments 2 and 3 to the Order and shall complete implementation by November 18, 2007, or the first day that greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources is possessed, which ever is later.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachments 2 or 3, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachments 2 or 3 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachments 2 or 3 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information'' (EA–06–242) issued on October 4, 2006, only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to the panoramic or underwater irradiator sealed sources that equal or exceed 370 Terabecquerels (10,000 curies). Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.61 [72 Fed. Reg. 4945 (February 2, 2007)]. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or

have an active federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the Energy Policy of 2005 fingerprinting requirement and need not be fingerprinted again for purposes of being considered for unescorted access.

2. No person may have access to Safeguards Information or unescorted access to the panoramic or underwater irradiator sealed sources if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to a utilization facility or radioactive material subject to regulation by the NRC.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under Order EA–06–242 do not need to be fingerprinted again for purposes of being considered for unescorted access.

E. The Licensee may allow any individual who currently has unescorted access to the panoramic or underwater irradiator sealed sources, in accordance with this Order, to continue to have unescorted access without being fingerprinted, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthy and reliability determination) that the individual may continue to have unescorted access to the panoramic or underwater irradiator sealed sources. The licensee shall complete implementation of the requirements of Attachments 2 and 3 to this Order by November 18, 2007.

F. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachments 2 and 3.

The Licensee shall report to the Commission when they have achieved fullcompliance with the requirements described in Attachments 2 and 3.

G. Notwithstanding any provisions of the Commission's or Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee response to Conditions B.1, B.2, F.1, and F.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain specific physical protection or security information considered to be Safeguards Information shall be put in a separate enclosure or attachment and, marked as ''SAFEGUARDS INFORMATION—MODIFIED HANDLING'' and mailed (no electronic transmittals i.e., no e-mail or FAX) to the NRC in accordance with Attachment 2 to the NRC's ''Order Imposing Requirements for the Protection of Certain Safeguards Information'' (EA–06–241).

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, *ATTN:* Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated this 22nd day of May 2007.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: List of Licensees—Redacted

Attachment 2: Compensatory Measures for Panoramic and Underwater Irradiator Licensees Revision 2

These compensatory measures (CMs) are established to delineate licensee responsibility in response to the current threat environment in the aftermath of the terrorist attacks of September 11,

2001. The following security measures apply to Licensees who, now and in the future, possess greater than 370 TeraBecquerels (TBq) [10,000 Ci] of byproduct material in the form of sealed sources in panoramic irradiators that have dry or wet storage of the sealed sources, or in underwater irradiators in which both the source and the product being irradiated are underwater.

4. Use and store the radioactive material only within a security zone that isolates the material from unauthorized access and facilitates detection if such access occurs.

The security zone is an area, defined by the licensee, that provides for both isolation of radioactive material and access control. The licensee must demonstrate for this area a means to detect any attempt of unauthorized access to licensed material. ''Isolation'' means to deter persons, materials, or vehicles from entering or leaving through other than established access control points. ''Access control'' means to allow only approved individuals into the security zone. Thus, isolation and access control aid in the detection of unauthorized access or activities deemed by the licensee to be indicative of, or contributory to, the loss, theft, or release of material. The security zone does not have to be the same as the restricted area or controlled area, as defined in 10 CFR Part 20.

Security zones can be permanent or temporary to meet transitory or intermittent business activities (such as during periods of maintenance, source delivery and source replacement). Different isolation/access control measures may be used for periods during which the security zone is occupied versus unoccupied.

2. Continuously control access to the security zone and limit admittance to those individuals who are approved and require access to perform their duties.

A. For individuals granted access to safeguards information or unescorted access to the security zone, Licensees must provide reasonable assurance that individuals are trustworthy and reliable, and do not constitute an unreasonable risk to the common defense and security. ''Access'' means that an individual could exercise some physical control over the material or device containing radioactive material.

i. The trustworthiness and reliability of individuals shall be determined based on a background investigation. The background investigation shall address at least the past 3 years and, as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history check, verification of work or education references as appropriate to the length of employment, and confirmation of employment eligibility.

ii. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order.

iii. A reviewing official that the licensee nominated and has been approved by the NRC, in accordance with NRC ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' is the only individual that may make trustworthiness and reliability determinations.

B. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

3. Implement a system (i.e., devices and/or trained individuals) to monitor, detect, assess and respond to unauthorized entries into or activities in the security zone.

A. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

B. Provide enhanced security measures when temporary security zones are established, during periods of maintenance, source delivery and shipment, and source replacement, that will provide additional assurance for enhanced detection and assessment of and response to unauthorized individuals or activities involving the radioactive material. Such security measures shall include, but not be limited to:

i. Advanced notification to the local law enforcement agency (LLEA) for radioactive source exchanges, deliveries, and shipments.

ii. For shipments of sources, establish a positive means of transferring the security responsibility, between the shipper/carrier and the consignee (receiver), for communicating with the LLEA.

C. Provide a positive measure to validate that there has been no unauthorized removal of the radioactive material from the security zone.

D. Maintain continuous communications capability among the various components for intrusion detection and assessment to bring about a timely response.

E. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

4. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

Attachment 3: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information or Unescorted Access to the Panoramic or Underwater Irradiator Sealed Sources

General Requirements

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to safeguards information (SGI) or unescorted access to the panoramic or underwater irradiator sealed sources. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for access to SGI or unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to SGI or 10 CFR 73.61 for unescorted access, has a favorably decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided for either of the latter two cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI or unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of this Order, in making a determination whether to grant, or continue to allow, access to SGI or unescorted access to the

panoramic or underwater irradiator sealed sources.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to forms@nrc.gov. Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404.] Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR Part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources, the Licensee shall provide the individual its documented basis for denial. Access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history

record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial to access SGI or unescorted access to the panoramic or underwater irradiator sealed sources. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–10695 Filed 6–1–07; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB Control Number 0420–0006).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C., Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request for reinstatement for approval of information collections, OMB Control Number 0420–0006, the Peace Corps Confidential Reference Form, PC 1532 (Rev. 10/2006). The purpose of this information collection is to assist in processing applicants for volunteer service in determining suitability of applicants. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Ms. Cathey Bernhard, Office of Volunteer Recruitment and Selection, Peace Corps, 1111 20th Street, NW., Room 6416, Washington, DC 20526. Ms. Bernhard can be contacted by telephone at 202–692–1884 or 800–424–8580 ext. 1884. Comments on the form should also be addressed to the attention of Ms. Bernhard and should be received on or before July 5, 2007.

Information Collection Abstract

Title: Peace Corps Confidential Reference Form (PC 1532).

Need For and Use of This Information: The Peace Corps Confidential Reference Form is used to gather information about individuals who have submitted applications, are basically qualified, and are nominees for volunteer service. The form is an integral part of the screening and selection process conducted by the Office of Volunteer Recruitment and Selection. Such information as past criminal records, severe mental problems, poor interpersonal relationships or emotional immaturity is used by the agency in their consideration of applicants. The purpose of this information collection is to assist in processing applicants for volunteer service in determining suitability of applicants. There is no other means of obtaining the required data. This program also fulfills the first goal of the Peace Corps as required by Congressional legislation.

Respondents: Returned Peace Corps Volunteers.

Respondent's Obligation To Reply: Individuals who voluntarily agree to serve as a reference for Peace Corps applicants.

Burden on the Public:

a. *Annual reporting burden:* 16,500 hours.

b. *Annual recordkeeping burden:* 0 hours.

c. *Estimated average burden per response:* 30 minutes.

d. *Frequency of response:* one time.

e. *Estimated number of likely respondents:* 33,000.

f. *Estimated cost to respondents:* $0.00.

Dated: May 23, 2007.

Wilbert Bryant,

Associate Director for Management.

[FR Doc. 07–2745 Filed 6–01–07; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB Control Number 0420–0533).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request for approval of information collections, OMB Control Number 0420–0533, the Peace Corps Crisis Corps Volunteer Application Form. This is a renewal of an active information collection. The purpose of this information collection is necessary in order to identify prospective, interested, and available returned Peace Corps Volunteers who are completing their services for Crisis Corps Volunteer Service. The information is used to determine availability, suitability, and potential Crisis Corps placement applicants.

The purpose of this notice is to allow for public comment on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Ms. Mary Angelini, Director of the Crisis Corps, Peace Corps, 1111 20th Street, NW., Room 7305, Washington, DC 20526. Ms. Angelini can be contacted by telephone at 202–692–2250. Comments on the form should also be addressed to the attention of Ms. Angelini and should be received on or before July 5, 2007.

Information Collection Abstract

Title: Peace Corps' Crisis Corps Volunteer Application Form.

Need For and Use of This Information: The Peace Corps/Crisis Corps need this information in order to identify prospective, interested, and available returned Peace Corps Volunteers and Volunteers who are completing their services for Crisis Corps Volunteer service. The information is used to determine availability, suitability, and potential for Crisis Corps placement of applicants.

Respondents: Returned Peace Corps Volunteers (RPCVs) who have successfully completed their service and Volunteers currently completing their service who are interested in applying for Peace Corps/Crisis Corps service.

Respondent's Obligation To Reply: Voluntary, but required to obtain benefits.

Burden On The Public:

a. *Annual reporting burden:* 42 hours.

b. *Annual recordkeeping burden:* 0 hours.

c. *Estimated average burden per response:* 5 minutes.

d. *Frequency of response:* One time.

e. *Estimated number of likely respondents:* 507.

f. *Estimated cost to respondents:* $2.26.

Dated: May 23, 2007.

Wilbert Bryant,

Associate Director for Management.

[FR Doc. 07–2746 Filed 6–01–07; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Director for Coverdell World Wise Schools invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This notice announces that Coverdell World Wise Schools has submitted to the Office of Management and Budget a request to approve the use of the PC–DO–969.5 (04/2007), Correspondence Match Educator Online Enrollment Form: Educator Sign Up Form. A copy of the information collection may be obtained from Sally Caldwell, Director of World Wise Schools, Peace Corps, Office of Domestic Programs, 1111 20th Street, NW., Washington, DC 20256. Ms. Caldwell may be contacted by telephone at 202–692–1425. Coverdell World Wise Schools invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps' Coverdell World Wise Schools' Correspondence Match program, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility, and clarify of the information to be collected; and ways to minimize the burden of the collection of information to on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of technology. Comments on the form should be addressed to the attention of Ms. Sally Caldwell, Director of World Wise Schools, Peace Corps, Office of Domestic Programs, 1111 20th Street, NW., Washington, DC 20256, and should be received on or before July 5, 2007.

Information Collection Abstract

Title: Correspondence Match Educator Online Enrollment Form.

Need For and Use of This Information: The Peace Corps and Paul D. Coverdell World Wise Schools need this information officially to enroll educators in the Correspondence Match program. The information is used to make suitable matches between the educators and currently serving Peace Corps Volunteers.

Respondents: Educators interested in promoting global education in the classroom.

Respondents' Obligation To Reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 1667 hours.

b. *Annual record keeping burden:* 250 hours.

c. *Estimated average burden per response:* 10 minutes.

d. *Frequency of response:* Annually.

e. *Estimated number of likely respondents:* 10,000.

f. *Estimated cost to respondents:* $0.00/$0.00.

Dated: May 23, 2007.

Wilbert Bryant,

Associate Director for Management.

[FR Doc. 07–2747 Filed 6–1–07; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of pubic use form review request to the Office of Management and Budget.

SUMMARY: The Director for Coverdell World Wise Schools invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the use of the PC–DP–969.4 (04/2007), Speakers Match: Request for a Speaker (Online). A copy of the information collection may be obtained from Sally Caldwell, Director of World Wise Schools, Peace Corps, Office of Domestic Programs, 1111 20th Street, NW., Washington, DC 20526. Ms. Caldwell may be contacted by telephone at 202–692–1425. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps and the Paul D. Coverdell World Wise Schools' Match program, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of technology. Comments on the forms should be addressed to the attention of Ms. Sally Caldwell, and should be received on or before July 5, 2007.

Information Collection Abstract

Title: Speakers Match: Request for a Speaker—PC–DP–969.4 (Online)

Need for and Use of This Information: The Peace Corps and Paul D. Coverdell World Wise Schools need this information officially to make suitable matches between the educators and returned Peace Corps Volunteers for the Speakers Match program.

Respondents: Educators interested in promoting global education in the classroom.

Respondent's Obligation to Reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 1667 hours.

b. *Annual recordkeeping burden:* 250 hours.

c. *Estimated average burden per response:* 10 minutes.

d. *Frequency of response:* Annually.

e. *Estimated number of likely respondents:* 10,000.

f. *Estimated cost to respondents:* $0.00/$0.00.

Dated: May 23, 2007.

Wilbert Bryant,

Associate Director for Management.

[FR Doc. 07–2748 Filed 6–1–07; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Director for Coverdell World Wise Schools invites comments on information collection requests as required ursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the use of the PC–DP–969.3 (04/2007), World Wise Schools Conference Online Registration Form. A copy of the information collection may be obtained from Sally Caldwell, Director of World Wise Schools, Peace Corps, Office of Domestic Programs, 1111 20th Street, NW., Washington, DC 20256. Ms. Cladwell may be contacted by telephone at 202–692–1425.

The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps and the Paul D. Coverdell World Wise Schools' Annual Conference, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility, and clarify of the information to be collected; and ways to minimize the burden of the collection of information to on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of technology. Comments on the form should also be addressed to the attention of Ms. Sally Caldwell, and should be received on or before July 5, 2007. [after date of publication in **Federal Register**].

Information Collection Abstract

Title: World Wise Schools Conference—Online Registration Form, PC–DP–969.3 Form.

Need for and Use of This Information: The Peace Corps and Paul D. Coverdell World Wise Schools need this information to officially register attendees to the annual World Wise Schools Conference. The information is used as record of attendees.

Respondents: Educators, and employees of governmental and nongovernmental organizations interested in promoting global education in the classroom.

Respondent's Obligation to Reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 50 hours.

b. *Annual recordkeeping burden:* 50 hours.

c. *Estimated averaged burden per response:* 10 minutes.

d. *Frequency of response:* Annually.

e. *Estimated number of likely respondents:* 300.

f. *Estimated cost to respondents:* $0.00/$0.00.

Dated: May 23, 2007.

Wilbert Bryant,

Associate Director for Management

[FR Doc. 07–2749 Filed 6–1–07; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget. OMB Control #0420–0513, Correspondence Match Educator Enrollment Form and Teacher Survey.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the PC–2042, Correspondence Match Educator Enrollment Form and Teacher Survey. Comments from the public are invited on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps and the Paul D. Coverdell World Wise Schools' Correspondence Match program, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of technology. A copy of the proposed information collections can be obtained from Sally Caldwell, Director of World Wise Schools, Peace Corps, Office of Domestic Programs, 1111 20th Street, NW., Washington, DC 20256. Ms. Caldwell may be contacted by telephone at 202–692–1425 or 800–424–8580, ext 1425 or e-mail at *scaldwell@peacecorps.gov*. Comments on the collections should be addressed to the attention of Ms. Caldwell and should be received on or before August 3, 2007.

Information Collection Abstract

Title: Correspondence Match Educator Enrollment Form and Teacher Survey.

Need for and Use of This Information: The Peace Corps and Paul D. Coverdell World Wise Schools need this information officially to enroll educators in the Correspondence Match program and to provide relevant services to its constituency. The information is used to make suitable matches between the educators and currently serving Peace Corps Volunteers as well as to assess programmatic functions.

Respondents: Educators interested in promoting global education in the classroom for the Correspondence Match Educator Enrollment Form. Correspondence Match educators for the Teacher Survey.

Respondents' Obligation to Reply: Both collections are voluntary.

BURDEN ON THE PUBLIC

	Educator form	Teacher survey
a. *Annual reporting burden*	1667 hours	

BURDEN ON THE PUBLIC—Continued

	Educator form	Teacher survey
b. *Annual recordkeeping burden*	250 hours	
c. *Estimated average burden per response*	10 minutes	15 minutes.
d. *Frequency of response*	Annually	Once.
e. *Estimated number of likely respondents*	10,000	3,000.
f. *Estimated cost to respondents*	$0.00/$8,900	$0.00.

Dated: May 23, 2007.

Wilbert Bryant,

Associate Director for Management.

[FR Doc. 07–2750 Filed 6–1–07; 8:45 am]

BILLING CODE 6051–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of the following collection of information: 3220–0155, Supplement to Claim of Person Outside the United States.

Under the Social Security Amendments of 1983 (Pub. L. 98–21), which amended Section 202(t) of the Social Security Act, the Tier I or the O/M (overall minimum) portion of an annuity and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the U.S., may be withheld effective January 1, 1985. The benefit withholding provision of Public Law 98–21 applies to divorced spouses, spouses, minor or disabled children, students, and survivors of railroad employees who (1) initially became eligible for Tier I amounts, O/M shares, and Medicare benefits after December 31, 1984; (2) are not U.S citizens or U.S. nationals; and (3) have resided outside the U.S for more than six consecutive months starting with the annuity beginning date. The benefit withholding provision does not apply, however to a beneficiary who is exempt under either a treaty obligation of the U.S., in effect on August 1, 1956, or a totalization agreement between the U.S. and the country in which the beneficiary resides, or to an individual who is exempt under other criteria specified in Public Law 98–21. RRB Form G–45, Supplement to Claim of Person Outside the United States, is currently used by the RRB to determine applicability of the withholding provision of Public Law 98–21. Our ICR describes the information we seek to collect from the public. Completion of Form G–45 is required to obtain or retain benefits. One response is required of each respondent. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 13540 on March 22, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Supplement to Claim of Person Outside the United States.

OMB Control Number: 3220–0155.

Form(s) submitted: G–45.

Type of request: Extension of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under Public Law 98–21, the Tier I or overall minimum portion of an annuity and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the United States may be withheld. The collection obtains the information needed by the Railroad Retirement Board to implement the benefit withholding provisions of Public Law 98–21.

Changes Proposed: The RRB proposes no changes to Form G–45.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 100.

Total annual responses: 100.

Total annual reporting hours: 17.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–10708 Filed 6–1–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27844; 812–13288]

HealthShares™, Inc. and XShares Advisors LLC; Notice of Application

May 29, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act.

Summary of the Application: The requested order would permit certain registered management investment companies and unit investment trusts registered under the Act (''UITs'') to acquire shares of certain registered open-end management investment companies and UITs, including those that operate as exchange-traded funds, that are outside the same group of investment companies as the acquiring investment companies.

Applicants: HealthShares™, Inc. (the ''Corporation'') and XShares Advisors LLC (the ''Advisor'').

Filing Dates: The application was filed on May 2, 2006 and amended on February 13, 2007 and May 29, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the 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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 20, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 420 Lexington Avenue, Suite 2626, New York, NY 10170.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained 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).

Applicants' Representations

1. The Corporation is an open-end management investment company registered under the Act and organized as a Maryland corporation. The Corporation is comprised of separate series that pursue distinct investment objectives and strategies (the ''Funds''). The existing Funds are offered as exchange-traded funds that operate in reliance on an order from the Commission permitting their shares to be redeemed in large aggregations (''Creation Units'').[1] The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the Funds.[2]

2. Applicants request relief to permit registered management investment companies and UITs that are not part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Corporation (such registered management investment companies are ''Investing Management Companies'', such UITs are ''Investing Trusts'', and Investing Management Companies and Investing Trusts are collectively ''Funds of Funds''), to acquire shares of the Funds in excess of the limits in section 12(d)(1)(A) of the Act, and to permit a Fund, any principal underwriter for a Fund, and any broker or dealer registered under the Securities Exchange Act of 1934 (''Broker'') to sell shares of a Fund to a Fund of Funds in excess of the limits of section 12(d)(1)(B) of the Act. Applicants request that the relief apply to: (1) Each registered open-end management investment company or UIT that currently or subsequently is part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Corporation, and is advised or sponsored by the Advisor or any entity controlling, controlled by, or under common control with the Advisor (such registered open-end management investment companies or their series are ''Open-end Funds'', such UITs or their series are ''UIT Funds,'' and both Open-end Funds and UIT Funds are included in the term ''Funds''); (2) each Fund of Funds that enters into a Participation Agreement (as defined below) with a Fund to purchase shares of the Fund; and (3) any principal underwriter to a Fund or Broker selling shares of a Fund.[3] Applicants also seek an exemption from sections 17(a)(1) and (2) of the Act to permit a Fund to sell shares to, and redeem its shares from, and engage in certain in-kind transactions with, a Fund of Funds that owns 5% or more of the shares of a Fund. A sponsor of a UIT is referred to as a ''Sponsor.''

3. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act and registered as an investment adviser under the Advisers Act (''Fund of Funds Adviser''). A Fund of Funds Adviser may contract with an investment adviser which meets the definition of section 2(a)(20)(B) of the Act (''Fund of Funds Subadviser''). Applicants state that the Funds of Funds will be interested in using the Funds as part of their overall investment strategy.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit Funds of Funds to acquire shares of the Funds in excess of the limits in section 12(d)(1)(A), and a Fund, any principal underwriter for a Fund and any Broker to sell shares of a Fund to a Fund of Funds in excess of the limits of section 12(d)(1)(B).

3. Applicants state that the terms and conditions of the proposed arrangement will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a

[1] HealthShares™, Inc., et al., Investment Company Act Release Nos. 27553 (Nov. 17, 2006) (notice) and 27594 (Dec. 7, 2006) (order) (the ''HealthShares™ Order'').

[2] All references to the term ''Advisor'' includes successors-in-interest to the Advisor. Successors-in-interest are limited to any entity resulting from a name change, a reorganization of the Advisor into another jurisdiction or a change in the type of business organization.

[3] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. A Fund of Funds may rely on the requested order only to invest in the Funds and not in any other registered investment company.

fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over the Funds.[4] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting the Fund of Funds Adviser or Sponsor of the Investing Trust, any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor of the Investing Trust, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser or Sponsor of the Investing Trust, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor of the Investing Trust (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to the Fund of Funds Subadviser, any person controlling, controlled by or under common control with the Fund of Funds Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Subadviser or any person controlling, controlled by or under common control with the Fund of Funds Subadviser (''Fund of Funds Subadviser Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end Fund or Sponsor to a UIT Fund) will cause a Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Subadviser, Sponsor of the Investing Trust, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Subadviser, Sponsor of the Investing Trust, or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to a Fund is covered by section 10(f) of the Act.

5. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of each Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Disinterested Trustees''), will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Open-end Fund in which the Investing Management Company may invest. In addition, a Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of the Investing Trust or its affiliated person, by an Open-end Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants also state that with respect to registered separate accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Conduct Rules''), if any, will only be charged at the Fund of Funds level or at the Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules. Further, applicants represent that each Fund of Funds will represent in the Participation Agreement that no insurance company sponsoring a registered separate account funding variable insurance contracts will be permitted to invest in the Fund of Funds unless the insurance company has certified to the Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Fund of Funds, including fees and charges at the separate account, Fund of Funds, and Fund levels, will be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

6. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order that allows the Fund to purchase shares of an affiliated money market fund for short-term cash management purposes or rule 12d1–1 under the Act. Applicants also represent that to ensure that the Funds of Funds comply with the terms and conditions of the requested relief from section 12(d)(1)(A)of the Act, a Fund of Funds must enter into a participation agreement between the Corporation, on behalf of the relevant Fund, and the Funds of Funds (''Participation Agreement'') before investing in a Fund beyond the limits imposed by section 12(d)(1)(A). The Participation Agreement will require the Fund of Funds to adhere to the terms and conditions of the requested order. The Participation Agreement will include an acknowledgment from the Fund of Funds that it may rely on the requested order only to invest in the Funds and not in any other registered investment company. The Participation Agreement will further require each Fund of Funds that exceeds the 5% or 10% limitations in sections 12(d)(1)(A)(ii) and (iii) of the Act to disclose in its prospectus that it may invest in the Funds, and to disclose, in ''plain English,'' in its prospectus the unique characteristics of the Fund of Funds investing in the Funds, including but not limited to the expense structure and any additional expenses of investing in the Funds. Each Fund of Funds also will comply with the disclosure requirements

[4] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Subadviser, a Sponsor of an Investing Trust, a promoter, or a principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, Sponsor, promoter, or principal underwriter of a Fund, and any person controlling, controlled by, or under common control with any of those entities.

concerning the costs of investing in Funds set forth in Investment Company Act Release No. 27399.

7. Applicants also note that a Fund may choose to reject a direct purchase of shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases shares of a Fund in the secondary market, the Fund would still retain its ability to reject purchases of its shares through its decision to enter into the Participation Agreement prior to any investment by the Fund of Funds in excess of the limits of section 12(d)(1)(A).

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants seek relief from section 17(a) to permit a Fund that is an affiliated person of a Fund of Funds because the Fund of Funds holds 5% or more of the Fund's shares to sell its shares to and redeem its shares from a Fund of Funds. Applicants believe that any proposed transactions directly between a Fund and Fund of Funds will be consistent with the policies of each Fund and Fund of Funds. The Participation Agreement will require any Fund of Funds that purchases shares from a Fund to represent that the purchase of shares from the Fund by a Fund of Funds will be accomplished in compliance with the investment restrictions of the Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement.[5]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act.[6] Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of shares directly from a Fund will be based on the net asset value of the Fund. Applicants state that the proposed transactions will be consistent with the policies of each Fund of Funds and Fund and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The members of a Fund of Funds Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds Subadviser Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds Advisory Group or the Fund of Funds Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Fund, it (except for any member of the Fund of Funds Advisory Group or Fund of Funds Subadviser Group that is a separate account) will vote its shares of the Fund in the same proportion as the vote of all other holders of the Fund's shares. This condition does not apply to the Fund of Funds Subadviser Group with respect to a Fund for which the Fund of Funds Subadviser or a person controlling, controlled by, or under common control with the Fund of Funds Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Open-end Fund) or as the Sponsor (in the case of a UIT Fund). A registered separate account will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An unregistered separate account will either (i) vote its shares of the Fund in the same proportion as the vote of all other holders of the Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of a Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Fund of Funds Adviser and any Fund of Funds Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Open-end Fund (''Board''), including a majority of the Disinterested Trustees, will determine that any consideration paid by the Open-end Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Open-end Fund; (b) is within the range of consideration that the Open-end Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an

[5] To the extent that purchases and sales of shares of a Fund occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. The requested relief is also intended to cover the in-kind transactions that would accompany such sales and redemptions as described in the application for the HealthShares™ Order.

[6] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgment.

Open-end Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end Fund or Sponsor to a UIT Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Open-end Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Open-end Fund in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Open-end Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Open-end Fund. The Board of the Open-end Fund will consider, among other things, (i) whether the purchases were consistent with the investment objectives and policies of the Open-end Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Open-end Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Open-end Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. The Open-end Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Open-end Fund were made.

8. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), the Fund of Funds and the Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, or Sponsors and trustees, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-end Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Open-end Fund of the investment. At such time, the Fund of Funds will also transmit to the Open-end Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Open-end Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement and, in the case of an Open-end Fund, the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the Disinterested Trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Open-end Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

10. A Fund of Funds Adviser or trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee, or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of the Investing Trust or its affiliated person, by an Open-end Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Subadviser will waive fees otherwise payable to the Fund of Funds Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Subadviser, or an affiliated person of the Fund of Funds Subadviser, other than any advisory fees paid to the Fund of Funds Subadviser or its affiliated person by an Open-end Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Subadviser. In the event that the Fund of Funds Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

11. With respect to registered separate accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Fund level. Other sales charges and service fees, as defined in Rule 2830 of the NASD Conduct Rules, if any, will only be charged at the Fund of Funds level or at the Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order that allows the Fund to purchase shares of an affiliated money market fund for short-term cash management purposes or rule 12d1–1 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10700 Filed 6–1–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the

Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 4, 2007:

A Closed Meeting will be held on Thursday, June 7, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, June 7, 2007 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of litigation claims; and

Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 30, 2007

Nancy M. Morris,

Secretary.

[FR Doc. E7–10659 Filed 6–1–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55825; File No. SR–Phlx–2007–38]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Automated Sending of Linkage Principal Acting as Agent Orders

May 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) [3] of the Act and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to reflect a system change that is intended to specify when orders that are not executed automatically on the Exchange would be routed through the Intermarket Option Linkage (''Linkage'').[5] Specifically, the Exchange proposes to amend Exchange Rule 1080(c)(vi)(A)(1) to reduce the exposure period for marketable customer limit orders on the Exchange's limit order book that are eventually sent automatically to away markets a Linkage Principal Acting as Agent (''P/A'') Orders [6] when the Exchange's disseminated market is not the National Best Bid or Offer (''NBBO''). The exposure period would be reduced from the current three seconds to one second.

The text of the proposed rule change is available on the Phlx's Web site at *http://www.phlx.com*, at the Exchange'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 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 Phlx has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modernize the Exchange's system to account for technological advances that have been made in the Exchange's systems and in the industry since the original adoption of the rule,[7] and to provide more efficient executions for customers with marketable limit orders on the Exchange's limit order book.

Currently, under Exchange Rule 1080(c)(vi)(A)(1), when the Exchange's disseminated price on the opposite side of the market is not the NBBO, marketable public customer limit orders are exposed to the trading crowd and to participants in Phlx XL [8] for a period of three seconds following receipt. At the end of this three-second exposure period, if the Exchange's disseminated price on the opposite side of the market is still not the NBBO, any unexecuted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(5).

[5] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, and the International Securities Exchange, LLC. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and the Boston Stock Exchange, Inc. joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[6] A ''P/A Order'' is an order for the principal account of a specialist (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 specialist is acting as agent. *See* Exchange Rule 1083(k)(i).

[7] *See* Securities Exchange Act Release No. 51544 (April 14, 2005), 70 FR 20613 (April 20, 2005) (SR–Phlx–2005–03).

[8] Phlx XL is the Exchange's fully electronic trading platform for options. *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

contract remaining in such an order is automatically sent as a P/A Order through the Linkage to an exchange disseminating a price on the opposite side of the market that is the NBBO.

If, at the end of the three-second exposure period, the Exchange's disseminated price on the opposite side of the market is the NBBO, any unexecuted contracts remaining in the marketable public customer limit order are automatically executed on the Exchange up to the Exchange's disseminated size. Any remaining contracts are then sent as P/A Order(s) to the exchange(s) displaying the NBBO. If the marketable public customer limit order is canceled during the three-second period, no P/A Order is sent and the marketable public customer limit order would not be executed.

The proposed system change would simply reduce the exposure period from three seconds to one second. The Exchange believes that the proposal to reduce the exposure period for marketable customer limit orders on the limit order book should provide more efficient and immediate executions. In addition, the Exchange believes that a one-second order exposure feature for inbound limit orders when the Exchange's disseminated price on the opposite side of the market is not the NBBO, together with the automatic execution of unexecuted contracts up to the Exchange's disseminated size when the Exchange's disseminated price becomes the NBBO and the automatic routing through Linkage of unexecuted contracts when the Exchange's disseminated prices is not the NBBO, will provide an effective means for avoiding trade-throughs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by providing more efficient executions for customers with marketable limit orders on the Exchange's limit order book.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 the access to or availability of the system, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(5) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–38 and should be submitted on or before June 25, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10664 Filed 6–1–07; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58824; File No. SR–Amex–2007–52]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Floor Broker Zone Requirements in AEMI

May 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 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 Amex. The Exchange filed the proposed rule change as a ''non-controversial'' rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a specific zone (each a ''Zone'' or collectively, the ''Zones'') requirement for floor brokers in equities and ETFs on the trading floor. The text of the proposed rule change is available on Exchange's Web site (*http://www.amex.com*), at Amex'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, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to amend the AEMI Rules[4] to require a floor broker to be located within the same Zone when submitting a Crowd Order in that Zone.[5] A floor broker may trade in any crowd on the floor of the Exchange, but, pursuant to existing Rule 1A—AEMI, must be physically present in the crowd to represent a Crowd Order in the AEMI Book.[6] Furthermore, upon leaving a crowd or logging out of his system, a floor broker must either: (i) Cancel all crowd orders in the AEMI Book for securities in the crowd he is leaving, (ii) electronically submit the orders in the form of percentage or limit order to the Specialist for handling, or (iii) electronically route the crowd order to another floor broker in the crowd, via his hand held terminal.[7]

The Exchange proposes, in Rule 1A—AEMI, to establish three trading Zones to reflect the specific identifiable areas on the trading floor where floor brokers are able to conduct business at each post/panel within the Zone. A floor broker will be considered to be in the Zone if he or she is physically present in the area set forth as part of that Zone. The Exchange believes that designating specific Zones on the trading floor will serve to distinguish the areas that benefit the interaction among the members on the trading floor. The Exchange proposes to require that a floor broker submitting a Crowd Order must be within the same Zone as where he is submitting the Crowd Order.

As noted above, a floor broker, upon leaving a crowd or logging out of his system, must either: (i) Cancel all crowd orders in the AEMI Book for securities in the crowd he is leaving, (ii) electronically submit the orders in the form of percentage or limit order to the Specialist for handling, or (iii) electronically route the crowd order to another floor broker in the crowd, via his hand held terminal.[8] The Exchange however, proposes two exceptions to the Zone requirement. First, a floor broker may leave a Zone to obtain ''market looks'' in securities located at panels that are part of another Zone.[9] Second, a floor broker may leave the Zone for the time necessary to change its hand held batteries without having to cancel all Crowd Orders, electronically submit orders to the Specialist for handling, or electronically route the Crowd Order to another floor broker in the Zone.

AEMI securities are traded on the Main Trading Floor, the Mezzanine, and the ground floor of the Exchange, which is called Harry's. In this regard, the Exchange proposes to designate Zones in only those three areas of the Trading Floor. The Main Trading Floor shall be designated as Zone A, the Mezzanine as Zone B, and Harry's as Zone C.

The Exchange intends to disseminate to its members an information circular identifying the specific areas comprising each Zone.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[10] in general and furthers the objectives of Section 6(b)(5) of the Act[11] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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, protect investors and the public interest.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] As required under Rule 19b–4(f)(6)(iii),[14] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

Amex has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] The

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (order approving SR–Amex–2005–104) (''AEMI Approval Order''); *see also* Securities Exchange Act Release No. 54709 (November 3, 2006), 71 FR 65847 (November 9, 2006) (order approving SR–Amex–2006–72).

[5] A Crowd Order is defined in Rule 1A—AEMI as an order in the AEMI Book that is represented by: (1) A broker standing in the crowd or (2) a bid or offer in the AEMI Book entered by a Registered Trader standing in the crowd.

[6] The ''AEMI Book'' is the part of the AEMI platform that holds and automatically matches orders, bids, and offers submitted to it electronically by specialists, Registered Traders, Floor Brokers, and off-Floor members in accordance with these rules.

[7] *See* AEMI Approval Order, 71 FR at 59551.

[8] *Id.*

[9] ''Market looks'' are quick snapshots of trading interest that brokers convey back to their customers.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on

Commission notes that the proposed rule change is modeled on NYSE Rules 70.20 and 70.30, which previously have been subject to a public notice period.[16] Amex's proposal does not appear to raise any novel regulatory issues and will allow Amex without undue delay to define what it means for a floor broker to be physically present in a crowd and thus permitted to represent a Crowd Order in the AEMI Book.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–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–Amex–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 Section. Copies of such filing also will be available for inspection and copying at the principal office of 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–2007–52 and should be submitted on or before June 25, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10680 Filed 6–1–07; 8:45 am]

BILLING CODE 8010–01–P

efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] *See* Securities Exchange Act Release Nos. 54427 (September 12, 2006), 71 FR 54862 (September 19, 2006) (SR–NYSE–2006–58); and 55316 (February 20, 2007), 72 FR 8825 (February 27, 2007) (SR–NYSE–2007–14).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55808; File No. SR–ISE–2007–33]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Amendment of the International Securities Exchange Holdings, Inc. Certificate of Incorporation and Bylaws

May 23, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2007, the International Securities Exchange, LLC (''Exchange'' or ''ISE, LLC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) 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

ISE, LLC is proposing to amend the Certificate of Incorporation and Bylaws of International Securities Exchange Holdings, Inc. (''ISE Holdings'' or ''Company''). The text of the proposed rule change is available at ISE, LLC, on ISE, LLC's Web site *http://www.iseoptions.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE, LLC 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

ISE, LLC proposes to amend ISE Holdings' Certificate of Incorporation and Bylaws to remove the requirement that the President of the Company also be the Chief Executive Officer of the Company. Currently, the ISE Holdings Bylaws require that the President of the Company also be the Chief Executive Officer of the Company.[5] The Exchange believes that the proposed modification would provide the Board of Directors of ISE Holdings with the flexibility to structure management of the Company in a way that is most effective for attracting and keeping the industry's most talented people, and in turn provide the flexibility to attract and retain the best possible management team for the Company and its stockholders.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(1)[6] that an exchange be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] ISE Holdings Bylaws, Section 4.1.

[6] 15 U.S.C. 78f(g)(1).

(subject to any rule or order of the Commission pursuant to Section 17(d)[7] or 19(g)(2)[8] of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. The Exchange also believes this proposed rule change furthers the objective of Section 6(b)(5)[9] that an exchange have rules that, among other things, are designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[10] of the Act and Rule 19b–4(f)(3) thereunder because it is concerned solely with the administration of the Exchange.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–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–ISE–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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–33 and should be submitted on or before June 25, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10666 Filed 6–1–07; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78q(d).

[8] 15 U.S.C. 78s(g)(2).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(3).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55809; File No. SR–ISE–2007–34]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change Relating to an Amendment to the International Securities Exchange, LLC Constitution and Amended and Restated LLC Agreement

May 23, 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 May 8, 2007, the International Securities Exchange, LLC (''Exchange'' or ''ISE, LLC'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE, LLC is proposing to amend its Constitution and Amended and Restated LLC Agreement. The text of the proposed rule change is available on the Exchange's Web site at (*http://www.iseoptions.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Exchange's Constitution and Amended and Restated LLC Agreement to: (i) Remove the requirement that the President of the Exchange also be the Chief Executive Officer of the Exchange; and (ii) change the number of directors from 15 to no less than 15 and no more than 16, so as to allow for the election, at the discretion the Sole LLC Member,[3] of a director who was employed by the Exchange at any time during the prior three years, but otherwise meets the definition of a ''Non-Industry Director'' as provided under the Exchange's Constitution. Currently, the Exchange's Constitution requires that the President of the Exchange also be the Chief Executive Officer of the Exchange[4] and that the number of directors on the Board of Directors be fixed at 15.[5] The Exchange believes that the proposed modifications would provide the flexibility to structure the Board of Directors in a way that is most effective for attracting and keeping the industry's most talented people, and in turn provide the flexibility to attract and retain the best possible management team for the Exchange and its members.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(1)[6] that an exchange be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d)[7] or 19(g)(2)[8] of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. The Exchange also believes this proposed rule change furthers the objective of Section 6(b)(5)[9] that an exchange have rules that, among other things, are designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which ISE, LLC consents, the Commission will:

A. By order approve such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2007–34 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–2007–34. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–34 and should be submitted on or before June 25, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10667 Filed 6–1–07; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Article I, Section 1.1 of the ISE, LLC Constitution, which defines the term ''Sole LLC Member''.

[4] Constitution, Section 4.1.

[5] Constitution, Section 3.2.

[6] 15 U.S.C. 78f(g)(1).

[7] 15 U.S.C. 78q(d).

[8] 15 U.S.C. 78s(g)(2).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55819; File No. SR–NASD–2007–033]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Extension of NASD's Authority Under the Cease and Desist Pilot Program

May 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2007, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has filed the proposal as a ''non-controversial'' 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 renders the proposal effective upon filing with the Commission. On May 24, 2007, NASD filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rules 9556, 9800, 9810, and 9860, to extend for an additional two-year period, to June 23, 2009, NASD's authority under the cease and desist pilot program. At this time, NASD is not proposing any substantive changes to the rules covered by the pilot program. The only changes regard extending the pilot's expiration date to June 23, 2009, and technical changes to the titles of the NASD executives who can authorize the initiation of cease and desist proceedings and certain cross-references in rules covered by the pilot program.

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders

(Rule 9556, and amendments adopted by SR–NASD–98–80 to Rule 8310, *IM–8310–3(c)(1) (formerly* IM–8310–2(d)(1)*, renumbered by SR–NASD–2003–168*), 9120(x), 9241(c), 9290, 9311(b), 9312(b), 9360 and the Rule 9800 Series, shall expire on June 23, [2007]*2009*, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to NASD's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, NASD staff—after receiving written authorization from *NASD's Chairman and CEO or NASD's Senior Executive Vice President for Regulatory Policy and Programs* [the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs]—may issue a notice to such member or person stating that the failure to comply with the temporary or permanent cease and desist order within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(b) through (h) No Change.

* * * * *

9800. Temporary Cease and Desist Orders

(The entire Rule 9800 Series, and related amendments adopted by SR–NASD–98–80 to Rule 8310, *IM–8310–3(c)(1) (formerly* IM–8310–2(d)(1)*, renumbered by SR–NASD–2003–168)*, 9120(x), 9241(c), 9290, 9311(b), 9312(b), and 9360, and by SR–NASD–2003–110 to Rule 9556, shall expire on June 23, [2007]*2009*, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)

9810. Initiation of Proceeding

(a) Department of Enforcement or Department of Market Regulation

With the prior written authorization of *NASD's Chairman and CEO or NASD's Senior Executive Vice President for Regulatory Policy and Programs* [the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs], the Department of Enforcement or the Department of Market Regulation may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b–5 thereunder; SEC Rules 15g–1 through 15g–9; NASD Rule 2110 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act of 1933); NASD Rule 2120; or NASD Rule 2330 (if the alleged violation is misuse or conversion of customer assets). The Department of Enforcement or the Department of Market Regulation shall initiate the proceeding by serving a notice on a member or associated person (hereinafter ''Respondent'') and filing a copy thereof with the Office of Hearing Officers. The Department of Enforcement or the Department of Market Regulation shall serve the notice by personal service, overnight commercial courier, or facsimile. If service is made by facsimile, the Department of Enforcement or the Department of Market Regulation shall send an additional copy of the notice by overnight commercial courier. The notice shall be effective upon service.

(b) through (c) No Change.

* * * * *

9860. Violation of Temporary Cease and Desist Orders

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled under Rule 9556. *NASD's Chairman and CEO or NASD's Senior Executive Vice President for Regulatory Policy and Programs* [The President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs] must authorize the initiation of any such proceeding in writing.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In May 2003, the Commission approved, on a two-year pilot basis, a rule change that gave NASD authority to issue temporary cease and desist orders (''TCDOs'') and made explicit NASD's ability to impose permanent cease and desist orders as a remedy in disciplinary cases.[5] The pilot program also gave NASD authority to enforce cease and desist orders. In June 2005, NASD extended the pilot program for an additional two-year period.[6] The current two-year pilot expires on June 23, 2007. NASD is proposing a rule change to extend the pilot program for an additional two-year period, to June 23, 2009. Such an extension will enable NASD to continue to issue and enforce temporary and permanent cease and desist orders. NASD's authority to issue TCDOs will expire after the additional two-year period unless the pilot program is further extended or adopted

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 47925 (May 23, 2003), 68 FR 33548 (June 4, 2003) (SR–NASD–98–80).

[6] *See* Securities Exchange Act Release No. 51860 (June 16, 2005), 70 FR 36427 (June 23, 2005) (SR–NASD–2005–061).

on a permanent basis with Commission approval.

NASD currently is seeking only to extend the pilot program period and make technical changes to the titles of the NASD executives who can authorize the initiation of cease and desist proceedings and certain cross-references in rules covered by the pilot program. NASD is not proposing any substantive changes to the rules covered by the pilot program at this time. Since the pilot program was first approved in 2003, NASD has issued only one TCDO and one permanent cease and desist order (in the same case, which is described below). Consequently, NASD believes that additional time is needed to make a meaningful determination about whether the program should continue and whether certain specific provisions should be modified and, if so, to what extent.

In the one case initiated under the pilot program, NASD's Department of Enforcement (''Enforcement'') alleged that the member in question was engaged in widespread fraud that included, among other things, making material misrepresentations and omissions in connection with the private offering of its own stock, effecting unauthorized transactions, and using customer funds improperly.[7] Enforcement showed that not only was the member attempting to continue the fraudulent offering, it also was funneling money and assets to a non-NASD member affiliate. Enforcement alleged, and a hearing panel found, that a TCDO was necessary, because the member's continuation of the misconduct was likely to result in further dissipation or conversion of assets and other significant harm to investors before the completion of the underlying disciplinary proceeding. After the hearing panel issued a permanent cease and desist order following a full disciplinary hearing, the parties settled the case, resulting in the expulsion of the member, the bar of its owner, and the imposition of almost $12 million in fines and restitution.

The proposed extension of the pilot program for an additional two years will provide NASD with a mechanism to continue to take appropriate remedial action against a member or an associated person who has engaged (or is engaging) in violative conduct that could cause continuing harm to the investing public if not addressed expeditiously. At the same time, the pilot program continues to contain numerous procedural checks and safeguards to ensure that cease and desist proceedings are used prudently, sparingly, and fairly. In addition, the extension of the pilot program will allow NASD to analyze more thoroughly the pilot program's overall effectiveness. Accordingly, NASD believes it is appropriate to extend the pilot period regarding cease and desist orders for two years.

The proposed rule change will become effective upon filing, will be operative on June 23, 2007, and will expire on June 23, 2009, unless extended or permanently adopted by NASD pursuant to Commission approval at or before such date.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change also is consistent with the provisions of Section 15A(b)(7) of the Act,[9] which provides that NASD members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or NASD's rules. The extension of the pilot program is consistent with NASD's obligations under the Act, because cease and desist orders are designed to stop violative conduct that is likely to cause dissipation or conversion of assets or other significant harm to investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2007–033 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–NASD–2007–033. 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

[7] *See* Securities Exchange Act Release No. 51270 (February 28, 2005) (summarizing NASD's cease and desist proceedings against former NASD member L.H. Ross & Company).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78*o*–3(b)(7).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

Room. Copies of the filing also will be available for inspection and copying at the principal office of NASD. 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–NASD–2007–033 and should be submitted on or before June 25, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10681 Filed 6–1–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55818; File No. SR–NYSE–2007–48]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Proposed Amendments to Rule 600 to Provide Guidance Regarding New and Pending Arbitration Claims in Light of the Consolidation of NYSE Regulation into NASD DR

May 25, 2007.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 23, 2007, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend current Rule 600 and adopt a new Rule 600A.

As part of the consolidation of the member firm regulation function of NYSE Regulation, Inc. (''NYSE Regulation'') with the National Association of Securities Dealers, Inc. (''NASD''), NYSE Regulation will cease to provide an arbitration program, and its existing arbitration department (''NYSE Arbitration'') will be consolidated with that of NASD Dispute Resolution, Inc. (''NASD DR''). The proposed amendments provide that the arbitration rules of the Exchange shall apply only to NYSE arbitration cases pending prior to the effective date of the consolidation, and that, thereafter, claims involving member organizations, and/or associated persons, and/or other related parties will be arbitrated under the Codes of Arbitration Procedure of NASD DR. The text of the proposed rule is set forth below. Proposed new language is underlined.

* * * * *

Rule 600 Arbitration

* * * * *

Supplementary Material

Rules 600 through 639, with the exception of Rule 600A, apply only to arbitrations commenced prior to [insert effective date of the consolidation] and are otherwise of no force or effect. Notwithstanding the foregoing, arbitrations filed with NYSE Arca on or prior to January 31, 2007 continue to be governed by the NYSE Arca Rule 12 in effect on or prior to January 31, 2007, and arbitrations filed with NYSE Arca Equities on or prior to January 31, 2007 continue to be governed by the NYSE Arca Equities Rule 12 in effect on or prior to January 31, 2007. On and after [insert effective date of the consolidation] all such arbitrations shall, until concluded, be administered by NASD Dispute Resolution, Inc. (''NASD DR'') pursuant to a Regulatory Services Agreement with the Exchange.

* * * * *

Rule 600A

(a) Duty to Arbitrate. (i) Any dispute, claim or controversy between a member organization and another member organization shall be arbitrated pursuant to the Codes of Arbitration Procedure of NASD DR; and, (ii) any dispute, claim or controversy between a customer or non-member and a member organization and/or associated person and/or other related party, or between an associated person and a member organization and/or an associated person arising in connection with the business of such member organization and/or associated person in connection with his or her activities as an associated person, shall be arbitrated pursuant to NASD DR Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement, or upon the demand of the customer or non-member. However, such obligation to arbitrate shall not extend to any controversy that is not permitted to be arbitrated under NASD DR Codes of Arbitration Procedure.

(b) Referrals. The Exchange may receive, investigate and take disciplinary action with respect to any referral it receives from an NASD DR arbitrator of any matter which comes to the attention of such arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange's Rules or the federal securities laws.

(c) Failure to Arbitrate or to Pay an Arbitration Award. Any member organization or associated person who fails to submit to arbitration a matter required to be arbitrated pursuant to this Rule, or that fails to honor an arbitration award made pursuant to the Codes of Arbitration Procedure of NASD DR, or made under the auspices of any other self-regulatory organization, shall be subject to disciplinary proceedings in accordance with Exchange Rule 476.

(d) Other Actions. The submission of any matter to arbitration as provided for under this Rule shall in no way limit or preclude any right, action or determination by the Exchange that it would otherwise be authorized to adopt, administer or enforce.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide guidance regarding both new and pending arbitration claims in light of the consolidation of NYSE Regulation into NASD DR. NYSE

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Arbitration currently administers an arbitration program for NYSE Regulation, governed by NYSE Regulation Rules 600 through 639. NYSE Arbitration also administers a program for NYSE Arca, Inc. (''NYSE Arca'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities''), governed by what is referred to as ''Rule 12.''[4]

As part of the consolidation of NYSE Regulation with NASD,[5] NYSE Regulation will cease to administer an arbitration program, and its existing arbitration department will be consolidated with NASD DR. As a result, on or after the date of the consolidation, all arbitration claims filed prior to the date of the consolidation and previously subject to NYSE Regulation rules and administration will be administered by NASD DR pursuant to a Regulatory Services Agreement with the NYSE.

However, the rules governing the administration of any particular arbitration will depend on the date the case was filed. This will ensure that any person that commenced arbitration under a particular set of arbitration rules will continue to have the case administered pursuant to those rules through to the case's conclusion. There are two categories of cases. First, NYSE arbitration cases filed before the effective date of the consolidation will continue to be governed by existing NYSE Regulation arbitration rules, as would pending NYSE Arca and NYSE Arca Equities cases filed on or after February 1, 2007.[6] Second, those NYSE Arca and NYSE Arca Equities cases filed on or prior to January 31, 2007 are (and will continue to be) governed by Rule 12.

Proposed Exchange Rule 600A provides detailed guidance concerning claims involving member organizations, and/or associated persons and/or other related parties, that are asserted on and after the date of the consolidation. First, any dispute, claim or controversy between a member organization and another member organization shall be arbitrated pursuant to the Codes of Arbitration Procedure of NASD DR. Second, any dispute, claim or controversy between a customer or a non-member and a member organization, and/or associated person and/or other related party shall be arbitrated pursuant to NASD DR Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement, or upon the demand of the customer or non-member. Third, any dispute, claim or controversy between an associated person and a member organization and/or an associated person arising in connection with the business of such member organization and/or associated person in connection with his or her activities as an associated person, shall be arbitrated pursuant to NASD DR Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement.

In almost all cases the change from NYSE to NASD DR arbitration rules should not result in material, substantive differences to persons participating in the arbitration process. However, one difference is the treatment of employment discrimination claims. NASD DR rules provide that any claim alleging employment discrimination, including any sexual harassment claims, in violation of a statute, will be eligible for arbitration pursuant to either a pre-dispute or a post-dispute agreement to arbitrate. In contrast, Exchange Rule 600(f) permits claims to be arbitrated only when the parties have agreed to arbitrate the claim after it has arisen.

Rule 600A will explicitly retain the Exchange's enforcement authority related to arbitration. In appropriate cases, arbitrators refer to the Exchange potential violations of the Exchange's Rules or the federal securities laws that come to their attention during and in connection with a proceeding. Rule 600A will specify that the Exchange will retain the ability to take action based on such referrals that may come from arbitrators in cases being arbitrated at NASD DR.

Rule 600A will also retain the substance of current Exchange Rule 637, regarding the obligation to honor arbitration awards. It will provide that any Exchange member organization, or associated person of any Exchange member organization, that fails to honor an award of arbitrators rendered under the NASD DR Codes of Arbitration Procedure, or under the auspices of any other self-regulatory organization, shall be subject to disciplinary proceedings in accordance with Exchange Rule 476. It will also specify that failure to submit a matter to arbitration as required by Rule 600A will also subject the member organization to Exchange disciplinary action.

Rule 600A will also specify that the submission of any matter to arbitration as provided for under the Rule shall in no way limit or preclude any right, action or determination by the Exchange that it would otherwise be authorized to adopt, administer or enforce.

Finally, Supplementary Material added to existing Rule 600, and to become effective on the effective date of the consolidation, will specify that the current NYSE arbitration rules, Rules 600 through 639, will thereafter apply only to arbitrations commenced prior to the effective date of the consolidation and will be otherwise of no force or effect. The Supplementary Material will also specify that arbitrations filed with NYSE Arca or NYSE Arca Equities on or prior to January 31, 2007 will continue to be governed by Rule 12. This will ensure that those who commenced arbitrations under a particular set of arbitration rules will continue to have their cases administered pursuant to those same rules through to the cases' conclusion. The Supplementary Material will also note that from and after the effective date of the consolidation, all outstanding arbitrations shall, until concluded, be administered by NASD DR pursuant to a Regulatory Services Agreement with the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5)[7] of the Act, which requires, among other things, that the rules of an Exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposed rule change will streamline the arbitration process and provide for a unified and more efficient arbitration forum with one set of arbitration rules and administrative procedures. This will allow resources to be devoted to maintaining and improving the NASD DR program, rather than splitting resources between two mainly duplicative programs. As a result of these improvements, the proposed rule change will better protect investors and the public interest.

[4] NYSE Arca and NYSE Arca Equities have two separate rules that govern arbitrations, one for Equity Trading Permit (''ETP'') holders, and one for Option Trading Permit (''OTP'') holders and OTP firms; both rules are known as ''Rule 12.'' Although Rule 12 has subsequently been amended, for purposes of administering NYSE Arca and NYSE Arca Equities arbitrations filed on or prior to January 31, 2007, NYSE Arbitration follows Rule 12 as it was in effect on that date.

[5] Additional information regarding the consolidation may be found in: SR–NASD–2007–23 (March 19, 2007) concerning proposed amendments to the By-Laws of NASD to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc.; and SR-NYSE–2007–22 (February 27, 2007) concerning proposed amendments to several NYSE rules which, among other matters, harmonize the rules with corresponding NASD regulatory requirements.

[6] *See* Release No. 34–55142 (January 19, 2007), 72 FR 3898 (January 26, 2007) (SR–NYSEArca–2006–54) and Release No. 34–55141 (January 19, 2007), 72 FR 3897 (January 26, 2007) (SR–NYSEArca–2006–55).

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–48 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–2007–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2007–48 and should be submitted on or before June 25, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10661 Filed 6–1–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55823; File No. SR–NYSE–2007–10]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Amendments to Interpretation to Rule 311(b)(5) (''Co-Designation of Principal Executive Officers'') as Modified by Amendment No. 1

May 29, 2007.

I. Introduction

On February 2, 2007, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Interpretation .05 to NYSE Rule 311(b)(5) regarding co-designation of principal executive officers. On April 16, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 26, 2007.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

NYSE Rule 311 (''Formation and Approval of Member Organizations'') and specifically Section (b)(5) thereof currently provide that principal executive officers[5] shall exercise principal executive responsibility over the various areas of the business of the member corporation. Interpretation .05 to Rule 311(b)(5) (the ''Interpretation'') sets forth the regulatory framework under which member organizations may request approval for assigning two persons as the principal executive officers for the same function pursuant to Rule 311(b)(5). The Rule currently provides that no understanding or agreement purporting to limit or apportion the joint and several responsibility of each such co-officer will be recognized by the Exchange. The Exchange now believes, however, that there are situations in which CCOs and COOs can exercise supervisory authority over discrete and naturally separate business functions, consistent with the internal corporate structure of the particular member organization. Accordingly, the Exchange has proposed to permit co-CCOs and co-COOs to allocate supervisory responsibility in a fashion acceptable to the Exchange.[6]

Specifically, where a member organization seeks to divide regulatory responsibility between more than one such principal executive officer bearing the same or similar titles without the assumption of joint and several responsibility, it must provide the Exchange with a plan acceptable to the Exchange allocating specific responsibility and making unambiguous provisions, especially for the supervision of areas where the separate functions interact. Joint and several responsibility would remain in effect for any area not specifically included in the plan approved by the Exchange.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78(a) *et seq.*

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 55650 (April 19, 2007), 72 FR 20905.

[5] The Exchange recognizes four such principal executive officers: chief executive officer (''CEO''), chief operations officer (''COO''), chief finance officer (''CFO'') and chief compliance officer (''CCO'').

[6] The Exchange continues to believe that the authority vested in CEOs and CFOs is indivisible, thus the proposed amendments to the Interpretation would not apply to these principal executive officers.

In addition, because the CCO of a member organization has unique responsibilities under NYSE Rule 342.30 (''Annual Reports''), the revised Interpretation would also require a representation that the certification required by Rule 342.30(e) will confirm the qualification of each such co-CCO and that the responsibility of the co-CCOs encompasses every aspect of the business of the member organization. Each of the co-CCOs would be required to meet with and advise the CEO as part of the Rule 342.30 certification process.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [7] and, in particular, the requirements of Section 6 of the Act. [8] Specifically, the Commission finds that the proposal is consistent with Section (b)(5) of the Act,[9] in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that the proposal should provide the Exchange with flexibility in selecting, and offering positions to, qualified candidates to fill CCO and COO positions, thus helping to ensure skilled management of the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2007–10), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10668 Filed 6–1–07; 8:45 am]

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[7] The Commission has considered the amended proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55817; File No. SR–Phlx–2007–07]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Index Linked Securities

May 25, 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 January 25, 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. On May 9, 2007, Phlx filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 803—Criteria for Listing—Tier 1, for the purpose of adopting generic listing standards pursuant to Rule 19b–4(e) under the Act [3] in connection with index-linked securities (''Index Securities''). The text of the proposed rule change is available on Phlx's Web site at *http://www.phlx.com*, at Phlx'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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(e).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Rule 803(f), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants.[4] The Exchange proposes to add a new section (n) to Phlx Rule 803 to provide generic listing standards to permit the listing and trading of Index Securities pursuant to Rule 19b–4(e) under the Act.[5] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4 [6] if the Commission has approved, pursuant to Section 19(b) of the Act,[7] the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives product, and the SRO has a surveillance program for the product class.[8]

Index Securities are designed for investors who desire to participate in a specific market segment or combination of market segments through index products. Each Index Security is intended to provide investors with exposure to an identifiable underlying market index. Despite the fact that Index Securities are linked to an underlying index, each will trade as a single, exchange-listed security.

The Exchange proposes that generic listing standards appropriate for Index Securities provide that each index or combination of indexes (the ''Underlying Index'' or ''Underlying Indexes'') meet the criteria set forth in proposed Phlx Rule 803(n) or an index previously approved for the trading of options or other derivative securities by

[4] *See* Securities Exchange Act Release No. 30466 (March 11, 1992), 57 FR 9301 (March 17, 1992) (SR–Phlx–92–01).

[5] 17 CFR 240.19b–4(e). The Exchange has previously received Commission approval to list and trade certain index options, exchange-traded funds and trust issued receipts pursuant to Rule 19b–4(e). *See* Securities Exchange Act Release Nos. 43683 (December 6, 2000), 65 FR 78235 (December 14, 2000) (SR–Phlx–00–67) (Index Options); 45178 (December 20, 2001), 66 FR 67610 (December 31, 2001) (SR–Phlx–00–68) (Trust Shares); and 44826 (September 20, 2001), 66 FR 49990 (October 1, 2001) (SR–Phlx–2001–75) (TIRs).

[6] 17 CFR 240.19b–4(c)(1).

[7] 15 U.S.C. 78s(b).

[8] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within 5 business days after the SRO begins trading the new product(s). *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

the Commission under Section 19(b)(2) of the Act and rules thereunder. In all cases, an Underlying Index is required to have a minimum of (10) component securities. The specific criteria for each underlying component security in proposed Phlx Rule 803(n) are set forth below in the section entitled ''Eligibility Standards for Underlying Component Securities.'' In general, the criteria for the underlying component securities of an Underlying Index is substantially similar to the requirements for index options set forth in Phlx Rule 1009A(a).

Index-Linked Securities

Index Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. The issuer of an Index Security may or may not provide for periodic interest payments to holders based on dividends or other cash distributions paid on the securities comprising the Underlying Index or Indexes during a prescribed period.[9] The holder of an Index Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component securities. For example, an Index Security may be subject to a ''cap'' on the maximum principal amount to be repaid to holders or a ''floor'' on the minimum principal amount to be repaid to holders at maturity. The proposed generic listing standards may provide for accelerated returns based on a multiple of the positive performance of an index, but will not be applicable to Index Securities where the payment at maturity may be based on a multiple of negative performance of an underlying index or indexes. The structure of an Index Security may provide ''principal protection,'' *i.e.*, a minimum guaranteed amount to be repaid, or provide that the principal amount is fully exposed to the performance of a market index. An Index Security may also provide ''contingent'' protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain pre-determined level. The Exchange believes that the flexibility to list a variety of Index Securities will offer investors the opportunity to more precisely focus their specific investment strategies.

The original public offering price of Index Securities may vary with the most common offering price expected to be $10 or $1,000 per unit. The initial offering price for an Index Security will be established on the date the security is priced for sale to the public. The Exchange states that the final value of an Index Security will be determined on the valuation date at or near maturity consistent with the mechanics detailed in the prospectus for such Index Security. The Exchange states that Index Securities are expected to trade at a lower cost than the cost of trading each of the underlying component securities separately because of reduced commission and custody costs and are also expected to give investors the ability to maintain index exposure without the corresponding management or administrative fees and ongoing expenses.

The Index Securities do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Underlying Index. Index Securities may or may not be structured with accelerated upside returns based on the performance of the Underlying Index.[10] For example, an Index Security may provide for an accelerated return of 3-to-1 if the Underlying Index achieves a positive return at maturity.

The Exchange submits that Index Securities are ''hybrid'' securities whose rates of return are largely the result of the performance of Underlying Index or Indexes comprised of component securities. In connection with the listing and trading or the trading pursuant to unlisted trading privileges (''UTP'') of Index Securities, the Exchange will issue an Memorandum to members detailing the special risks and characteristics of each Index Security that it will list or trade.[11] Accordingly, the particular structure and corresponding risk of any Index Security traded on the Exchange will be highlighted and disclosed.[12] In particular, the Information Memorandum will set forth the Exchange's suitability rule that requires every member, either personally or through a general partner or an officer who is a holder of voting stock in his organization to use due diligence to learn the essential facts relative to every customer and to every order or account accepted by his organization.[13]

Proposed Listing Criteria for Index-Linked Securities

Eligibility Standards for Issuers

The following standards are proposed for each issuer of Index Securities:

(1) Both the issue and the issuer of such security meet the criteria set forth in Phlx Rule 803(f) except that the minimum public distribution and minimum public shareholders requirement will not be applicable to an issue traded in thousand dollar denominations. In addition, the minimum public shareholders requirement will not apply if the securities are redeemable at the option of the holders thereof on at least a weekly basis.

(2) The issue has a minimum term of one (1) year but not greater than thirty (30) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirements set forth in Phlx Rule 803(a)(2). In the alternative, the issuer will be expected: (A) To have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirement set forth in Phlx Rule 803(a)(2), and (B) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A–3 under the Act.

[9] Interest payments may be based on a fixed or floating rate.

[10] *See* telephone conference between John Dayton, Director and Counsel, Phlx, and Jan Woo, Attorney, Division of Market Regulation, Commission, on May 25, 2007.

[11] *Id.*

[12] The Exchange notes that members that carry customer accounts must be members of the NASD and would therefore be subject to the rules and regulations of the NASD, including NASD Rule 2310(a) and (b). Accordingly, NASD Notice to Members 03–71 (November 2003) (''Notice 03–71'') regarding non-conventional investments or ''NCIs'' applies to Exchange members recommending/selling index-linked securities to public customers. Notice 03–71 specifically reminds members in connection with NCIs (such as index-linked securities) of their obligations to: (1) Conduct adequate due diligence to understand the features of the product; (2) perform a reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated with the particular product, especially when selling to retail investors; (5) implement appropriate internal controls; and (6) train registered persons regarding the features, risk and suitability of these products.

[13] *See* Phlx Rule 746.

Description of Underlying Indexes

Each Underlying Index will either be (i) an index meeting the specific criteria set forth in proposed Phlx Rule 803(n); or (ii) an index approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder. However, in all cases, an Underlying Index must contain at least ten (10) component securities.

The Exchange will require that all changes to an Underlying Index, including the deletion and addition of underlying component securities, index rebalancings and changes to the calculation of the index, will be made in accordance with the proposed generic criteria or the Commission's Section 19(b)(2) order approving a similar derivative product based on the Underlying Index.

If a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such broker-dealer is required to erect and maintain a ''firewall,'' in a form satisfactory to the Exchange, to prevent the flow of information regarding the Underlying Index from the index production personnel to the sales and trading personnel.[14] In addition, an Underlying Index that is maintained by a broker-dealer is also required to be calculated by an independent third party who is not a broker-dealer.

Eligibility Standards for Underlying Securities

Index Securities will be subject to the criteria in proposed Phlx Rule 803(n)(7) and (8) for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of and Index Security, such Index must either be approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder or meet the following requirements:

- Each component security must have a minimum market value of at least $75 million, except that for each of the lowest weighted Underlying Securities in the index in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;
- Each component security must have a trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;
- In the case of a capitalization-weighted index, the lesser of the five highest weight Underlying Securities in the index or the highest weighted Underlying Securities in the index that in the aggregate represent at least 30% of the total number of Underlying Securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;
- No component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index will not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 Underlying Securities);
- 90% of the index's numerical index value and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 1009;
- Each component security shall be (A) securities (other than foreign country securities and American Depository Receipts (''ADRs'')), that are (1) issued by an Act reporting company which is listed on a national securities exchange and (2) NMS stocks, as defined in Rule 600 of Regulation NMS,[15] or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group (''ISG'') or parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the index.

The proposed continued listing criteria set forth in proposed Rule 803(n)(8)(A) regarding the underlying components of an Underlying Index provides that the Exchange will commence delisting or removal proceedings of an Index Security if any of the standards set forth in the initial eligibility criteria of proposed Rule 803(n)(7) are not continuously maintained, except that:

- The criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;
- The total number of components in the index may not increase or decrease by more than 33–1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;
- The trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and
- In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

In connection with an Index Security that is listed pursuant to proposed Rule 803(n)(7)(l), the Exchange will commence delisting or removal proceedings if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

As set forth in proposed Rule 803(n)(8)(C), the Exchange will also commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security), under any of the following circumstances:

- If the aggregate market value or the principal amount of the securities publicly held is less than $400,000;
- If the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis during the time the security is traded on the Exchange; or
- If such other event shall occur or condition exists which is the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Phlx represents that Index Securities listed and traded on the

[14] For certain indexes, an index provider, such as Dow Jones, may select the components and calculate the index, but overseas broker-dealer affiliates of U.S. registered broker-dealers may sit on an ''advisory'' committee that recommends component selections to the index provider. In such case, the Exchange would ensure that appropriate information barriers and insider trading policies exist for this advisory committee.

[15] *See* 17 CFR 242.600(b)(47).

Exchange will be required to be in compliance with rule 10A–3 under the Act.[16]

Exchange Rules Applicable to Index-Linked Securities

Index Securities will be treated as equity instruments and will be subject to all Exchange rules governing the trading of equity securities, including, among others, rule governing XLE, the Exchange's equity trading system, and related trading halt provisions pursuant to Phlx Rule 133. Exchange equity margin rules and the trading hours of 8 a.m. to 6 p.m. will apply to transactions in Index Securities.

In addition, the Exchange represents that it will prepare and distribute, if appropriate, an Information Memorandum that describes the product to each member organization highlighting the particular structure and corresponding risks of an Index Security. In particular, the Memorandum will set forth the Exchange's suitability rule that sets forth certain requirements for member organizations recommending a transaction in Index Securities. In addition, the Information Memorandum will note that all of the Exchange's equity trading rules will be applicable to trading in the Index Securities. The Memorandum will also reference the member requirements to deliver a prospectus to each investor purchasing newly issued Index Securities prior to or concurrently with the confirmation of a transaction.

The Exchange will closely monitor activity in Index Securities to identify and deter any potential improper trading activity in Index Securities. The Exchange represents that its surveillance procedures will be adequate to properly monitor the trading of Index Securities. Specifically, the Phlx will rely on its existing surveillance procedures governing equities, options and exchange-traded funds. The Exchange will develop procedures to closely monitor activity in the Index Security and related Underlying Securities to identify and deter potential improper trading activity. Proposed Rule 803(n)(10) provides that the Exchange will implement written surveillance procedures for Index Securities.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. For Index Securities where the Underlying Index is maintained by a broker-dealer, the broker-dealer will be required to erect a ''firewall'' around the personnel responsible for the maintenance of the Underlying Index or who have access to information concerning changes and adjustments to the Underlying Index, and the Underlying Index will be calculated by a third party who is not a broker-dealer. Any advisory committee, supervisory board, or similar entity that advises an Index Licensor or Administrator or that makes decisions regarding the Underlying Index or portfolio composition, methodology, and related matters would be required to implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable Underlying Index or portfolio.

Proposed Phlx Rule 136(c)–(e) sets out Phlx's trading halt parameters for all of the Exchange's derivative securities products, including Index Securities. In particular, proposed Phlx Rule 136(c) sets out that, where the Exchange is the listing market for an Index Security, if the Intraday Indicative Value (''IIV'') or the index value applicable to that series of Index Security is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV of the index value occurs. If the interruption to the dissemination of the IIV or the index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption. Proposed Phlx Rule 136(d) provides how and when the Exchange will halt trading in a series of Index Securities traded pursuant to UTP if the primary listing market halts trading in that series of Shares because the IIV or the index value applicable to that series of Shares is not being disseminated as required. Proposed Phlx Rule 136(e) provides definitions used in Phlx Rule 136.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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 No. SR–Phlx–2007–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx.

[16] *See* Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

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–2007–07 and should be submitted on or before June 25, 2007.

IV. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[20] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

A. Generic Listing Standards for Index Securities

To list and trade Index Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act[21] and Rule 19b–4 thereunder.[22] However, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a SRO will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of Index Securities pursuant to Rule 19b–4(e) fulfill these requirements.

The Exchange's ability to rely on Rule 19b–4(e) to list and trade Index Securities that meet the requirements of proposed Phlx Rule 803(n) should reduce the time frame for bringing these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making Index Securities available to investors more quickly.

The Commission has previously approved generic listing standards that are substantially similar to the Exchange's proposal.[23] In approving these securities for Exchange trading, the Commission considered applicable Exchange rules that govern their trading. The Commission believes that the proposed generic listing standards for Index Securities should fulfill the intended objective of Rule 19b–4(e) and allow Index Securities that satisfy these standards to commence trading without the need for public comment and Commission approval.[24]

B. Listing and Trading Index Securities

Taken together, the Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Index Securities listed pursuant to Rule 19b–4(e) on the Exchange. All Index Securities listed under the proposed generic standards will be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

As set forth more fully above, the Exchange has proposed size, earnings, and minimum tangible net worth requirements for each Index Security issuer, as well as minimum distribution and holder, principal amount/market value, and term thresholds for each issuance of Index Securities. The Exchange's proposed listing criteria include minimum market capitalization, monthly trading volume, and relative weighting requirements for each Index Security and the components underlying each such security. These requirements are designed to ensure that the trading markets for the Underlying Index components are adequately capitalized and sufficiently liquid, and that no one component dominates the Underlying Index. The Commission believes that these requirements should minimize the potential for manipulation.

The Commission notes that each component security of an Index Security (other than foreign country securities and ADRs) must be issued by a reporting company under the Act, listed on a national securities exchange, and be an ''NMS stock,'' as such term is defined in Rule 600 of Regulation NMS.[25] The Commission believes that such a requirement will contribute to the transparency of the Underlying Index. Alternatively, such component securities may also be foreign country securities or ADRs, so long as the foreign country securities or foreign country securities underlying ADRs having their primary trading market on foreign markets that are not ISG members or parties to comprehensive surveillance agreements with the Exchange do not, in the aggregate, represent more than 20 percent of the dollar weight of the Underlying Index. The Commission also believes that the requirement that 90 percent of the index's numerical value and at least 80 percent of the total number of component securities be eligible for standardized options trading should prevent an Index Security from being a vehicle for trading options on a security not otherwise options eligible. The Commission also notes that, by requiring pricing information for the relevant Underlying Index or Indexes and the Index Security to be readily available, the proposed listing standards should help ensure a fair and orderly market for Index Securities listed and traded pursuant to Rule 19b–4(e).

The Exchange has also developed delisting criteria that will permit it to suspend trading of an Index Security in circumstances that make further dealings in the product on the Exchange inadvisable. The Commission believes that the delisting criteria should help ensure that a minimum level of liquidity exists for each Index Security to allow for the maintenance of fair and orderly markets. Also, in the event that the value of the Underlying Index is no longer calculated and widely disseminated on at least a 15-second basis, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption and will commence delisting proceedings.

[19] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(1).

[22] 17 CFR 240.19b–4.

[23] *See* Securities Exchange Act Release Nos. 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR–NYSE–2007–27) (adopting generic listing standards for index linked securities); and 51563 (April 15, 2005), 70 FR 21257 (Aril 25, 2005) (SR–Amex–2005–001) (approving the generic listing standards for index-linked securities).

[24] The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b–4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade such product.

[25] 17 CFR 240.600(b)(47).

C. Surveillance

The Commission notes that any Index Security approved for listing and trading would be subject to the Exchange's existing surveillance procedures governing equities, options, and exchange-traded funds, as well as procedures the Exchange represents it will develop to closely monitor activity in Index Securities and their underlying components. The Exchange has represented that its surveillance procedures will be adequate to properly monitor the trading of Index Securities listed pursuant to these proposed generic listing standards.

D. Information Memorandum

The Exchange has represented that it will distribute, as appropriate, an Information Memorandum to members describing the product, the structure of the product, and the corresponding risks of the Index Security. In addition, the Information Memorandum will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Index Securities to customers and the prospectus delivery requirements. The Memorandum will also identify the Exchange's trading rules governing the Index Securities.

E. Firewall Procedures

The Exchange has further represented that, if the Underlying Index is maintained by a broker-dealer, such broker-dealer will establish a ''firewall'' around personnel responsible for the maintenance of the Underlying Index. As an added measure, a third-party who is not a broker-dealer will calculate the Underlying Index. In addition, the Exchange has stated that any advisory committee, supervisory board, or similar entity that advises an Index Licensor or Administrator or that makes decisions regarding the Underlying Index or portfolio composition, methodology, and related matters will be subject to procedures designed to prevent the use and dissemination of material, non-public information.

F. Acceleration

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Exchange requested accelerated approval of the proposal to enable the Exchange to immediately list and trade Index Securities. The Commission notes that the Exchange's proposed generic listing standards are substantially similar to previously approved listing standards for Index Securities [26] and presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of such securities on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Index Securities, subject to the standards and representations discussed herein. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[27] 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, that the proposed rule change (SR–Phlx–2007–07), as amended, is hereby approved on an accelerated basis.[28]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10665 Filed 6–1–07; 8:45 am]

BILLING CODE 8010–01–P

[26] *See supra* note 22.

[27] 15 U.S.C. 78s(b)(2).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10883 and #10884]

Iowa Disaster #IA–00008

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1705–DR), dated 05/25/2007.

Incident: Severe Storms, Flooding and Tornadoes.

Incident Period: 05/05/2007 through 05/07/2007.

Effective Date: 05/25/2007.

Physical Loan Application Deadline Date: 07/24/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 02/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/25/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Cass, Fremont, Harrison, Ida, Mills, Montgomery, Page, Pottawattamie, Shelby, Taylor, and Union.

Contiguous Counties (Economic Injury Loans Only):

Iowa: Adair, Adams, Audubon, Buena Vista, Carroll, Cherokee, Clarke, Crawford, Decatur, Guthrie, Madison, Monona, Ringgold, Sac, and Woodbury.

Missouri: Atchison, Nodaway, and Worth.

Nebraska: Burt, Cass, Douglas, Otoe, Sarpy, and Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10883B and for economic injury is 108840.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–10710 Filed 6–1–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10866 and #10867]

Kansas Disaster Number KS–00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for the State of Kansas (FEMA–1699—DR), dated 05/06/2007.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/04/2007 through 05/18/2007.

Effective Date: 05/25/2007.

Physical Loan Application Deadline Date: 07/05/2007.

EIDL Loan Application Deadline Date: 02/06/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Kansas, dated 05/06/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Clay, Cloud, Comanche, Leavenworth, Lyon, Reno, Rice, Saline, and Shawnee.

Contiguous Counties:

Kansas: Atchison, Chase, Coffey, Douglas, Geary, Greenwood, Harvey, Jackson, Jefferson, Johnson, Marion, Mcpherson, Morris, Osage, Pottawatomie, Republic, Riley, Sedgwick, Wabaunsee, Washington, and Wyandotte.

Missouri: Platte.

Oklahoma: Harper, and Woods.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–10709 Filed 6–1–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5821]

Culturally Significant Object Imported for Exhibition Determinations: Paul Gaugin's ''The Purau Tree'' and Paul Cézanne's ''A Modern Olympia''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects Paul Gaugin's ''The Purau Tree'' and Paul Cézanne's ''A Modern Olympia'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of Paul Gaugin's ''The Purau Tree'' from on or about September 17, 2007, until on or about September 30, 2010, and the exhibition or display of Paul C?zanne's ''A Modern Olympia'' from on or about September 17, 2007, until on or about January 30, 2011, in the Nineteenth-Century European Paintings and Sculpture Galleries, The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 22, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–10701 Filed 6–1–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA–2007–27172]

Final Guidance on New Starts/Small Starts Policies and Procedures and Notice of Availability of Updated Reporting Instructions

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Availability of Final Guidance on New Starts/Small Starts Policies and Procedures and Updated Reporting Instructions.

SUMMARY: This notice conveys the Federal Transit Administration's (FTA) Final Guidance on New Starts/Small Starts Policies and Procedures. This Policy Guidance complements FTA's previous Guidance on New Starts Policies and Procedures, dated May 22, 2006, by providing further updates and enhancements to the procedures for project planning and development necessary to receive New or Small Starts funding. This notice also announces the availability of FTA's *Reporting Instructions for the Section 5309 New Starts Criteria,* which must be followed when reporting New Starts information for evaluation during the FY 2009 project evaluation cycle, as well as for any requests to enter into preliminary engineering, final design, or a full funding grant agreement until further notice. Finally, this notice provides the schedule for reporting of information for FTA's FY 2009 New Starts budget evaluations.

EFFECTIVE DATE: These policies and procedures will take effect on June 4, 2007.

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., East Building, Washington, DC 20590 or *Ronald.Fisher@dot.gov.*

Availability of Comments Considered in the Development of this Guidance, and of the New Starts Reporting Instructions

A copy of the notice of availability of the proposed Guidance, issued on February 12, 2007, and comments and material received from the public as a part of its review of the proposed Guidance, are part of docket FTA–2007–27172 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may retrieve the Guidance and comments online through the Document Management System (DMS) at: *http://dms.dot.gov.* Enter docket number 27172 in the search field. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the

Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/fr/index.html.* FTA's Reporting Instructions for the Section 5309 New Starts Criteria is available on FTA's Web site for New Starts planning and project development at *http://www.fta.dot.gov/planning/planning_environment_5221.html.*

Schedule for Reporting the new Starts Project Justification and Local Financial Commitment Criteria for Evaluation in the FY 2009 Annual Report on Funding Recommendations

The formal deadline for reporting information on the New Starts and Small Starts project justification and local financial commitment criteria—*i.e.*, the New and Small Starts templates and supporting land use and financial information—for evaluation in the *FY 2009 Annual Report on Funding Recommendations* is September 7, 2007. In addition, FTA requests, for projects already in the New Starts or Small Starts ''pipeline'' (projects in preliminary engineering, final design, or Small Starts project development), that information related to travel forecasts, operating and maintenance cost methodologies, and service annualization factors *as appropriate* be submitted by July 30, 2007 *if this information is different from what was submitted last year.* This advanced submission of information helps FTA staff to understand the information underlying the New or Small Starts project justification criteria, and helps to ensure that the information reported in the formal New or Small Starts templates is sufficient for FTA's evaluation and rating of candidate projects. Both the ''advanced'' and formal submission of information should be sent to the FTA Office of Planning and Environment (TPE), 1200 New Jersey Avenue, SE., East Building, Washington, DC, 20590. In addition, FTA's consultants for financial and land use reviews will be contacting sponsors of projects in the pipeline in late-August 2007 to provide additional direction on transmitting specific information to them for these reviews.

As conveyed in the Policy Guidance, which follows, only projects that are candidates for a funding recommendation (i.e., seeking either an FFGA or PCGA), or which have undergone significant scope, cost, or financial changes, need submit information for evaluation.

FTA considers requests for project entry into preliminary engineering, final design, or Small Starts project development at any time of the year. For sponsors who hope to have their proposed New Starts project approved into preliminary engineering or Small Starts project approved into project development in time for inclusion in the *FY 2009 Annual Report,* a complete request (with previously FTA-accepted travel forecasts, baseline alternative, build and baseline capital costs, and achievement of other project readiness requirements, *as appropriate*) must be submitted to FTA no later than September 7, 2007. FTA encourages sponsors of such projects to contact FTA as soon as possible to assess their readiness for preliminary engineering and project development and to prepare their request for advancement. Projects supported by incomplete or premature requests will not be considered for inclusion in the *FY 2009 Annual Report.*

FTA encourages sponsors of candidate New Starts projects to follow the *Reporting Instructions* closely, and to submit complete information according to the deadlines established above. FTA's period for completing its FY 2009 budget evaluations is very short. FTA staff is committed to working closely with project sponsors to resolve any questions or issues with their submittals, but cannot guarantee the acceptance and inclusion of any revised or updated information after September 30, 2007 in time for the FY 2009 evaluation. Project sponsors should contact the FTA Office of Planning and Environment, or their FTA Regional Office, if they have any questions regarding the submission of information for evaluation, or the process for developing such information.

Response to Comments and New and Small Starts Program Changes

The purpose of this notice is to convey the Final Guidance on New Starts/Small Starts Policies and Procedures, reflecting the changes implemented as a result of comments received on the February 12, 2007 notice of availability. FTA finds that there is good cause to make this guidance effective upon publication of this notice because sponsors of projects seeking New and Small Starts funding must have adequate time to prepare information that FTA will use to evaluate projects for inclusion in the President's FY 2009 budget request to Congress.

1. Information Required of Grantee

a. Operating Efficiencies and Environmental Benefits

FTA adopts as final its proposal to no longer require the submission by New Starts project sponsors of information on FTA's measures for operating efficiencies and environmental benefits.

The elimination of these two requirements is intended to reduce the reporting effort of New Starts project sponsors. FTA has not found that current measures for these two evaluation criteria distinguish, in any meaningful way, the differences between projects. Moreover, FTA believes that the operating efficiencies of New Starts projects are essentially captured under FTA's current measure for cost effectiveness. Until measures can be developed that provide salient information for the environmental benefits criterion that better differentiates the characteristics of projects, grantee submission of the information is not required. FTA's *Reporting Instructions for the Section 5309 New Starts Criteria* have been updated to reflect this change.

Comments: Nearly all of the respondents agreed with this proposal, although many expressed support for the eventual development by FTA of a more effective measure for environmental benefits.

Response: FTA agrees that New Starts projects can make important and meaningful contributions to an improved environment, and believes that their environmental benefits ought to be better captured in the evaluation and rating process. To that end, FTA has been studying a number of potential environmental benefits measures which better distinguish New Starts projects from each other. These measures will be proposed some time in the future and FTA will seek comment on them at that time. At this time, however, FTA will continue to use its current evaluation measure of the Environmental Protection Agency's ambient air quality rating.

b. Transit Supportive Land Use Patterns and Policies

FTA adopts as final its proposal that the resubmission of information on transit supportive land use patterns and policies for the purposes of the Annual Report on Funding Recommendations be optional for both New Starts and Small Starts.

While land use ratings rarely change over the course of a project's development, project sponsors have the option of submitting information for this criterion should they believe that the new information would improve their project's rating.

Comments: Most respondents agreed with the proposal, with some additional suggestions. Several respondents felt that in the absence of an annual

requirement FTA should make clear that land use remains an important part of FTA's evaluation and continue to encourage local governments, with transit agency support, to take supportive land use actions during the course of project development. Others suggested that FTA should continue to raise the standard for land use ratings as a project advances, and require that a project sponsor submit land use information prior to being permitted entry into final design. Finally, a few respondents requested that FTA consider new information for re-evaluation at any time if a sponsor believes that this information will result in improving its project's land use rating.

Response: FTA's proposal to no longer require annual land use reporting should not be construed in any way as a diminishment of its support for good transit-oriented land use planning. Indeed, FTA will re-evaluate a project's transit-supportive land use plans and policies annually if its sponsor desires to submit significant new information. While annual re-evaluations will be at the discretion of project sponsors, FTA will continue to evaluate and rate transit-supportive land use at the time of a request to enter preliminary engineering, and will require a formal re-evaluation and rating of transit-supportive land use at the time of a sponsor's request to advance a project into final design.

c. Annual Report on Funding Recommendations

FTA adopts as final its proposal to no longer require New Starts and Small Starts project sponsors to submit information for evaluation for the Annual Report on Funding Recommendations if their project is not likely to be ready for a funding recommendation. Such information is required, however, for New Starts projects in or near final design, or for projects which have experienced a significant change since its last evaluation.

This policy change is intended to reduce the reporting burden for candidate New and Small Starts projects in their earlier stages of development while at the same time better align FTA's annual project evaluation responsibilities with its statutorily-required *Annual Report on Funding Recommendations.*

Comments: Most of those commenting on this proposal agreed with it. A few respondents suggested that FTA should make reporting optional in cases where local funding processes and conditions would make a new rating necessary or desirable. A few others expressed concern about what FTA would report in the absence of a formal resubmission of the information supporting the New Starts criteria. Questions on the proposal included what would constitute a ''significant'' change requiring a new evaluation and rating for projects not being considered for funding; how far in advance FTA would notify sponsors of the need to resubmit updated information; and what criteria FTA would use to determine if a project is a candidate for a funding recommendation.

Response: FTA views its *Annual Report on Funding Recommendations* as a complementary document to the Administration's annual budget request. FTA's proposal was intended to reduce the annual reporting burden on candidate New Starts project sponsors which have not yet reached a level of development necessary to warrant consideration for a funding recommendation. So long as a project sponsor submits information when requesting approval into preliminary engineering and final design (or, for Small Starts, project development) and the project continues to advance on schedule with insignificant changes to its scope, cost, and/or financial plan, additional submissions and a formal re-evaluation (until the time of its consideration by FTA for funding), strikes FTA as unnecessary. However, when a project experiences a significant event e.g., a loss of local revenues that brings into question its local financial commitment; a change in project scope that would have a significant impact on its operation and hence transportation benefits; or an increase in its cost estimate that requires a re-examination of its financial plan and/or threatens the project's cost effectiveness—a formal re-evaluation and re-rating will be required. The examples above serve as general guidelines that might trigger a re-evaluation; the decision on the need for such an evaluation will be made by FTA on a case-by-case basis. The decision to re-rate a project would be made and transmitted by FTA in the previous year's Annual Report on Funding Recommendations or by letter no later than April 30 prior to the Fall preparation of the next Annual Report, thus providing the sponsor ample time to address any causes of concern and prepare updated information for evaluation.

On the other hand, and at the discretion of project sponsors, FTA will re-evaluate projects that have taken positive steps since preliminary engineering, such as gaining additional funding commitments or reducing project costs that are expected to improve the project's rating for the *Annual Report on Funding Recommendations.*

In the case where a re-evaluation is not necessary, FTA will report all recent relevant and validated information on a candidate project for the *Annual Report.* The primary focus will be placed on reporting the progress demonstrated by the project sponsor in terms of meeting its schedule, addressing NEPA requirements and design uncertainties, and garnering local funding commitments. For projects advancing under a project development agreement (PDA) with FTA, adherence to the milestones included in the PDA will be noted. Modest changes to the project scope and cost estimate will also be reported (as noted above, major changes would require a formal re-evaluation and rating). It is anticipated that most of this information will be collected over the course of the year as part of FTA's normal project oversight responsibilities. In limited cases it may be necessary for project sponsors to submit supporting documentation on changes in the local financial commitment for their project, although it is not expected that a full financial plan would need to be submitted.

Projects that demonstrate readiness for a funding recommendation will be required to submit updated New Starts criteria and be evaluated and rated, thus ensuring complete information for decision-making. In the absence of any comments on the criteria proposed by FTA to determine when a project will be considered for funding, FTA will continue to utilize the threshold it currently follows: That is, projects expected to be approved into final design by the Spring after the Fall preparation of *Annual Report on Funding Recommendations.* Small Starts projects that have completed NEPA by the Fall preparation of the *Annual Report* would also be considered to be a funding candidate and would be subject to reporting and evaluation.

2. FTA Review of Key Documents

FTA will not adopt at this time the proposed requirement that potential New Starts and Small Starts project sponsors in alternatives analysis provide a timely opportunity for FTA comment on documents describing the alternatives at their conceptual, detailed, and final stages of development. FTA is inclined, however, to establish this requirement at such time that it has the resources and systems in place to address stakeholder concerns with the proposal. In addition,

FTA may propose as a requirement at some time in the future the review of, and comment upon, other key products of the alternatives analysis study process.

The intent of this proposal was to ensure that FTA be involved early in a corridor planning study that might result in the selection of a candidate New or Small Starts project. FTA believes that such involvement produces a number of benefits to the study effort, including the provision of technical assistance for improving the information available to support local decision-making and the management of both FTA and local expectations for advancement of the study and the resulting locally-preferred alternative. This proposed requirement supports FTA's goal of working closely with sponsors of alternatives analysis studies to ensure that communication of Federal and local concerns occurs at the appropriate time so that they can be resolved quickly and avoid negative impact of the study's progress and cost.

Comments: Comments received on this proposal generally recognized the benefit of engaging FTA early in the project development process, but expressed significant concerns about making such engagement a formal requirement whereby FTA would officially review and approve the documents mentioned. Concerns expressed by the majority of commenters included the perceived insertion of FTA into the local decision-making process, the timeliness of FTA's review of the materials, and the potential time and costs these requirements could add to the project development process.

Response: SAFETEA–LU gives FTA the responsibility to ensure that reasonable alternatives are considered in alternative analyses for a project to be eligible for New Starts funding, and that these alternatives are developed in such a way that their costs, benefits, and impacts can be properly presented to decision makers and stakeholders. Documentation and submission to FTA of the descriptions of alternatives at the conceptual, detailed, and final level of definition assists FTA in carrying out this responsibility. FTA believes that such a Federal-local partnership better protects the public interest, which FTA places as its over-arching goal for the New and Small Starts program. FTA's proposal was not intended to undermine local decision-making authority, which FTA holds to be a core principle of alternatives analysis studies.

Furthermore, FTA's proposal never contemplated an approval of the alternatives (except for FTA's long-standing approval of the New Starts ''baseline'' alternative). Rather, FTA's reviews would simply highlight for study sponsors the issues surrounding the development of the alternatives that must be addressed in order for a locally preferred alternative to advance into preliminary engineering as quickly as possible.

Nevertheless, FTA is concerned that enforcing this requirement without being able to commit to a timeframe for its review would fail to give project sponsors important information for their project schedules. Therefore, over the next several months, FTA will collect information on existing review times that will help inform us of a reasonable period for the reviews of various products of alternatives analysis studies. Moreover, FTA is currently researching the use of enhanced, technology-based information management systems to improve the efficiency, accountability, and transparency of FTA reviews. In the meantime, FTA will continue to strongly encourage project sponsors to submit documents to FTA for review on the descriptions of alternatives and technical methods and results, as described in FTA guidance and workshops. FTA assures study sponsors that the timely review of these documents is an agency priority.

3. Travel Forecasts

a. Validation Against Travel Patterns

FTA adopts as final the proposal—for implementation in May 2009—that travel forecasts for both New and Small Starts submitted in support of a request to enter preliminary engineering (PE) or project development (PD) be based on travel models that have been validated against data sufficient to describe current ridership patterns.

The purpose of this policy is to ensure that sufficient data on current ridership patterns are available to understand the key markets served by the existing transit system and to check the grasp of those markets by the local travel forecasting procedures. Without adequate data, the identification of purpose and need for a major transit project is substantially limited by the absence of insight into the functions and limitations of the existing transit system. Further, the inability to test the travel forecasting procedures for their understanding of those functions and limitations reduces the credibility of forecasts for transit alternatives in the future.

Comments: Comments reflected a variety of topics ranging from funding to survey bias, with no topic receiving more than one-third of the nineteen total responses. There was concern that collecting data and then calibrating travel models every five years was costly; that five years was an arbitrary timeline; and that by the time the travel models were calibrated, it would be time to begin data collection efforts again. Other comments indicated that alternative methods of data collection such as automated counts, farebox counts, vehicle location systems and/or telephone surveys should substitute for or supplement system-wide ridership surveys. Comments also noted the difficulty of eliminating survey bias and the need to provide survey requirements to ensure that data is collected uniformly by project sponsors.

Response: During the past five years, a large number of project sponsors have proceeded through alternatives analysis without any useful data on current ridership patterns. The locally preferred alternatives emerging from those analyses have included guideway-expansion projects whose forecasts were prepared without any insight into the ridership patterns on recently opened initial guideway projects in the metropolitan area. Other project sponsors have proceeded with forecasts for initial projects that would depend heavily on park-ride access but without any data on park-ride facilities and express-bus services opened relatively recently in the area. In these circumstances, the forecasting procedures are uninformed by readily available information on travel markets that are key to understanding the benefits of proposed major investments in transit facilities. Consequently, the uncertainties in the forecasts are large and the risks are significant that the forecasts—and therefore the project evaluation and ratings—will be substantially in error.

In these circumstances, any unexpected characteristics in the forecasts become cause for concern and potential delay as project sponsors struggle—without data—to document the reasonableness of the unusual characteristics or to correct the forecasting tools. Therefore, FTA thinks it in the best interest of all parties to have sufficient data on key travel markets, travel forecasting procedures that are tested with those data, and a clear understanding of current ridership patterns as they inform the purpose and need for a major transit project. Further, FTA views the costs of such data collection as very small relative to the value of the information obtained, to the costs of other tasks (engineering, environmental, and others) necessary to

project development, and to the costs of the projects proposed for funding.

FTA agrees that a 5-year horizon—or any fixed point in time—is arbitrary and potentially not useful in many cases. In metropolitan areas with relatively slow growth in population and employment, and with a relatively stable transit system and transit ridership, a 10-year-old on-board survey plus current on-off counts may well be sufficient to prepare useful information on current ridership patterns. Conversely, in rapidly growing areas that have opened the initial guideway facility in the past three years, a 4-year-old survey of bus riders may well be an insufficient basis for understanding the potential performance of a second guideway line. Therefore, FTA will consider the adequacy of data on existing ridership patterns on a case-by-case basis. Project sponsors are advised to discuss with FTA—well in advance of a planned alternatives analysis—the nature, extent, timing, and quality of local data sources on current transit ridership patterns.

Finally, this policy requires the availability of sufficient data on current travel patterns but not the specific method(s) for obtaining that data. Methods for obtaining information from individual riders might include personal interviews with a very limited number of questions, phone surveys, intercepts of riders at stations/stops rather than on board, and other emerging methods. Further, advances in automated passenger counters, farecard systems, automatic vehicle locator systems, and other data-collection methods may reduce the need for information from individual riders. Detailed on-off passenger counts, for example, might be used to update the sample expansion of an older on-board survey. In other circumstances, those counts might be used to estimate station-to-station trip tables, informed by a limited amount of rider-specific information. In general, FTA anticipates that project sponsors will tailor the strategy for data assembly to their individual circumstances to ensure that sufficient useful information is available as efficiently as possible.

b. Mode-Specific Effects

FTA adopts as final its proposal to allow project sponsors that seek to introduce a new transit mode to an area to claim credits (implemented through what is commonly called a mode-specific constant) for the user benefits caused by attributes of that mode beyond the travel time and cost measures currently available in the local travel model. FTA will continue to work closely with sponsors of projects that have calibrated mode-specific constants to ensure that they are using constants that are generally consistent with the methods and values permitted for sponsors of projects which are new to an area.

This policy establishes a reasonable approach to crediting alternatives that represent new transit modes locally with the mobility benefits caused by changes in transit service characteristics that are universally omitted from current travel forecasting methods. The policy applies to both the transit guideways identified as locally preferred alternatives and to guideway-like elements of baseline alternatives used to evaluate proposed projects. The approach gives credit—and additional user benefits—based on the specific attributes of the alternative as they are perceived by travelers. FTA will assign credits for characteristics in three categories: (1) Guideway-like characteristics (equivalent to a maximum of eight minutes of travel-time savings); (2) span of good service (up to three minutes); and (3) passenger amenities (up to four minutes). Further, FTA will define a discount of up to 20 percent on the weight applied to time spent on the transit vehicle. These credits and discount are applied to the calculation of user benefits only; ridership forecasts will not be affected. This policy is effective immediately except in the case of baseline alternatives in areas that are considering expansion of existing guideway systems. The policy will apply to those alternatives beginning in May 2008 so that project sponsors have sufficient time to modify their travel forecasting procedures.

FTA will issue technical guidance on the application of this policy in the May 2007 Reporting Instructions.

Comments: The most frequent comment was a request that walk access be given a similar user benefit credit as park and ride access trips. Other comments expressed the concern that these credits would penalize both transit agencies seeking to expand an existing mode as well as those agencies with an already well validated travel model. Respondents requested greater transparency on the process of calculating user benefit credits. In addition, respondents would like to utilize local information to supplement the calculation of credits to user benefits in their region.

Response: Because of the large size of the ''transportation analysis zones'' used in travel models to represent the geography of metropolitan areas, nearly all current travel models overestimate the potential walk access market for fixed guideways. Many of the walk-to-guideway and walk-from-guideway trips represented in these models would actually require a bus connection. Because a walk-guideway-walk trip is subject to this error at both ends of the guideway trip—and the errors are multiplicative—FTA cannot grant credits for walk-only travel on guideways where the size of that travel market is inevitably and grossly overstated. However, in an effort to capture all credible benefits and reward good practice in local travel models, FTA will consider the full crediting of these benefits for walk-access as well as drive-access transit trips when the local travel models support accurate accounting of walk to guideway walk trips. Therefore, project sponsors may propose the full set of credits where they believe that the local travel models handle walk-access to fixed guideways with sufficient accuracy.

This policy in no way penalizes areas that have existing guideway transit systems and have calibrated forecasting procedures with transit-mode-specific constants and coefficient discounts for guideway transit. The policy remedies a large disadvantage previously faced by sponsors of an initial guideway project in a given metropolitan area.

Technical assistance in the application of the constants can be requested of FTA by contacting the FTA Office of Planning and Environment at (202) 366–4033.

4. Evaluation Criteria

a. Overall Project Justification Rating

FTA adopts as final its proposal to replace the current three-tiered overall project rating scale of ''low,'' ''medium,'' and ''high'' with a five-tiered rating scale of ''low,'' ''medium-low,'' ''medium,'' ''medium-high,'' and ''high'' as directed in SAFETEA–LU.

This policy was intended to modify the current overall ratings to be consistent with the ratings specified in SAFETEA–LU, which requires that projects be given an overall rating based on a five-tier scale of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' and ''low.'' The application of this modest change will be documented in a separate summary document on the FY 2009 New Starts Evaluation and Rating Process, to be issued by June 30, 2007.

Comments: Almost all comments received were supportive of the proposed change to the five-tiered rating scale. A few commenters asked for clarification on the decision rules.

Response: The overall rating is determined by the average of the rating for project justification and for local

financial commitment. When the average of these ratings is unclear (e.g., project justification rating of ''medium-high'' and local financial commitment rating of ''medium''), FTA will round up the overall rating to the higher rating (e.g., project justification rating of ''medium-high'' and local financial commitment rating of ''medium'' yields an overall rating of ''medium-high'') except in the following circumstances:

- A ''medium'' overall rating requires a rating of at least ''medium'' for both project justification and local financial commitment.
- A ''medium-low'' overall rating requires a rating of at least ''medium-low'' for both project justification and local financial commitment.

b. Simplified Rating of Local Financial Commitment

FTA adopts as final its policy to add a decision rule that Small Starts and Very Small Starts projects that meet the conditions for a simplified financial rating be given a rating of ''high'' if their sponsors request no more than a 50% Small Starts share, while those requesting between 50% and 80% share receive no less than a ''medium'' rating.

Agencies currently receive a simplified financial rating of ''medium'' if they can demonstrate they have a reasonable plan to secure funding for the local share of capital costs; that the additional operating and maintenance costs of the project are less than 5% of the agency's operating budget; and that the agency is in good operating condition. By giving higher ratings to projects seeking less Small Starts funding, FTA is providing an incentive for a project to request a lower percentage of Small Starts funding, thus allowing for the program to benefit more localities.

Comments: Nearly half of the respondents supported this proposal. Of those who did not, comments cited this incentive would make it difficult to put together entry level projects; it would dilute other financial considerations of a project sponsor and it may disadvantage high quality projects as measured by other criteria. In addition, other comments requested greater flexibility in the amount of local match or the ability to consider the economic health of the area while still competing for a ''high'' financial rating.

Response: Projects which meet the aforementioned conditions for streamlined evaluation and rating will in every case receive a rating sufficient to advance in development and be considered for Small Starts funding, regardless of the local share. FTA believes that the ability of project sponsors to contribute a higher non-Small Starts funding share represents a measure of local commitment to a project that should be recognized in the ratings. FTA further believes that providing higher ratings for requests of less Small Starts funding is entirely consistent with SAFETEA–LU provisions that specify local share as an evaluation consideration. Finally, by specifying that projects seeking Small Starts funding must be under $250 million in total cost and $75 million in Small Starts funding, SAFETEA–LU constrains higher cost projects to less than 50 percent in Small Starts funding.

c. Mobility Measures for Transit Dependents

FTA adopts as final its proposal to replace the current measure of mobility benefits for transit dependents with three easily computed measures: (1) The share of user benefits that accrue to transit dependents; (2) user benefits per project passenger mile for transit dependents; and (3) the number of project riders who are transit dependent.

This policy addresses the dimensions of a project's improvements to mobility: (1) The extent that it benefits transit dependents compared to their representation in the metropolitan area; (2) the magnitude of the increase in mobility for each traveler normalized by the length of their journey on the project; and (3) the number of travelers affected. The overall rating for mobility for transit dependents will be based on the ratings of each of these three dimensions of mobility. The procedures for developing these measures are provided in FTA's updated *Reporting Instructions for the Section 5309 New Starts Criteria*, available simultaneously with this notice.

Comments: Three-quarters of the respondents were concerned that these measures do not take into account the evolving definition of a transit dependent. Thus, project sponsors who attempt to improve service to those who choose to be transit dependent may not be able to capture this segment by income or employment data. Further, respondents noted that measuring benefits per passenger mile may skew the results to favor long haul transit. In addition, several respondents cited that the NEPA documentation assesses the project benefits to low income and minority populations and may be a more meaningful tool in addressing overall transit equity.

Response: Because travel models stratify the metropolitan population by either auto ownership or income, the current state of the practice can ascertain the mobility impacts of a project on carless households or the lowest income group used in a travel model. Carless and lower income households are reasonable surrogates for transit dependents. Forecasts of benefits for some other definition would require a new methodology to be implemented for every area seeking Small Starts funding, instead of relying on existing travel models. As noted, long haul transit with infrequent stops may rate well for the user-benefit-per-mile measure. Finally, using NEPA documents to address transit dependent mobility improvements is problematic given that there is no standardized approach for reporting project benefits in NEPA documentation.

d. Subfactors for Local Financial Commitment

FTA adopts as final the three proposed changes to the evaluation and rating of local financial commitment for both New and Small Starts, all of which are related to the sub-factors used to develop the ratings for the stability and reliability of the capital and operating finance plans. These changes include for both the capital and operating plans: (1) Eliminating the completeness sub-factor; (2) merging the existing capacity and cost estimates and planning assumptions sub-factors together; and (3) re-weighting the remaining sub-factors.

This policy is intended to both simplify FTA's evaluations of local financial commitment and better align considerations of the uncertainty associated with financial planning assumptions with the factor they affect. The application of this modest change will be documented in a separate summary document on the *FY 2009 New Starts Evaluation and Rating Process,* and FTA's *Guidelines and Standards for Assessing Local Financial Commitment.* Both documents will be available no later than June 30, 2007.

Comments: All comments received were supportive of the proposed changes to the evaluation and rating of local financial commitment.

Response: FTA will reduce the number of subfactors used to develop the ratings for the stability and reliability of the capital and operating finance plans from five to three. The three subfactors will be weighted as follows to arrive at a summary capital/operating rating: (1) Current capital/operating condition (25%); (2) commitment of capital/operating funds (25%); and (3) cost estimates/planning assumptions/capacity (50%).

The three measures used to determine the overall local financial commitment

rating and their weights will be maintained at: (1) The share of non-New Starts funding (20%); (2) the stability and reliability of the capital finance plan (50%); and (3) the stability and reliability of the operating finance plan (30%). All FTA decision rules for determining a rating for local financial commitment will remain in place as well.

e. Innovative Contractual Agreements for Operations

FTA adopts as final its policy that the degree to which a project employs innovative contractual agreements will be considered in the evaluation and rating of the operating finance plan for both New and Small Starts.

This policy is intended to encourage project sponsors to examine innovative operating arrangements that might result in cost savings. FTA will increase the operating plan rating one level from ''medium'' to ''medium-high'' or from ''medium-high'' to ''high'' if the project sponsor can demonstrate it has provided the opportunity for the operation and maintenance of the project to be contracted out. The operating plan rating will not increase if the operating finance plan rating is below a medium. FTA will revise its guidance documents, including the *Guidelines and Standards for Addressing Local Financial Commitment*, to reflect this change.

Comments: Nearly half of the respondents requested that similar considerations be made for transit agencies that have studied such innovative arrangements, regardless of whether the arrangement was implemented or not. Other comments cited the concern that this proposal could disrupt existing labor union contracts. The last set of comments cited the lack of statutory basis to provide an additional weight for this consideration.

Response: The operating plan rating will be increased for project sponsors that can provide evidence that the operations and maintenance of the project will be contracted out or that simply an *opportunity* has been given for contracting out but that there were substantive reasons for not doing so. FTA believes that current statutes do not prohibit the implementation of this proposal.

f. Rating Information in Planning Studies

FTA adopts as final its proposal that alternatives analysis (AA) final reports and AA/Draft Environmental Impact Statements (Draft EISs) must present—for all alternatives—the information used by FTA to assign New or Small Starts ratings if that information has been vetted by FTA. If the information has not been vetted with FTA, then the absence of the information must be highlighted in the document.

The intent of this policy is to comply with FTA requirements for AAs and the Council on Environmental Quality for DEISs by identifying information relevant and important to a decision on a locally preferred alternative. If this requirement cannot be met, publication of the AA or AA/DEIS would not be delayed; rather, the absence of the information and its relevance must be explained in the AA or AA/DEIS.

Comments: Many opposed the proposal stating that the NEPA and New Starts process should be independent. Others opposed the proposal because of potential project delays citing the lack of FTA staff to review the information. Others agreed that FTA should allow that a disclosure statement be used in alternatives analysis documents when fully vetted information is not available, which would summarize the New Starts process and explain that information addressing the criteria has not yet been completed.

Response: It has been FTA's long standing policy to integrate the NEPA and New Starts processes because they share common goals. The Council on Environmental Quality regulations state that ''an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.'' For projects seeking New or Small Starts funding, rating information that determines whether the project can qualify for funding is ''relevant and important to a decision.'' Regarding concerns over project delays, this policy will not delay a document/project if information on the New Starts criteria has not been vetted with FTA. In such cases, the absence of such information would simply be acknowledged without prejudice with a statement that it has not yet been fully vetted with FTA and therefore no assurances can be given that the alternatives considered, including the locally preferred alternative, would be eligible or competitive for New or Small Starts funding. The inclusion of such a statement simply provides the public and local decision makers full disclosure of the actions necessary to advance the preferred alternative into the New or Small Starts project development process.

g. Other Factors

FTA adopts as final its proposal to incorporate under ''other factors'' two specific considerations. First, if a proposed New or Small Starts project is a principal element of a congestion management strategy, in general, and an auto pricing strategy, in particular, the project justification rating could be increased. Second, if a New or Small Starts project addresses significant transportation problems or opportunities in a corridor and the appropriateness of the preferred alternative as a response, FTA will consider the contents of the ''make-the-case document'' as a standard criterion under ''other factors.'' A ''high'' make-the-case rating could increase the project's overall rating and a ''low'' make-the-case rating could decrease the overall rating. FTA further continues to encourage the reporting, under ''other factors,'' of information on a project's economic development impacts. Particularly compelling information may be used by FTA to increase a project's ''project justification'' rating.

Each of the considerations has the potential of changing the overall project justification rating. The first consideration can only increase the rating while the second can either increase or decrease the rating. The details of how these factors will be applied, along with consideration of the economic development factor will be described in an update to its summary document on the *New Starts Evaluation and Rating Process*, available no later than June 30, 2007.

Comments: In response to the first consideration, comments indicated that a congestion pricing strategy is not effective except in large cities with substantial investment in transit infrastructure. The second consideration was largely supported with just over half of the respondents citing their support. Of those who opposed the consideration, the reason cited was that FTA would be evaluating a document and not the project itself.

Response: The first consideration supports the Department's initiative to address congestion using pricing strategies. Successful pricing strategies have been introduced in medium-sized cities. The purpose of the second consideration, the make-the-case document, is intended to marshal the best available arguments for the proposed project based on the analytical results of planning and project development findings. As such, FTA believes that it provides important information in assessing project merit that complements the mechanical application of ratings and numbers. FTA will base its rating on the extent to which a compelling case is made that addresses this purpose.

Issued on: May 30, 2007.

James S. Simpson,

Administrator.

[FR Doc. 07–2774 Filed 5–31–07; 11:09 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 25, 2007.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 5, 2007 to be assured of consideration.

Federal Consulting Group

OMB Number: 1505–0196.

Type of Review: Extension.

Title: Litigation Management—Information Collection Regarding Proposed Settlements.

Form: TRIP 03.

Description: Section 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) authorize the Department of the Treasury to administer and implement the temporary Terrorism Risk Insurance Program established by the Act. Section 107 contains specific provisions designed to manage litigation arising out of or resulting from a certified act of terrorism. The Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144, added section 107(a)(6) to TRIA, which provides that procedures and requirements established by the Secretary under 31 CFR 50.82, as in effect on the date of issuance of that section in final form [July 28, 2004], shall apply to any Federal cause of action described in section 107(a)(1). Section 50.82 of the regulations requires insurers to submit to Treasury for advance approval certain proposed settlements involving an insured loss, any part of the payment of which the insurer intends to submit as part of its claim for Federal payment under the Program. The collection of information in the notice of proposed settlement in Section 50.83 that insurers must submit to implement the settlement approval process prescribed by Section 50.82.

Respondents: Business and other for-profit institutions.

Estimated Total Reporting Burden: 5,141 hours.

OMB Number: 1505–0197.

Type of Review: Extension.

Title: Recordkeeping Requirements for Insurers Compensated Under Terrorism Risk Insurance Program.

Description: Sections 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (as extended by the Terrorism Risk Insurance Extension Act of 2005, Pub. L. 109–144) authorize the Department of the Treasury to administer and implement the Terrorism Risk Insurance Program established by the Act. In 31 CFR part 50, subpart F (Sec. 50.50–50.55) Treasury established requirements and procedures for insurers that file claims for payment of the Federal share of compensation for insured losses resulting from a certified act of terrorism under the Act. Section 50.60 allows Treasury access to records of an insurer pertinent to amounts paid as the Federal share of compensation for insured losses in order to conduct investigations, confirmations and audits. Section 50.61 requires insurers to retain all records as are necessary to fully disclose all material matters pertaining to insured losses. This collection of information is the recordkeeping requirement in § 50.61.

Respondents: Business and other for-profit institutions.

Estimated Total Reporting Burden: 833 hours.

Clearance Officer: Howard Leiken, (202) 622–7139, Department of the Treasury, 1425 New York Avenue, NW., Room 2113, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–10690 Filed 6–1–07; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–ES

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–ES, Estimated Income Tax for Estates and Trusts.

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Estimated Income Tax for Estates and Trusts.

OMB Number: 1545–0971.

Form Number: Form 1041–ES.

Abstract: Internal Revenue Code section 6654(1) imposes a penalty on trusts, and in certain circumstances, a decedent's estate, for underpayment of estimated tax. Form 1041–ES is used by the fiduciary to make the estimated tax payments. The form provides the IRS with information to give estates and trusts proper credit for estimated tax payments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200,000.

Estimated Time Per Respondent: 2 hours, 38 minutes.

Estimated Total Annual Burden Hours: 3,161,236.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–10642 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8877

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8877, Request for Waiver of Annual Income Recertification Requirement for the Low-Income Housing Credit.

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Waiver of Annual Income Recertification Requirement for the Low-Income Housing Credit.

OMB Number: 1545–1882.

Form Number: 8877.

Abstract: Owners of low-income housing buildings that are 100% occupied by low-income tenants may request a waiver from the annual recertification of income requirements, as provided by Code section 42(g)(8))(B).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 7 hours, 59 minutes.

Estimated Total Annual Burden Hours: 1,598.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 23, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–10643 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–45–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–45–86 (TD 8125), Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation (§ 1.924).

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation.

OMB Number: 1545–0904.

Regulation Project Number: INTL–45–86.

Abstract: This regulation provides rules for complying with foreign

management and foreign economic process requirements to enable foreign sales corporations to produce foreign trading gross receipts and qualify for reduced tax rates. Section 1.924(d)–1(b)(2) of the regulation requires that records must be kept to verify that the necessary activities were performed outside the United States.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 11,001.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 22,001.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–10644 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–941–86; INTL–656–87; INTL–704–87]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–941–86; INTL–656–87; and INTL–704–87, Treatment of Shareholders of Certain Passive Foreign Investment Companies (§ 1.1291–1, 1.1291–2, 1.1291–3, 1.1291–6, and 1.1291–8).

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.

OMB Number: 1545–1304.

Regulation Project Number: INTL–941–86; INTL–656–87; and INTL–704–87.

Abstract: This regulation concerns the taxation of shareholders of certain passive foreign investment companies (PFICs) upon payment of distributions by such companies or upon disposition of the stock of such companies. The reporting requirements affect U.S. persons that are direct and indirect shareholders of PFICs. The information is required by the IRS to identify PFICs and their shareholders, administer shareholder elections, verify amounts reported, and track transfers of stock of certain PFICs.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–10645 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–276–76]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–276–76 (TD 8586), Treatment of Gain From Disposition of Certain Natural Resource Recapture Property (Sections 1.1254–1(c)(3) and 1.1254–5(d)(2)).

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224 or at (202) 622–6688, or through the internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Gain From Disposition of Certain Natural Resource Recapture Property.

OMB Number: 1545–1352.

Regulation Project Number: PS–276–76

Abstract: This regulation prescribes rules for determining the tax treatment of gain from the disposition of natural resource recapture property in accordance with Internal Revenue Code section 1254. Gain is treated as ordinary income in an amount equal to the intangible drilling and development costs and depletion deductions taken with respect to the property. The information that taxpayers are required to retain will be used by the IRS to determine whether a taxpayer has properly characterized gain on the disposition of section 1254 property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 400.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 23, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–10646 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–246256–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–246256–96 (TD 8978), Excise Taxes on Excess Benefit Transactions (§ 53.4958–6).

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Taxes on Excess Benefit Transactions.

OMB Number: 1545–1623.

Regulation Project Number: REG–246256–96.

Abstract: This regulation relates to the excise taxes on excess benefit transactions under section 4958 of the Internal Revenue Code and affects certain tax-exempt organizations described in Code sections 501(c)(3) and (4). The collection of information entails obtaining and relying on appropriate comparability data and documenting the basis of an organization's determination that compensation is reasonable, or a property transfer (or transfer of the right to use property) a fair market value.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 150,427.

Estimated Time Per Respondent: 6 hours, 3 minutes.

Estimated Total Annual Burden Hours: 910,083.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–10647 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–128767–04 (Final)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Final Regulation REG–128767–04, Treatment of Disregarded Entities Under Section 752.

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Disregarded Entities Under Section 752.

OMB Number: 1545–1905.

Regulation Project Number: REG–128767–04.

Abstract: Generally, the regulation recognizes that only the assets of a disregarded entity that limits its member's liability are available to satisfy creditors' claims under local law. The regulation provides rules under section 752 for taking into account the net value of a disregarded entity owned by a partner or related person for purposes of allocating partnership liabilities. Specifically, it provides that in determining the extent to which a partner bears the economic risk of loss for a partnership liability, payment obligations of a disregarded entity are taken into account only to the extent of the net value of the disregarded entity.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households and not-for-profit institutions.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–10651 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8817

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form

8817, Allocation of Patronage and Nonpatronage Income and Deductions.

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov*

SUPPLEMENTARY INFORMATION:

Title: Allocation of Patronage and Nonpatronage Income and Deductions.

OMB Number: 1545–1135.

Form Number: 8817.

Abstract: Form 8817 is filed by taxable farmers cooperatives to report their income and deductions by patronage and nonpatronage sources. The IRS uses the information on the form to ascertain whether the amounts of patronage and nonpatronage income or loss were properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 1,650.

Estimated Time Per Respondent: 13 hours, 20 minutes.

Estimated Total Annual Burden Hours: 22,006.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–10652 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 709

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return.

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: United States Gift (and Generation-Skipping Transfer) Tax Return.

OMB Number: 1545–0020.

Form Number: 709.

Abstract: Form 709 is used by individuals to report transfers subject to the gift and generation-skipping transfer taxes and to compute these taxes. The IRS uses the information to collect and enforce these taxes, to verify that the taxes are properly computed, and to compute the tax base for the estate tax.

Current Actions: There are no changes being made to Form 709 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 278,500.

Estimated Time per Respondent: 5 hours, 47 minutes.

Estimated Total Annual Burden Hours: 1,609,730.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2007

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–10653 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–44

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–44, Extension of the Amortization Period.

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Extension of the Amortization Period.

OMB Number: 1545–1890.

Revenue Procedure Number: Revenue Procedure 2004–44.

Abstract: Revenue Procedure 2004–44 describes the process for obtaining an extension of the amortization period for the minimum funding standards set forth in section 412(e) of the Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 25.

Estimated Annual Average Time per Respondent: 100 hours.

Estimated Total Annual Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–10654 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2848

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2848, Power of Attorney and Declaration of Representative.

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Power of Attorney and Declaration of Representative.

OMB Number: 1545–0150.

Form Number: 2848.

Abstract: Form 2848 issued to authorize someone to act for the taxpayer in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. The information on the form is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 533,333.

Estimated Time per Respondent: 1 hour, 39 minutes.

Estimated Total Annual Burden Hours: 880,333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–10656 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–118926–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–118926–97 (TD 8817), Notice of Certain Transfers to Foreign Partnerships and Foreign Corporations (§ 1.6038B–1, 1.6038B–2).

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Certain Transfers to Foreign Partnerships and Foreign Corporations.

OMB Number: 1545–1615.

Regulation Project Number: REG–118926–97.

Abstract: Section 6038B requires U.S. persons to provide certain information when they transfer property to a foreign partnership or foreign corporation. This regulation provides reporting rules to identify United States persons who contribute property to foreign partnerships and to ensure the correct reporting of items with respect to those partnerships.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, and individuals or households.

The collections of information contained in these final regulations are in § 1.6038B–1(b) and 1.6038B–2. The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865. The burden of complying with the collection of information required to be reported on Form 926 is reflected in the burden for Form 926.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 23, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–10657 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–97–91 and PS–101–90 (TD 8448), Enhanced Oil Recovery Credit (Section 1.43–3(a)(3) and 1.43–3(b)(3)).

DATES: Written comments should be received on or before August 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Enhanced Oil Recovery Credit.

OMB Number: 1545–1292.

Regulation Project Number: PS–97–91 and PS–101–90.

Abstract: This regulation provides guidance concerning the costs subject to the enhanced oil recovery credit, the circumstances under which the credit is available, and procedures for certifying to the Internal Revenue Service that a project meets the requirements of section 43(c) of the Internal Revenue Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 73 hours.

Estimated Total Annual Burden Hours: 1,460.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–10658 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting.

SUMMARY: In 1998 the Internal Revenue Service established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is for industry partners to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements. Listed is a summary of the agenda along with the planned discussion topics.

Summarized Agenda

8:30 a.m. Meet and Greet
9 a.m. Meeting Opens
10:30 a.m. Meeting Adjourns

The planned discussion topics are:

(1) Remarks from the Director of Electronic Tax Administration

(2) Draft 2007 Report to Congress Discussion

Note: Last-minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of ETAAC on Wednesday, June 20, 2007. You must register in advance to be put on the guest list and be able to show your state issued picture ID to attend the meeting. This meeting will be open to the public, and will be in a room that accommodates approximately 40 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis.

ADDRESSES: The meeting will be held at the Internal Revenue Service, 1111 Constitution Avenue, NW., Room 3313, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: You must provide your name to me in advance for the guest list and be able to show your state issued picture ID on the day of the meeting. Otherwise, you will not be able to attend the meeting as this is a secured building. To receive a copy of the agenda or general information about ETAAC, please contact Cassandra Daniels on 202–283–2178 or at *etaac@irs.gov* by Sunday, June 17, 2007. Notification of intent should include your name, organization and telephone number. Please spell out all names if you leave a voice message.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration, who is also the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the strategy for electronic tax administration will help IRS achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns.

ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Dated: May 25, 2007.

Gregory K. Kay,

Director, Strategic Services Division.

[FR Doc. E7–10650 Filed 6–1–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
June 4, 2007

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1212 and 1240

Establishment of Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order; Referendum Procedures; Proposed Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1212 and 1240

[Docket No. AMS–FV–06–0176; FV–03–704–PR–1A]

RIN 0581–AC37

Establishment of Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order and Termination of the Honey Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule proposes a new industry-funded research, promotion, consumer education, and information order for honey and honey products under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The proposed Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Proposed Order) was submitted to the Department of Agriculture (Department) by the National Honey Packers and Dealers Association (Association). The Department proposes that an initial referendum be conducted to ascertain whether the persons to be covered by and assessed under the Proposed Order favor the Proposed Order prior to it going into effect. The Proposed Order would replace the existing Honey Research, Promotion, and Consumer Information Order (Current Order) for honey and honey products and this action proposes the Current Order's termination. The Current Order is issued under the Honey Research, Promotion, and Consumer Information Act (Honey Act). This rule also announces the Agricultural Marketing Service's (AMS) intention to request approval of new honey information collection requirements by the Office of Management and Budget (OMB) for the Proposed Order. Comments are specifically requested on the potential impact of terminating the Current Order and on implementing the Proposed Order.

DATES: Comments must be received by August 3, 2007. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by August 3, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0244, Washington, DC 20250–0244. Comments may also be sent by facsimile to: (202) 205–2800, or electronically to: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

Pursuant to the Paperwork Reduction Act (PRA), comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address and to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sonia Jimenez, Chief, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Ave., SW., Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free), Fax: (202) 205–2800 or e-mail *sonia.jimenez@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425) and under the Honey Research, Promotion, and Consumer Information Act (Honey Act) (7 U.S.C. 4601–4613). The Current Order appears at 7 CFR part 1240.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under both section 519 of the 1996 Act and section 10 of the Honey Act, a person subject to an order may file a petition with the Department stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with the law, and requesting a modification of the order or an exemption from the order. Any such petition must be filed within two years after the effective date of an order, provision or obligation subject to challenge. The petitioner would have the opportunity for a hearing on the petition. Thereafter, the Department would issue a ruling on the petition. The 1996 Act and the Honey Act provide that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Department's final ruling.

In deciding whether a proposal for an order is consistent with and will effectuate the purpose of the 1996 Act, the Secretary may consider the existence of other federal research and promotion programs issued under other laws. Taking into account the duplicative nature of the Proposed Program with the Current Program, the Department is proposing that the Current Order be terminated.

Similar to the Current Order, the goals of the Proposed Order are to: (1) Develop and finance an effective and coordinated research, promotion, industry information, and consumer education program for honey and honey products; (2) strengthen the position of the honey industry; and (3) develop, maintain, and expand existing markets for honey and honey products.

The Department is soliciting comments from producers, first handlers, manufacturers, importers, consumers, industry organizations and other interested persons on the possible termination of the Current Order and replacing it with the Proposed Order. In view of the proposed termination of the Current Order, comments are requested specifically on the potential impact of terminating the Current Order and on implementing the Proposed Order. This comment request is expanded upon later in the document under the section captioned ''Request for Public Comments.''

Background

While both the Current and the Proposed Order have the same goal in terms of making positive strides for the

honey industry, some of the main provisions within each order vary significantly between the two orders. Below is a discussion of some of the differences between the Current Order and the Proposed Order submitted by the Association. This comparison is not exhaustive, but it is intended to allow interested persons a way to distinguish between the two orders so they may better be able to provide comments to the Department.

Current Order: Honey Research, Promotion, and Consumer Information Order (Part 1240)

The Current Order, authorized by the Honey Act [7 U.S.C. 4601–4613], became effective on July 21, 1986, after honey producers and importers voted in favor of the Order. A 12-member board consisting of seven producers, two handlers, two importers, one officer of a marketing cooperative, and their alternates, administers the program. Under the Honey Act, at least 50 percent of the members of the Board must be honey producers. The Act also provides for the establishment of a National Honey Nominations Committee consisting of state members for nominating producer members to the Board. The State members are nominated by state beekeeper associations. Nominations for handler and importer members are made by qualified national organizations representing handler and importer interests, respectively. The national honey marketing cooperative representative is nominated by a qualified national honey marketing cooperative. Board reconstitution is every five years, subject to certain statutory considerations and restrictions.

Under the Current Order, assessments are collected on honey and honey products produced in or imported into the 50 States, Puerto Rico, and the District of Columbia. The funds are collected from producers and importers and are used by the National Honey Board for market research and development, advertising and promotion of honey and honey products, and consumer information. This is done under the oversight of AMS. The current assessment rate is 1 cent per pound. First handlers are responsible for collection of producer assessments and payment to the National Honey Board. The U.S. Customs Service collects the importer assessments.

Producers and importers marketing less than 6,000 pounds of honey per year are exempt from paying assessments. In addition, producers who operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produce only products eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, are exempt from the paying assessments. Similarly, importers who import only products eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, are exempt from paying assessments.

Under the Current Order, approximately 2,700 entities are assessed and approximately $3.6 million is collected annually.

Under the Current Order, handlers, importers, producers, and producer-packers are required to report certain specified information to the Board. Persons who have an exemption from assessments also must report to the Board information.

The Honey Act provides for a number of permissive terms that may be included in an order. For example, the Honey Act provides authority to establish minimum purity standards for honey and honey products that are designed to maintain a positive and wholesome marketing image for honey and honey products. An inspection and monitoring system and a voluntary quality assurance program is authorized in connection with the minimum purity standards. Only a voluntary quality assurance program has been approved by referendum and therefore appears in the Current Order.

The Honey Act requires a referendum to establish an order as well as to authorize a number of order provisions, including handler representation on the Board, reconstitution of the Board, an alternative assessment rate as provided by statute on honey producers, producer-packers, handlers and importers, and an inspection and monitoring system of a voluntary quality assurance program. Approval is by a majority vote by number and volume for producers, importers and when applicable, handlers.

Proposed Order: Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Part 1212)

This rule proposes the implementation of a Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Proposed Order). The Department received the proposal for a new order from the National Honey Packers and Dealers Association (Association).

The Proposed Order is authorized under the 1996 Act, instead of the Honey Act, which provides the statutory authority for the Current Order. The 1996 Act varies from the Honey Act in several ways.

The 1996 Act authorizes the Department, under a generic authority, to establish agricultural commodity research and promotion orders, which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. The Proposed Order, similar to the Current Order, would provide for the continued development and financing of a coordinated program of research, promotion, and information for honey and honey products.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders to the needs of different commodity groups. Section 516 of the 1996 Act contains permissive terms that may be included in the orders. For example, § 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity covered by the order in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin to be collected under an order. An order also may provide for its approval in a referendum based upon different voting patterns. In accordance with § 518(e) of the 1996 Act, the results of the referendum must be determined in one of three ways: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

Section 518 provides for the Department to: (1) Conduct an initial referendum, preceding a proposed order's effective date, among persons who would pay assessments under the proposed order; or (2) implement a proposed order, pending the conduct of a referendum, among persons subject to

assessments, within three years after assessments first begin.

For the Proposed Order, the Department is recommending a referendum be conducted, preceding the Proposed Order's effective date, to ascertain whether the persons to be covered and assessed favor the Proposed Order going into effect. Implementation of the Proposed Order would require the approval of a majority of the first handlers and importers voting in the referendum, which also represent a majority of the volume of honey and honey products handled and imported during the representative period by those voting in the referendum. Specific procedures to be followed in such referendum will be published in a separate **Federal Register** publication.

In addition, § 518 requires the Department to conduct subsequent referenda: (1) Not later than seven years after assessments first begin under the proposed order; or (2) at the request of the proposed board established under the proposed order; or (3) at the request of ten percent or more of the number of persons eligible to vote. In addition to these criteria, the 1996 Act provides that the Department may conduct a referendum at any time to determine whether persons eligible to vote favor the continuation, suspension, or termination of an order or a provision of an order. Expenses incurred by the Department in implementing and administering the proposed order, including referenda costs, would be paid from assessments.

Order Assessments

A major difference between the Current and Proposed Orders is that the Proposed Order provides for assessments to be paid by first handlers and importers of honey or honey products instead of producers and importers of such products. The number of entities assessed under the Proposed Order would be around 75, as compared to the 2,700 presently under the Current Order. The funds generated through the mandatory assessments on domestically handled and imported honey or honey products would be used, as it is under the Current Order, to pay for promotion, research, and consumer and industry information as well as the administration, maintenance, and functioning of the Board.

Under the Proposed Order, ''first handler'' would be defined to mean the first person who handles honey or honey products, and would include a producer who handles his or her own production. In addition, ''handle'' would be defined to mean process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in commerce. This term would include selling unprocessed honey that will be consumed without further processing or packaging, but would not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier for the account of the first handler or producer.

The Proposed Order would provide that each first handler pay an assessment to the proposed Board at the rate of $0.01 per pound of domestically produced honey or honey products that the handler handles. Under the Current Order, producers must pay an assessment rate of $0.01 per pound of honey produced. The Proposed Order establishes that each first handler responsible for remitting assessments shall pay the Board the amount due on a monthly basis no later than the fifteenth day of the month following the month in which the honey or honey products were marketed.

The Proposed Order would define ''importer'' to mean any person who imports honey or honey products from outside the United States for sale in the United States as a principal or as an agent, broker, or consignee for any person. An importer is also listed in the import records as the importer of record for such honey or honey products with the United States Customs and Border Protection (Customs).

Section 516(f) of the 1996 Act allows assessments on imports at a rate comparable to the rate for domestics. The Proposed Order treats importers in the same manner as they are treated under the Current Order in terms of the assessment rate and collection of assessments: Each importer would pay an assessment to the Board at the rate of $0.01 per pound of honey or honey products the importer imports into the United States. An importer must pay the assessment to the Board through Customs when the honey or honey products being assessed enter the United States. If Customs does not collect an assessment from an importer, the importer would be responsible for paying the assessment directly to the Board.

The assessment levied on domestically handled and imported honey and honey products would be used to pay for promotion, research, and consumer education and industry information as well as the administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the Proposed Order, including referenda costs, also would be paid from assessments.

Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by the Department [60 FR 12533, March 7, 1995]. Persons also would have to pay interest and late payment charges on late assessments as prescribed in the Proposed Order.

Under the Proposed Order, a first handler who handles less than 250,000 pounds of honey or honey products per year or an importer who imports less than 250,000 pounds of honey or honey products per year, would be exempt from paying assessments.

In addition, a first handler who operates under an approved NOP system plan, handles only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, is exempt from the paying assessments under the Proposed Order. An importer who imports only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, also is exempt from paying assessments.

The Proposed Order allows the Board to recommend to the Secretary for approval an increase or decrease to the assessment, as it deems appropriate by at least a two-thirds vote of members present at a meeting of the Board. The Board may not recommend an increase in the assessment of more than $0.02 per pound of honey or honey products and may not increase the assessment by more than $0.0025 in any single fiscal year.

Although the 1996 Act allows for credits of assessments for generic and branded activities, the Association who proposed the new Order did not elect to include it.

As the Proposed Order establishes that first handlers and importers will be responsible for paying assessments, the Order states that these two groups will also be responsible for filing specific reports and maintaining records regarding the amount of honey and honey products brought to the market. This is different than the Current Order in which reporting and record maintenance requirements are broader.

First handlers would be required to file reports and maintain records on the total quantity of honey and honey products acquired during the reporting period, the quantity of honey processed for sale from the handler's own production, and the quantity of honey purchased from a handler or importer responsible for paying the assessment

due. The Board would recommend to the Department specific reporting periods and dates when such reports are due to the Board.

Unless otherwise provided by Customs, importers would be required to report the total quantity of honey and honey products imported during each reporting period, and keep a record of each lot of honey and honey products imported during such period, including the quantity, date, country of origin, and port of entry. Under the Proposed Order, Customs would collect assessments on imported honey and honey products and remit the funds to the Board.

Each first handler and importer, including those who would be exempt from paying assessments under the Proposed Order, would be required to maintain any books and records necessary to carry out the provisions of the Proposed Order for two years beyond the fiscal period to which they apply. This would include the books and records necessary to verify any required reports. These books and records would be made available to the Board's or Department's employees or agents during normal business hours for inspection if necessary.

Both the Current and Proposed Order provide that all officers, employees, and agents of the Department and of the Board are required to keep confidential all information obtained from persons subject to the Order. This information would be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of the Department is a party.

However, the issuance of general statements based on reports or on information relating to a number of persons subject to the Order would be permitted, if the statements do not identify the information furnished by any person. Finally, the publication, by direction of the Department, of the name of any person violating the Order and a statement of the particular provisions of the Order violated by the person would be allowed.

It is anticipated that 95 percent of the assessment dollars presently collected under the Current Order would be collected under the Proposed Order. This is because the Proposed Order would exempt first handlers handling and importers importing less than 250,000 pounds of honey or honey products per year. In contrast, under the Current Order, about 95 percent of current assessment dollars are collected from approximately 2,700 producers and importers. Producers and importers who handle less than 6,000 pounds of honey or honey products are exempt from the assessment under the Current Program. It is estimated that revenue for the Proposed Order will be around or slightly more than $3 million. Of this amount, about 64 percent would be generated by assessments on imported honey and honey products.

It is also believed that the assessment of only first handlers and importers rather than producers and importers would reduce program administrative expenses as fewer entities would be paying assessments and filing reports.

Establishment of the Honey Packers and Importers Board

Section 515 of the 1996 Act provides for the establishment of a Board consisting of producers, first handlers, and others in the marketing chain, as appropriate. The Department would appoint members to the Board from nominees submitted in accordance with a Proposed Order. The Proposed Order would provide for the establishment of a Honey Packers and Importers Board to administer the Proposed Order under AMS oversight. The Association has proposed that the Board be composed of ten members; including three first handler representatives, two importer representatives one importer-handler representative, one national honey marketing cooperative representative and three producer representatives and their alternates.

The Current Board consists of 12 members; seven producers, two handlers, two importers, one officer of a marketing cooperative, and their alternates.

On the Proposed Board, the importer representatives must import at least 75 percent of the honey or honey products they market in the United States. The importer-handler representative must also import at least 75 percent of the honey or honey products they market in the United States and must handle at least 250,000 pounds annually. In addition, the producer representatives must produce a minimum of 150,000 pounds of honey in the United States annually based on the best three year average of the most recent five calendar years.

Each term of office on the Board would end on December 31, with new terms of office beginning on January 1, with the exception of the initial Board's term of office, as opposed to the Current Order in which a term of office begins on April 1.

First handlers, producers and a national honey marketing cooperative representative would represent those entities in the United States. Board members from each of these groups would be nominated by national organizations representing each of them respectively. The United States would be defined to include collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States. Honey is produced in almost all of the 50 States. The top ten producing States in 2006 included North Dakota, South Dakota, California, Florida, Minnesota, Montana, Texas, Wisconsin, Idaho, and New York.

Importers and the importer-handler on the Board would be nominated by national organizations representing importers. Such importers and the importer-handler would represent those individuals who import for sale honey or honey products into the United States as a principal or as an agent, broker, or consignee for any person who produces honey or honey products outside the United States. The importer-handler member of the Board would be required to import at least 75 percent of the honey or honey products they market in the United States and must handle at least 250,000 pounds annually. All qualified national organizations representing first handlers, producers, importers and honey-marketing cooperatives would have the opportunity to participate in a nomination caucus for the purposes of preparing a slate of candidates for the above positions submitted to the Department for consideration.

Eligible organizations must submit nominations to the Department six months before a new term of office begins. To become a qualified national organization representing first handlers, importers, or producers under the Proposed Order, each such organization would be required to meet the following criteria: (1) The majority of its voting membership must consist of first handlers, importers or producers of honey, respectively; (2) it must have a history of stability and permanency and have been in existence for more than 1 year; (3) its primary purpose must be to promote honey first handlers', importers' or producers' welfare; (4) it must derive a portion of its operating funds from first handlers, importers, or producers; and (5) it must demonstrate it is willing and able to further the 1996 Act's purposes. Further, any organization representing first handlers or producers must represent a substantial number of first handlers or producers who market or produce a substantial volume of honey or honey products in at least 20 States. Any

organization representing importers must represent at least a majority of the volume of honey or honey products imported into the United States.

To be eligible as a qualified national honey-marketing organization, the Department must certify that an entity qualifies as a cooperative, as defined in proposed section 1212.42(d). Such entity shall not be eligible for certification as a qualified national organization representing producer interests.

If the Department determines that there are no qualified national organizations representing first handlers, importers, producers, and honey-marketing cooperatives interests, individuals who have paid their assessments to the Board in the most recent fiscal year could submit nominations for those positions specified.

The nomination process in the Proposed Order varies from that in the Current Order. Under the Current Order, the National Honey Nominations Committee (Committee), consisting of individuals nominated by state beekeeper associations and appointed by the Secretary, is the entity that nominates members and alternates for the Board and submits such nominations to the Secretary for approval. The Committee picks producer members from seven regions established based on the production of honey. The Committee picks handler, importer, and cooperative members based on recommendations from qualified national organizations representing each of these groups' individual interests.

Just as in the Current Order, the Proposed Order indicates that the Board may recommend to the Department that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Department may remove the member if the Department finds that the Board's recommendation demonstrates cause.

The 1996 Act provides that to ensure fair and equitable representation, the composition of a board shall reflect the geographic distinction of the production of the agriculture commodity in the United States and the quantity or value of the agriculture commodity imported into the United States.

Under the Proposed Order at least once every five years, but not more frequently than once in each three year period, the Board would review the geographical distribution in the United States of the production of honey covered by the Order and quantity or value of honey and honey products imported into the United States. The review, based on a three-year average, would enable the Board to evaluate whether the Board membership is reflective of the composition of the honey industry.

Under the Current Order, every five years the Board reviews the geographical distribution of domestically produced honey and the quantity of honey imported. The Board then makes recommendations based on the five-year average annual assessments excluding the two years containing the highest and lowest disparity between the proportion of assessments owed from the imported and domestic honey and honey products.

Just as under the Current Order, Board members could serve terms of three years and be able to serve a maximum of two consecutive terms under the Proposed Order. When the Board is first established, one producer, one first handler, one importer, and the representative of a national honey cooperative would serve a two-year term. One producer, one first handler, and the importer-handler representative would serve a three-year term of office. One producer, one first handler, and one importer would serve a four-year term of office. This would allow the terms be staggered on the Board. No member or alternate may serve more than two consecutive terms, excluding any initial two-year term of office. Determination of which of the initial members and their alternates would serve two year, three year or four year terms, would be designated by the Department.

In the event that any member or alternate of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall become vacant.

Whereas under the Current Order, a quorum is met if there are a majority of members and at least 50% are producers, under the Proposed Order, a quorum is met if a majority of members are present and at least one first handler and one importer are present. Also, under the Proposed Order, there is a ⅔ vote requirement for recommendations of a change in assessment.

Other Order Provisions

In addition to differences in the entities assessed and the make up of the Board, there are other comparative changes between the Proposed Order and the Current Order.

There are a number of terms not used in the Current Order that are part of the Proposed Order, including ''first handler'' and ''importer-handler representative.'' Also, the definition of ''honey products'' was expanded from the Current Order to state that such a product shall be considered to have honey as a principal ingredient if the product contains at least 50% honey by weight.

The Proposed Order provides that 5% of the Board's anticipated revenue must be set aside for production research, while the Current Order states generally that funding for such research shall be part of the budget.

The provisions regarding referendum procedures in the Proposed Order provide for a referendum every seven years. In the Current Order, a referendum occurs every five years.

The Department modified the Association's proposal to make it consistent with the 1996 Act and to provide clarity, consistency, and correctness with respect to word usage and terminology. The Department also changed the proposal to make it consistent with other similar national research and promotion programs. Some of the changes made by the Department to the Association's proposal were: (1) To remove the term ''handler'' and adopt ''first handler'' as the term to be used throughout the Proposed Order to be consistent with the 1996 Act; (2) to add criteria under nominations if a member or alternate is no longer affiliated with the organization he or she was nominated to represent; (3) to specify the initial terms of office for the Board to stagger the terms for future years; (4) to remove any references to the Current Board or Order; (5) to describe in more detail the powers and duties of the Board; (6) to add a new section describing reports that need to be provided by the Board on its financial position; (7) to add a section on independent evaluation of the effectiveness of any plan or program conducted by the Board; (8) to add a section on patents, copyrights, inventions, product formulation and publication to specify that these would become the property of the U.S. government; (9) to add authority to collect first handler and importer tax identification numbers; (10) to revise referendum requirements; (11) to add a section on amendments to the Proposed Order; (12) to add a section to exempt from assessments handlers/importers who operate under an approved National Organic Program; (13) to delete references to a standards of identity program or a testing program for honey as these programs are not authorized under the 1996 Act; and (14) to clarify the membership on the Board.

While the proposal set forth below has not received the approval of the Department, it is determined that the Proposed Order is consistent with and will effectuate the purposes of the 1996 Act.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses would not be disproportionately burdened.

The 1996 Act authorizes generic promotion, research, and information programs for agricultural commodities. Development of such programs under this authority are in the national public interest and vital to the welfare of the agricultural economy of the United States and to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

The Association submitted this Proposed Order to: (1) Develop and finance an effective and coordinated program of research, promotion, industry information, and consumer education regarding honey and honey products; (2) strengthen the position of the honey industry; and (3) maintain, develop, and expand existing markets for honey and honey products.

The goals of the Current Order are similar. Therefore, taking into account the duplicative nature of the Proposed Program with the Current Program the Department is proposing that the Current Order be terminated. USDA is soliciting comments on the impact of implementing the Proposed Order and the impact of terminating the Current Order. It is USDA's intention to have an operational program in effect under either the Current or Proposed Order.

The Proposed Order is authorized under Commodity Promotion, Research, Information Act of 1996, while the Current Order is authorized under the Honey Research, Promotion, and Consumer Information Act. A major difference between the Current Order and the Proposed Order is that the Proposed Order provides for assessments to be paid by first handlers and importers of honey or honey products rather than producers and importers.

Administrative expenses under the Proposed Order should be reduced because the number of entities to be assessed under the Proposed Order would also be reduced. Approximately 2,700 entities are assessed under the Current Order, while only about 75 entities would be assessed under the Proposed Order. Administrative costs would be reduced with fewer entities paying assessments and filing reports, and the assessment collection process would be simplified.

First handlers, importers, and producers would have the opportunity to serve on the proposed 10 member Board. Each member would have an alternate. The Board would consist of three first handler representatives, three honey producers, two importer representatives, one importer-handler representative and one representative from a national honey marketing cooperative. The Secretary would appoint members to the Board from nominees submitted in accordance with the Proposed Order. Twelve members serve on the Current Board.

Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An initial referendum would be conducted prior to putting this Proposed Order in effect. The Proposed Order also provides for approval in a referendum to be based upon: (1) Approval by a majority of those persons voting; and (2) persons voting for approval that represent a majority of the volume of honey and honey products of those voting in the referendum. Every seven years, the Department shall conduct a referendum to determine whether first handlers and importers of honey or honey products favor the continuation, suspension, or termination of the Order. In addition, the Department could conduct a referendum at any time; at the request of 10 percent and more of the first handlers and importers required to pay assessments; or at the request of the Board.

There are approximately 45 first handlers and 30 importers of honey or honey products that would pay assessments under the Proposed Order. Under the Current Order, approximately 2,000 producers and 659 importers pay assessments. Under the Current Order, entities in the Board member nomination process include qualified national organizations representing handler and importer interests, a national honey market cooperative and state beekeeper associations. The Current Honey Board consists of 12 members; seven producers, two handlers, two importers, and one marketing cooperative member. Under the Proposed Order entities in the Board member nomination process would include, qualified national organizations representing first handlers, importers, producers, and cooperative interests. The Proposed Board would consist of 10 members; three first handlers, two importers, one importer-handler, three producers, and one marketing cooperative member.

The Proposed Order also provides for first handlers and importers to file reports to the Board. In addition, the Proposed Order requires that qualified national organizations and nominated producers provide information for the nomination and appointment process to the Proposed Board. While the Proposed Order would impose certain recordkeeping requirements on first handlers, importers, and any producers who seek nomination and appointment to the Board, information required under the Proposed Order could be compiled from records currently maintained and would involve existing clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the Proposed Program, and their use is necessary to fulfill the intent of the 1996 Act. An estimated 118 respondents would provide information to the Board. They would be: 45 first handlers, 30 importers, 6 producers (for nominations purposes), 10 certified organizations (for nomination purposes), 25 handlers/importers exempt under the program, and 2 organic handlers/importers (for exemption purposes). The estimated total cost of providing information to the Board by all respondents would be $12,408. This total has been estimated by multiplying 376 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics. In contrast, under the Current Order, 2,700 respondents need a total of 7,776 hours for reporting and recordkeeping for a total cost of $129,459.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $6.5 million or less. Using these criteria under both the Current and the Proposed Order, most producers, first handlers, cooperative organizations and other nominating organizations would be considered small businesses, while most importers and exporters would not.

National Agricultural Statistic Service (NASS) data reports that U.S. production of honey, from producers with five or more colonies, totaled 155 million pounds in 2006. The top ten producing States in 2006 included North Dakota, South Dakota, California, Florida, Minnesota, Montana, Texas, Wisconsin, Idaho, and New York. To avoid disclosing data for individual operations, NASS statistics do not include Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, Oklahoma, Rhode Island, and South Carolina. NASS reported the value of honey sold in 2006 was $161,314,000. Honey prices increased during 2006 to 104.2 cents, up 14 percent from 91.8 cents in 2005.

Based on the assessment reports in connection with the Current Order and recorded by Customs, four countries account for 72 percent of the honey and honey products imported into the United States. These countries and their share of the imports are: China (28%); Argentina (21%); Vietnam (13%); and Canada (10%). Other countries combined totaled 28 percent of honey and honey products imported to the United States. Assessment revenue collected from importers of honey or honey products for 2006 under the Current Order were approximately $2.3 million.

At the initial rate, revenue for the Proposed Order would be approximately $3 million. This amount is comparable to assessments collected under the Current Order. In 2006, $3.6 million of assessment income was collected from the honey industry, of which 36 percent was from domestic production and 64 percent from imports. In 2006, 155 million pounds of honey or honey products were produced in the United States, 279.4 million pounds were imported and 7.6 million pounds were exported. The value of production in 2006 was $161.3 million. The average price for honey in the U.S. in 2006 was 104.2 cents per pound. Therefore, the estimated assessment revenue as a percentage of total grower revenue (using 2006 as a model) could be estimated at 1.8 percent.

The honey industry and consumers would benefit from additional information that may be conveyed through the plans and projects regarding honey and honey products. Another benefit to first handlers and importers of honey or honey products would be that they would have more representation on the Board and have additional input into Board decisions regarding the plans and programs under the Proposed Order.

Associations and related industry media would receive news releases and other information regarding the implementation of the Proposed Order, termination of the Current Order, and the referendum process. Furthermore, all information would be available electronically.

The Board could develop guidelines for compliance with the Proposed Order. The Board could recommend changes in the assessment rate, programs, plans, projects, budgets, and any rules and regulations that might be necessary for the administration of the program. The administrative expenses of the Board are limited by the 1996 Act to no more than 15 percent of assessment income. This does not include USDA costs for program oversight.

With regard to alternatives, the 1996 Act itself provides for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in § 516 of the 1996 Act, and other sections provide for alternatives. In tailoring the program to industry needs, a decision also must be made about the termination or retention of the Current Program. This proposed rule requests comments on this issue.

Similar to the Current Order, the Proposed Order is designed to: (1) Develop and finance an effective and coordinated research, promotion, industry information, and consumer education program for honey and honey products; (2) strengthen the position of the honey industry; and (3) maintain, develop, and expand existing markets for honey and honey products. Additionally, the Proposed Order would require first handlers of honey or honey products, instead of honey producers, to pay assessments to the Board that administers the program. While assessments would impose some additional costs on first handlers, the reporting requirements are minimal because handlers under the Current Order already report to the Honey Board. Also, the costs are minimal and uniform on all first handlers. These costs should be offset by the benefits derived by the operation of the Proposed Order. Under the Proposed Order importers would continue to pay assessments and be responsible for reporting and recordkeeping.

Section 516 authorizes an order to provide for exemption of *de minimis* quantities (the Association has proposed 250,000 pounds or less as a *de minimis* quantity) of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

Also, under authority provided by 7 U.S.C. 7401, the Proposed Order exempts first handlers who operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan, handle only products that are eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, from paying assessments. The Proposed Order also states that importers who import only products that are eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, shall be exempt from paying assessments.

The Proposed Order includes provisions for domestic market expansion and improvement, reserve funds, and a referendum to be conducted prior to implementation of the Proposed Order. Approval would be based upon a majority of those persons voting for approval who also represent a majority of the volume of the honey and honey products of those voting in the referendum. Termination of the Current Order also is proposed.

If the Current Order is terminated and the Proposed Order implemented, there would be a decrease in the reporting and recordkeeping burden cost from $129,459 under the Current Order to $12,408 under the Proposed Order. The reduced cost is due to a reduction in the total of individuals required to report. If the Current Order is not terminated, it would duplicate some of the provisions proposed under the Proposed Order.

With the exception of the Current Order, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

While the Department has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, the Department requests information on the expected benefits and costs of implementing the Proposed Program and terminating the Current Order.

Request for Public Comments

Interested persons are requested to provide their views concerning implementing a honey research and promotion program under and the

Commodity Promotion, Research, and Information Act of 1996 and the termination of the current honey research and promotion program under the Honey Research, Promotion, and Consumer Information Act. Comments evaluating and analyzing differences between these statutory authorities as well as differences between the Current and Proposed Orders in terms of establishing an effective honey research and promotion program for the honey industry are appreciated. The goals of both programs are similar; however, a major difference is that responsibility for assessments would shift from producers under the Current Order to handlers under the Proposed Order. Under the Current Order, handlers are responsible for collecting such assessments. Importers would continue to be assessed under the Proposed Program. Comments concerning the costs and benefits of such changes are specifically requested. Further, views on referendum voting by handlers and importers rather than producers and importers; establishment, membership and reconstitution of the Board, and reporting and recordkeeping requirements also are specifically requested. Data and statistics and other information on the honey industry including imports, also are welcome.

While this action proposes termination of the Current Order, an option is to retain the Current Order and not implement the Proposed Order. In proposing termination of the Current Order, the Honey Act requires that the Secretary find that an order obstructs or does not tend to effectuate the purposes of the Honey Act. Comments concerning the termination of the Current Order are requested. Comments, views, and arguments are solicited from interested persons, including producers, handlers, importers, exporters, and industry organizations.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of a new information collection for the Proposed Honey Program.

Title: Advisory Committee and Research and Promotion Board Background Information.

OMB Number for background form AD–755: (Approved under OMB No. 0505–0001).

Expiration Date of approval: March 31, 2009.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act.

Under the Proposed Order, first handlers would be required to pay assessments to and file reports with the Board. While the Proposed Order would impose certain recordkeeping requirements on first handlers, information required under the Proposed Order could be compiled from records currently maintained by such handlers. Such records would be retained for at least two years beyond the marketing year of their applicability.

Under the Proposed Order importers are responsible to pay assessments. Unless provided by Customs, importers must report the total quantity of product imported during the reporting period and a record of each importation of such product during such period, giving quantity, date, and port of entry. Under the Proposed Order, Customs would collect assessments on imported honey and honey products and remit the funds to the Board.

An estimated 118 respondents would provide information to the Board. They would be: 45 first handlers, 30 importers, 6 producers (for nominations purposes), 10 certified organizations (for nomination purposes), 25 handlers/importers exempt under the program, and 2 organic handlers/importers (for exemption purposes). The estimated total cost of providing information to the Board by all respondents would be $11,682. This total has been estimated by multiplying 354 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other honey programs administered by the Department.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the Proposed Order, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly during the production season would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. There is no practical method for collecting the required information without the use of these forms.

If the Current Order is terminated and the Proposed Order implemented, there would be a decrease in the reporting and recordkeeping burden cost from $129,459 under the Current Order to $11,682 under the Proposed Order. The reduced cost is due to a reduction in the total of individuals required to report from 2,700 under the Current Order to 118 under the Proposed Order.

Information collection requirements that are included in this proposal include:

(1) A Background Information Form AD–755 (Approved Under OMB Form No. 0505–0001)

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each Board nominee.

Respondents: First handlers, importers, producers and cooperative organizations.

Estimated Number of Respondents: 40 for initial nominations, 13 in subsequent years.

Estimated Number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 20 hours for the initial nominations and 6 hours annually thereafter.

(2) An Exemption Application for First Handlers and Importers Who Would Be Exempt From Assessments

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each exempt first handler and importer.

Respondents: Exempt first handlers and importers.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6.25 hours.

(3) Monthly Report by Each First Handler of Honey

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on honey handled.

Respondents: First handlers.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 270 hours.

(4) A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents: First handlers and importers.

Estimated Number of Respondents: 118.

Estimated Total Annual Burden on Respondents: 59 hours.

(5) Application for Reimbursement of Assessment

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per request for reimbursement.

Respondents: First handlers and importers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5 hours.

(6) Application for Certification of Organizations

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per application.

Respondents: First handlers, importers, producers and marketing cooperatives.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5 hours.

(7) Nomination Appointment Form

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per application.

Respondents: First handlers, importers, producers and marketing cooperatives.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5 hours.

(8) Organic Exemption Form

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

Respondents: First handlers and importers.

Estimated Number of Respondents: 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1 hour.

Request for Public Comment on the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Proposed Order and the Department's oversight of the Proposed Order, including whether the information would have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk at the addresses and within the timeframes listed at the beginning of this proposed rule. All comments received will be available for public inspection during regular business hours at the same address. Comments regarding information collection should also be sent to the Office of Management and Budget at: Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The proposal set forth below has not received the approval of the Department.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

List of Subjects in 7 CFR Parts 1212 and 1240

Administrative practice and procedure, Advertising, Consumer education, Honey and honey products, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority at 7 U.S.C. 4601–4613, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

PART 1240—[REMOVED]

1. Part 1240 is proposed to be removed.

2. Part 1212 is proposed to be added as follows:

PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

Subpart A—Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order

Definitions

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1212.2 Board.
1212.3 Conflict of interest.
1212.4 Department.
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1212.6 First handler.
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1212.10 Honey products.
1212.11 Importer.
1212.12 Importer-handler representative.
1212.13 Information.
1212.14 Market or marketing.
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1212.17 Person.
1212.18 Plans and programs.
1212.19 Producer.
1212.20 Promotion.
1212.21 Qualified national organization representing first handler interests.
1212.22 Qualified national organization representing importer interests.

1212.23 Qualified national organization representing producer interests.
1212.24 Qualified national organization representing cooperative interests.
1212.25 Referendum.
1212.26 Research.
1212.27 Secretary.
1212.28 Suspend.
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1212.30 Terminate.
1212.31 United States.
1212.32 United States Customs Service.

Honey Packers and Importers Board

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Subpart B—[Reserved]

Authority: 7 U.S.C. 7401 and 7411–7425.

Subpart A—Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order

Definitions

§ 1212.1 Act.

''Act'' means the Commodity Promotion, Research, and Information Act of 1996, (7 U.S.C. 7411–7425), and any amendments to that Act.

§ 1212.2 Board.

''Board'' or ''Honey Packers and Importers Board'' means the administrative body established pursuant to § 1212.40, or such other name as recommended by the Board and approved by the Department.

§ 1212.3 Conflict of interest.

''Conflict of interest'' means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1212.4 Department.

''Department'' means the United States Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1212.5 Exporter.

''Exporter'' means any person who exports honey or honey products from the United States.

§ 1212.6 First handler.

''First handler'' means the first person who buys or takes possession of honey or honey products from a producer for marketing. If a producer markets honey or honey products directly to consumers, that producer shall be considered to be the first handler with respect to the honey produced by the producer.

§ 1212.7 Fiscal period.

''Fiscal period'' means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Secretary.

§ 1212.8 Handle.

''Handle'' means to process, package, sell, transport, purchase or in any other way place honey or honey products, or causes them to be placed, in commerce. This term includes selling unprocessed honey that will be consumed without further processing or packaging. This term does not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer.

§ 1212.9 Honey.

''Honey'' means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

§ 1212.10 Honey products.

''Honey products'' mean products where honey is a principal ingredient. For purposes of this subpart, a product shall be considered to have honey as a principal ingredient if the product contains at least 50% honey by weight.

§ 1212.11 Importer.

''Importer'' means any person who imports for sale honey or honey products into the United States as a principal or as an agent, broker, or consignee of any person who produces honey or honey products outside the United States or for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

§ 1212.12 Importer-Handler Representative.

''Importer-Handler Representative'' means any person who is an importer and first handler, who must import at least 75 percent of the honey they market in the United States and must handle at least 250,000 pounds annually.

§ 1212.13 Information.

''Information'' means activities or programs designed to develop new and existing markets, new and existing marketing strategies and increased efficiency and activities to enhance the image of honey and honey products. These include:

(a) Consumer education, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of honey and honey products; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the honey industry, and activities to enhance the image of the honey industry.

§ 1212.14 Market or marketing.

(a) ''Marketing'' means the sale or other disposition of honey or honey products in any channel of commerce.

(b) ''Market'' means to sell or otherwise dispose of honey or honey products in interstate, foreign, or intrastate commerce.

§ 1212.15 Order.

''Order'' means the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order.

§ 1212.16 Part and subpart.

''Part'' means the Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order (Order) and all rules,

regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a ''subpart'' of such part.

§ 1212.17 Person.

''Person'' means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1212.18 Plans and programs.

''Plans and programs'' mean those research, promotion and information programs, plans, or projects established pursuant to this Order.

§ 1212.19 Producer.

''Producer'' means any person who is engaged in the production and sale of honey in any State and who owns, or shares the ownership and risk of loss of the production of honey or a person who is engaged in the business of producing, or causing to be produced, honey beyond personal use and having value at first point of sale.

§ 1212.20 Promotion.

''Promotion'' means any action, including paid advertising and public relations that presents a favorable image for honey or honey products to the public and food industry with the intent of improving the perception and competitive position of honey and stimulating sales of honey or honey products.

§ 1212.21 Qualified national organization representing first handler interests.

''Qualified national organization representing first handler interests'' means an organization that the Secretary certifies as being eligible to nominate first handler and alternate first handler members of the Board under § 1212.42.

§ 1212.22 Qualified national organization representing importer interests.

''Qualified national organization representing importer interests'' means an organization that the Secretary certifies as being eligible to nominate importer, importer-handler, and alternate importer and importer-handler members of the Board under § 1212.42.

§ 1212.23 Qualified national organization representing producer interests.

''Qualified national organization representing producer interests'' means an organization that the Secretary certifies as being eligible to nominate producer and alternate producer members of the Board under § 1212.42.

§ 1212.24 Qualified national organization representing cooperative interests.

''Qualified national organization representing cooperative interests'' means an organization that the Secretary certifies as being eligible to nominate cooperative and alternate cooperative members of the Board under § 1212.42.

§ 1212.25 Referendum.

''Referendum'' means a referendum to be conducted by the Secretary pursuant to the Act whereby first handlers and importers shall be given the opportunity to vote to determine whether the implementation of or continuance of this part is favored by a majority of eligible persons voting in the referendum and a majority of volume voting in the referendum.

§ 1212.26 Research.

''Research'' means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of honey and honey products, including research relating to nutritional value, cost of production, new product development, testing the effectiveness of market development and promotion efforts. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees.

§ 1212.27 Secretary.

''Secretary'' means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority the Secretary delegated the authority to act on his or her behalf.

§ 1212.28 Suspend.

''Suspend'' means to issue a rule under § 553 of U.S.C. Title 5 to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1212.29 State.

''State'' means any of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 1212.30 Terminate.

''Terminate'' means to issue a rule under § 553 of U.S.C. Title 5 to cancel permanently the operation of an order beginning on a date certain specified in the rule.

§ 1212.31 United States.

''United States'' means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 1212.32 United States Customs Service.

''United States Customs Service'' or ''Customs'' means the United States Customs and Border Protection, an agency of the Department of Homeland Security.

Honey Packers and Importers Board

§ 1212.40 Establishment and membership.

The Honey Packers and Importers Board is established to administer the terms and provisions of this part. The Board shall have ten members, composed of three first handler representatives, two importer representatives, one importer-handler representative, three producer representatives, and one marketing cooperative representative. The importer-handler representative must import at least 75 percent of the honey or honey products they market in the United States and handle at least 250,000 pounds annually. In addition, the producer representatives must produce a minimum of 150,000 pounds of honey in the United States annually based on the best three year average of the most recent five calendar years, as certified by producers. The Secretary will appoint members to the Board from nominees submitted in accordance with § 1212.42. The Secretary shall also appoint an alternate for each member.

§ 1212.41 Term of office.

With the exception of the initial Board, each Board member and alternate will serve a three-year term or until the Secretary selects his or her successor. No member or alternate may serve more than two consecutive terms, excluding any initial two-year term of office. The terms of the initial Board members shall be staggered for two, three, and four-year terms. For the initial Board, one producer, one first handler, one importer, and the representative of a national honey cooperative will serve a two-year term of office. One producer, one first handler, and the importer-handler representative, will serve a three-year term of office. One producer, one first handler, and one importer will serve a four-year term of office. Determination of which of the initial members and their alternates shall serve two-year, three-year or four-year terms, shall be designated by the Secretary. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1. If this

part becomes effective on a date such that the initial period is less than six months in duration, then the tolling of time for purposes of this subsection shall not begin until the beginning of the first 12-month fiscal period.

§ 1212.42 Nominations and appointments.

All nominations to the Board will be made as follows:

(a) All qualified national organizations representing first handler interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for the first handler positions and the alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing first handler interests, individual first handlers who have paid assessments to the Board in the most recent fiscal period may submit nominations. For the initial Board, persons that meet the definition of first handlers as defined in this subpart will certify such qualification and upon certification, if qualified, may submit nominations.

(b) All qualified national organizations representing importer interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for importer positions, for the importer-handler position and for the alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing importer interests, individual importers who have paid assessments to the Board in the most recent fiscal period may submit nominations. For the initial Board, persons that meet the definition of importer as defined in this subpart will certify such qualification and upon certification, if qualified, may submit nominations.

(c) All qualified national organizations representing producer interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for the producer positions and the producer alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing producer interests, individual producers may submit nominations to the Secretary. For the initial Board, persons that meet the definition of producer as defined in this subpart will certify such qualification and upon certification, if qualified, may submit nominations.

(d) For the purposes of this subpart, a national honey-marketing cooperative means any entity that is organized under the Capper-Volstead Act (7 U.S.C. 291) or state law as a cooperative and markets honey or honey products in at least 20 states. All national honey-marketing cooperatives that are first handlers will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary of persons who serve as an officer, director, or employee of a national honey marketing cooperative for the cooperative position and the alternate position on the Board.

(e) Eligible organizations, cooperatives, producers, first handlers or importers must submit nominations to the Secretary six months before the new Board term begins. At least two nominees for each position to be filled must be submitted.

(f) Qualified national organization representing first handler interests. To be certified by the Secretary as a qualified national organization representing first handler interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's voting membership must be comprised primarily of first handlers of honey or honey products;

(2) The organization must represent a substantial number of first handlers who market a substantial volume of honey or honey products in at least 20 states;

(3) The organization has a history of stability and permanency and has been in existence for more than one year;

(4) The organization must have as a primary purpose promoting honey first handlers' economic welfare;

(5) The organization must derive a portion of its operating funds from first handlers; and

(6) The organization must demonstrate it is willing and able to further the Act's purposes.

(g) Qualified national organization representing importer interests. To be certified as a qualified national organization representing importer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's importer membership must represent at least a majority of the volume of honey or honey products imported into the United States;

(2) The organization has a history of stability and permanency and has been in existence for more than one year;

(3) The organization must have as a primary purpose promoting honey importers' economic welfare;

(4) The organization must derive a portion of its operating funds from importers; and

(5) The organization must demonstrate it is willing and able to further the Act's purposes.

(h) Qualified national organization representing producer interests. To be certified by the Secretary as a qualified national organization representing producer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's membership must be comprised primarily of honey producers;

(2) The organization must represent a substantial number of producers who produce a substantial volume of honey in at least 20 states;

(3) The organization has a history of stability and permanency and has been in existence for more than one year;

(4) The organization must have as one of its primary purposes promoting honey producers' economic welfare;

(5) The organization must derive a portion of its operating funds from producers; and

(6) The organization must demonstrate it is willing and able to further the Act's purposes.

(i) To be certified by the Secretary as a qualified national organization representing first handler, producer or importer interests, an organization must agree to:

(1) Take reasonable steps to publicize to non-members the availability of open Board first handler, producer or importer positions; and

(2) Consider nominating a non-member first handler, producer or importer, if he or she expresses an interest in serving on the Board.

(j) National honey-marketing cooperative. The Secretary can certify that an entity qualifies as a national honey-marketing cooperative, as defined in § 1212.42(d). Such entity shall not be eligible for certification as a qualified national organization representing producer interests.

§ 1212.43 Removal and vacancies.

(a) In the event that any member or alternate of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall become vacant.

(b) The Board may recommend to the Secretary that a member be removed from office if the member consistently refuses to perform his or her duties or

engages in dishonest acts or willful misconduct. The Secretary may remove the member if he or she finds that the Board's recommendation show adequate cause.

(c) A vacancy for any reason will be filled as follows:

(1) If a member position becomes vacant, the alternate for that position will serve the remainder of the member's term. In accordance with § 1212.42, the Secretary will request nominations for a replacement alternate and will appoint a nominee to serve the remainder of the term. The Secretary does not have to appoint a replacement if the unexpired term is less than six months.

(2) If both a member and alternate position become vacant, in accordance with § 1212.42, the Secretary will request nominations for replacements and appoint a member and alternate to serve the remainder of the term. The Secretary does not have to appoint a new member or alternate if the unexpired term for the position is less than six months.

(3) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Board.

§ 1212.44 Procedure.

(a) A majority of the Board members will constitute a quorum so long as at least one of the members present is an importer member and one of the members present is a first handler member. An alternate will be counted for the purpose of determining a quorum only if a member from his or her membership class is absent or disqualified from participating. Any Board action will require the concurring votes of a majority of those present and voting; with the exception of the two-thirds vote requirement in § 1212.52(f). All votes at meetings will be cast in person. The Board must give timely notice of all Board and committee meetings to members and alternates.

(b) The Board may take action by any means of communication when, in the opinion of the Board chairperson, an emergency requires that action must be taken before a meeting can be called. Any action taken under this procedure is valid only if:

(1) All members and the Secretary are notified and the members are provided the opportunity to vote;

(2) Each proposition is explained accurately, fully, and substantially identically to each member;

(3) With the exception of the two-thirds vote requirement in § 1212.52(f), a majority of the members vote in favor of the action; and

(4) All votes are promptly confirmed in writing and recorded in the Board minutes.

§ 1212.45 Reimbursement and attendance.

Board members and alternates, when acting as members, will serve without compensation but will be reimbursed for reasonable travel expenses, as approved by the Board, that they incur when performing Board business. The Board may request that alternates attend any meeting even if their respective members are expected to attend or actually attend the meeting.

§ 1212.46 Powers.

The Board shall have the following powers subject to § 1212.80:

(a) Administer this subpart in accordance with its terms and provisions of the Act;

(b) Require its employees to receive, investigate, and report to the Secretary complaints of violations of this part;

(c) Recommend adjustments to the assessments as provided in this part;

(d) Recommend to the Secretary amendments to this part;

(e) Establish, issue, and administer appropriate programs for promotion, research, and information including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products; and

(f) Invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order.

§ 1212.47 Duties.

The Board shall have, among other things, the following duties:

(a) To meet and organize, and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and other industry representatives; and to develop and recommend such rules, regulations, and by-laws to the Secretary for approval to conduct its business as it may deem advisable;

(b) To employ or contract with such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of anticipated expenses in the administration of this part including the probable costs of all programs and plans and to recommend a rate of assessment with respect thereto.

(d) To investigate violations of this part and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of this part.

(e) To establish, issue, and administer appropriate programs for promotion, research, and information including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products.

(f) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it.

(g) To periodically prepare and make public and to make available to first handlers, producers, and importers reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended.

(h) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary.

(i) To submit to the Secretary such information pertaining to this part or subpart as he or she may request.

(j) To give the Secretary the same notice of Board meetings and committee meetings that is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting to the Secretary.

(k) To notify first handlers, importers, and producers of all Board meetings through press releases or other means.

(l) To appoint and convene, from time to time, working committees or subcommittees that may include first handlers, importers, exporters, producers, members of the wholesale or retail outlets for honey, or other members of the honey industry and the public to assist in the development of research, promotion, advertising, and information programs for honey and honey products.

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the declared purpose of the Act.

(n) To provide any patents, copyrights, inventions, product

formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department.

§ 1212.47 Reapportionment of Board membership.

At least once in each 5-year period, but not more frequently than once in each 3-year period, the Board shall:

(a) Review, based on a three-year average, the geographical distribution in the United States of the production of honey and the quantity or value of the honey and honey products imported into the United States; and

(b) If warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the production of honey and the quantity or value of the honey and honey products imported into the United States.

Expenses and Assessments

§ 1212.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal period, and as may be necessary thereafter; the Board shall prepare and submit to the Department a budget for the fiscal period covering its anticipated expenses and disbursements in administering this subpart. The budget shall allocate five percent (5%) of the Board's anticipated revenue from assessments each fiscal period for production research and research relating to the production of honey.

Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Department, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Department.

(d) The Board is authorized to incur such expenses, including provision for a reserve, as the Department finds reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Voluntary contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, enforcement and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any calendar year an amount that exceeds 15 percent of the assessments and other income received by the Board for that calendar year. Reimbursements to the Department required under paragraph (g) of this section, are excluded from this limitation on spending.

(i) The Board may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

§ 1212.51 Financial statements.

(a) The Board shall prepare and submit financial statements to the Department on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Department within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Department an annual financial statement within 90 days after the end of the calendar year to which it applies.

§ 1212.52 Assessments.

(a) The Board will cover its expenses by levying in a manner prescribed by the Secretary an assessment on first handlers and importers.

(b) Each first handler shall pay an assessment to the Board at the rate of $0.01 per pound of domestically produced honey or honey products the first handler handles. A producer shall pay the Board the assessment on all honey or honey products for which the producer is the first handler.

(c) Each first handler responsible for remitting assessments under paragraph (b) of this section shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the honey or honey products were marketed.

(d) Each importer shall pay an assessment to the Board at the rate of $0.01 per pound of honey or honey products the importer imports into the United States. An importer shall pay the assessment to the Board through the United States Customs Service (Customs) when the honey or honey products being assessed enters the United States. If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment to the Board.

(e) The import assessment recommended by the Board and approved by the Secretary shall be uniformly applied to imported honey or honey products that are identified as HTS heading number 0409.00.00 and 2106.90. 9988 by the Harmonized Tariff Schedule of the United States.

(f) The Board may recommend an increase or decrease in the assessment as it deems appropriate by at least a two-thirds vote of members present at a meeting of the Board with the approval of the Secretary. The Board may not recommend an increase in the assessment of more than $0.02 per pound of honey or honey products and may not increase the assessment by

more than $0.0025 in any single fiscal year.

(g) In situations of late payment:

(1) The Board shall impose a late payment charge on any first handler or importer who fails to remit to the Board the total amount for which the first handler or importer is liable on or before the payment due date the Board establishes. The amount of the late payment charge shall be prescribed by the Department.

(2) The Board shall require any first handler or importer subject to a late payment charge to pay interest on the unpaid assessments for which the first handler or importer is liable. The rate of interest shall be prescribed by the Department.

(3) First handlers or importers who fail to remit total assessments in a timely manner may also be subject to actions under federal debt collection procedures.

(h) *Advance payment.* The Board may accept advance payment of assessments from first handlers or importers that will be credited toward any amount for which the first handlers or importers may become liable. The Board does not have to pay interest on any advance payment.

§ 1212.53 Exemption from assessment.

(a) A first handler who handles less than 250,000 pounds of honey or honey products per calendar year or an importer who imports less than 250,000 pounds of honey or honey products per calendar year is exempt from paying assessments.

(b) A first handler who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, handles only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, shall be exempt from the payment of assessments. An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, shall be exempt from the payment of assessments.

(c) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. A first handler shall certify that the first handler will handle less than 250,000 of honey and honey products for the calendar year for which the exemption is claimed. An importer shall certify that the importer will import less than 250,000 pounds of honey and honey products during the calendar year for which the exemption is claimed.

(d) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board will then issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(e) Exempt importers shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessment paid. No interest will be paid on the assessment collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the honey or honey products were imported.

(f) If a person has been exempt from paying assessments for any calendar year under this section and no longer meets the requirements for an exemption, the person shall file a report with the Board in the form and manner prescribed by the Board and begins to pay the assessment on all honey or honey products handled or imported.

(g) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(h) The Board may recommend to the Secretary that honey and honey products exported from the United States be exempt from this subpart and recommend procedures for refunding assessments paid on exported honey and honey products and any necessary safeguards to prevent improper use of this exemption.

§ 1212.54 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Department, such reserve funds may be used to defray any expenses authorized under this part.

§ 1212.55 Prohibition on use of funds.

(a) The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(1) Any action that is a conflict of interest;

(2) Except as otherwise provided in paragraph (b) using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

(3) A program, plan or project conducted pursuant to this subpart that includes false or misleading claims on behalf of honey or honey products.

(4) Any advertising, including promotion, research and information activities authorized that may be false or misleading or disparaging to another agricultural commodity.

(b) The prohibition in paragraph (a)(2) shall not apply:

(1) To the development and recommendation of amendments to this subpart; or

(2) To the communication to appropriate government officials, in response to a request made by the officials, of information relating to the conduct, implementation, or results of promotion, research, consumer information, education, industry information, or producer information activities authorized under this subpart.

Promotion, Research, and Information

§ 1212.60 Programs, plans and projects.

(a) *Scope of activities.* The Board must develop and submit to the Secretary for approval plans and programs authorized by this section. The plans and programs may provide for:

(1) Establishing, issuing, and administering appropriate programs for promotion, research, and information including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products;

(2) Establishing and conducting research and development activities to encourage and expand the acquisition of knowledge about honey and honey products, their consumption and use, or to encourage, expand or improve the quality, marketing, and utilization of honey and honey products;

(3) Conducting activities that may lead to developing new markets or marketing strategies for honey and honey products;

(4) Conducting activities related to production issues or bee research activities; and

(5) Conducting activities designed to make the honey industry more efficient, to improve the quality of honey or to enhance the image of honey and honey products and the honey industry.

(b) No program, plan, or project shall be implemented prior to its approval by the Department. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) The Board must periodically evaluate each plan and program

authorized under this part to ensure that it contributes to an effective and coordinated program of research, promotion and information. The Board must submit the evaluations to the Secretary. If the Board and the Secretary find that a plan or program does not further the purposes of the Act, then such plan or program should be terminated.

§ 1212.61 Independent evaluation.

The Board must authorize and fund not less than once every five years an independent evaluation of the effectiveness of this subpart and the plans and programs conducted by the Board under the Act. The Board must submit this independent evaluation to the Secretary and make the results available to the public.

§ 1212.62 Patents, copyrights, inventions, product formulations, and publications.

Except for a reasonable royalty paid by the Board to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department. Upon termination of this Order, § 1212.83 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1212.70 Reports.

(a) Each first handler or importer subject to this part must report to the Board, at the time and in the manner it prescribes, and subject to the approval of the Secretary, the information the Board deems necessary to perform its duties.

(b) First handlers must report:

(1) The total quantity of honey and honey products acquired during the reporting period;

(2) The total quantity of honey and honey products handled during the period;

(3) The quantity of honey processed for sale from the first handler's own production;

(4) The quantity of honey and honey products purchased from a first handler or importer responsible for paying the assessment due pursuant to this Order;

(5) The date that assessment payments were made on honey and honey products handled; and

(6) The first handler's tax identification number.

(c) Unless provided by Customs, importers must report:

(1) The total quantity of honey and honey products imported during the reporting period;

(2) A record of each lot of honey or honey products imported during such period, including the quantity, date, country of origin, and port of entry; and

(3) The importer of record's tax identification number.

(d) The Board may request any other information from first handlers and importers that it deems necessary to perform its duties under this subpart, subject to the approval of the Secretary.

(e) The Board, with the Secretary's approval, may request that persons claiming an exemption from assessments under § 1212.52 (b) or (d) must provide it with any information it deems necessary about the exemption, including, without limitation, the disposition of exempted honey or honey products.

§ 1212.71 Books and records.

Each first handler and importer, including those who are exempt under this subpart, must maintain any books and records necessary to carry out the provisions of this part, and any regulations issued under this part, including the books and records necessary to verify any required reports. Books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. A first handler or importer must maintain the books and records for two years beyond the fiscal period to which they apply.

§ 1212.72 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, first handlers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected thereof, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

Miscellaneous

§ 1212.80 Right of the Secretary.

All fiscal matters, programs or projects, contracts, rules or regulations, reports, or other actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1212.81 Referenda.

(a) After the initial referendum, the Secretary shall conduct subsequent referenda;

(1) Every seven years, to determine whether first handlers and importers of honey or honey products favor the continuation, suspension, or termination of the Order. The Order shall continue if it is favored by a majority of first handlers and importers voting in the referendum and a majority of volume voting in the referendum who, during a representative period determined by the Secretary, have been engaged in the handling or importation of honey or honey products;

(2) At the request of the Board established in this Order;

(3) At the request of ten (10) percent or more of the number of persons eligible to vote under the Order; or

(4) Whenever the Department deems that a referendum is necessary.

(b) *Approval of order.* Approval in a referendum shall be established by a majority of eligible persons voting in the referendum and a majority of volume voting in the referendum who are first handlers or importers during the representative period by those voting as established by the Secretary.

(c) *Manner of conducting referenda.* A referendum conducted under this section shall be conducted in the manner determined by the Secretary to be appropriate.

§ 1212.82 Suspension or termination.

The Secretary shall suspend or terminate the operation of this part or subpart or any provision thereof, if the Secretary finds that this part or subpart or the provision obstructs or does not tend to effectuate the declared policy of the Act.

§ 1212.83 Proceedings after termination.

(a) If this subpart terminates, the Board shall recommend to the Secretary up to five of its members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, will become trustees of any funds and property the Board possesses or controls at that time and any existing claims it has, including, without limitation, claims for any unpaid or undelivered funds or property.

(b) The trustees will:

(1) Serve until discharged by the Secretary;

(2) Carry out the Board's obligations under any contracts or agreements entered into pursuant to the Order;

(3) Account from time to time for all receipts and disbursements and deliver all property on hand, together with all the Board's and trustees' books and records to any person the Secretary directs; and

(4) Execute at the Secretary's direction any assignments or other instruments necessary or appropriate to vest in any person full title and right to all of the funds, property, and claims owned by the Board or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to the Order will be subject to the same obligations imposed upon Board and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more honey industry organizations in the interest of continuing honey promotion, research, and information programs.

§ 1212.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, terminating or amending this subpart or any regulation issued under it will not:

(a) Affect or waive any right, duty, obligation, or liability that arose or may arise in connection with any provision of this part;

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States or any person with respect to any violation.

§ 1212.85 Personal liability.

No member, alternate member, or employee of the Board may be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as a member, alternate member, or employee, except for acts of dishonesty or willful misconduct.

§ 1212.86 Separability.

If any provision of this subpart is declared invalid or the applicability of it to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability of it to other persons or circumstances will not be affected.

§ 1212.87 Amendments.

Amendments to this Order may be proposed from time to time by the Board or any interested person affected by the provisions of the Act, including the Department.

§ 1212.88 OMB control number.

The control number assigned to the information collection requirements in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505–0001, OMB control number 0581–0217, and OMB control number 0581–[NEW, to be assigned by OMB].

Subpart B—[Reserved]

Dated: May 29, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–2737 Filed 6–1–07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1212

[Docket No. AMS–FV–06–0176; FV–03–704–PR–1B]

RIN 0581–AC37

Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, Agriculture, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Order) is favored by first handlers and importers of honey or honey products. The Order will be implemented if it is approved by a majority of the eligible first handlers and importers voting in the referendum, who also represent a majority of the volume of honey and honey products handled and imported during the representative period. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996.

DATES: Comments must be received by August 3, 2007. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by August 3, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments can be made on the Internet at *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; Fax (202) 205–2800. Comments should reference the docket number, title of action, date, and page number of this issue of the **Federal Register** and will be made available for public inspection at the above address during regular business hours.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address and to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sonia Jimenez, Chief, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone 202–720–9915 or (888) 720–9917 (toll free) or e-mail *sonia.jimenez@usda.gov.*

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible first handlers and importers of honey or honey products to determine whether they favor issuance of the proposed Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Order) [7 CFR part 1212]. The program will be implemented if it is approved by a majority of the first handlers and importers voting in the referendum, who also represent a majority of the volume of honey and honey products handled and imported during the representative period. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411–7425]. It would cover domestic first handlers and importers of honey and honey products of 250,000 pounds or more. A proposed Order is being published separately in this issue of the **Federal Register**.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to an order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The National Honey Packers and Dealers Association (Association) has recommended that the Department conduct a referendum in which approval of an order would be based on a majority of the first handlers and importers voting who also represent a majority of the volume voting in the referendum. The Department proposes that a referendum be conducted prior to the proposed Order going into effect.

This proposed rule would establish the procedures under which first handlers and importers of honey or honey products may vote on whether they want a honey promotion, research, and information program to be implemented. This proposal would add a new subpart which establishes procedures to conduct an initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 45 first handlers and 30 importers of honey and honey products who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $6.5 million or less. First handlers and importers would be considered agricultural service firms. Using these criteria, most first handlers would be considered small businesses while most importers would not.

National Agricultural Statistic Service (NASS) data reports that U.S. production of honey, from producers with five or more colonies, totaled 155 million pounds in 2006. The top ten producing States in 2006 included North Dakota, South Dakota, California, Florida, Minnesota, Montana, Texas, Wisconsin, Idaho, and New York. To avoid disclosing data for individual operations, NASS statistics do not include Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, Oklahoma, Rhode Island, and South Carolina. NASS reported the value of honey sold in 2006 was $161,314,000. Honey prices increased during 2006 to 104.2 cents, up 14 percent from 91.8 cents in 2005.

There is a current Honey Research, Promotion, and Consumer Information Program in effect. Based on the assessment reports in connection with the current honey program, four countries account for 72 percent of the honey and honey products imported into the United States. These countries and their share of the imports are: China (28%); Argentina (21%); Vietnam (13%); and Canada (10%). Other countries combined totaled 28 percent of honey and honey products imported to the United States. In 2006, 155 million pounds of honey were produced in the United States, 279.4 million pounds were imported and 7.6 million pounds were exported.

This proposed rule provides the procedures under which first handlers and importers of honey or honey products may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 45 first handlers and 30 importers who will be eligible to vote in the first referendum. First handlers and importers of less than

250,000 pounds of honey and honey products annually will be exempt from assessments and not eligible to vote in the referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if first handlers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on first handlers and importers. This rule provides for a ballot to be used by eligible first handlers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 45 first handlers and for an estimated 30 importers would be $45.00 for all first handlers or $1.00 per first handler and $30.00 for all importers or $1.00 per importer.

USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost effective and reliable. USDA will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order.

OMB Number: 0581—NEW.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Order. The ballot is needed for the referendum that will be held to determine whether first handlers and importers are in favor of the program. The information collected is used by USDA to determine whether a majority of the eligible first handlers and importers voting in a referendum, who also represent a majority of the volume of honey and honey products approve of this program.

Referendum Ballot

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each first handler and importer.

Respondents: First handlers and importers.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 3.75 hours.

The ballot will be added to the other information collections approved for use under OMB Number 0581—NEW.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581—NEW and the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order, and should be sent to USDA in care of Sonia Jimenez at the address above and the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

All comments received will be available for public inspection during regular business hours at the same address. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of the public record.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The estimated annual cost of providing the information by an estimated 45 first handlers would be $45.00 or $1.00 per first handler and for an estimated 30 importers would be $30.00 or $1.00 per importer.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection.

Background

The Act, which became effective on April 4, 1996, authorizes the Department to establish a national research and promotion program covering domestic and imported honey and honey products. The Association submitted an entire proposed Order on March 17, 2006, and modifications were made to the proposal to make it consistent with the Act. The proposal is being published for public comment in this issue of the **Federal Register**.

The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for honey and honey products in the United States. The program would be funded by an assessment levied on first handlers and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at an initial rate of 1 cent per pound. First handlers and importers of less than 250,000 pounds of honey and honey products per year would be exempt from paying assessments.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the Honey Packers and Importers Board; and expenses incurred by the Department in implementing and administering the Order, including referendum costs.

Section 1206 of the Act requires that a referendum be conducted among eligible first handlers and importers of honey or honey products to determine

whether they favor implementation of the Order. That section also requires the Order to be approved by a majority of the first handlers and importers voting, who also represent a majority of the volume of honey and honey products handled an imported during the representative period.

This proposed rule establishes the procedures under which first handlers and importers of honey or honey products may vote on whether they want the honey packer and importer promotion, research, and information program to be implemented. There are approximately 75 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the honey industry.

List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Consumer education, Honey and honey products, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

1. The authority citation for part 1212, as proposed elsewhere in this issue of the **Federal Register**, continues to read as follows:

Authority: 7 U.S.C. 7401 and 7411–7425.

2. Part 1212, as proposed elsewhere in this issue of the **Federal Register**,is proposed to be amended by adding subpart B to read as follows:

Subpart B—Referendum Procedures

Sec.

1212.100 General.
1212.101 Definitions.
1212.102 Voting.
1212.103 Instructions.
1212.104 Subagents.
1212.105 Ballots.
1212.106 Referendum report.
1212.107 Confidential information.
1212.108 OMB control number.

Subpart B—Referendum Procedures

§ 1212.100 General.

Referenda to determine whether eligible first handlers and importers of honey and honey products favor the issuance, continuance, amendment, suspension, or termination of the Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order shall be conducted in accordance with this subpart.

§ 1212.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to re-delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter delegated, to act in the Secretary's stead.

(c) *Eligible first handler* means any person (excluding a common or contract carrier) who handled 250,000 or more pounds of domestic honey and honey products during the representative period, who first buys or takes possession of honey or honey products from a producer for marketing. If a producer markets the honey directly to consumers, the producer shall be considered the first handler with respect to the honey produced by the producer.

(d) *Eligible importer* means any person who imports 250,000 or more pounds of honey and honey products into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles honey or honey products outside of the United States for sale in the United States, and who is listed as the importer of record for such honey or honey products that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0409.00.00 and 2106.90.9988, during the representative period. Importation occurs when honey or honey products originating outside of the United States are released from custody by the U.S. Customs Service and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign produced honey or honey products immediately upon release by the U.S. Customs Service, as well as any persons who acts on behalf of others, as agents or brokers, to secure the release of honey or honey products from the U.S. Customs Service when such honey or honey products are entered or withdrawn for consumption in the United States.

(e) *Handle* means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in commerce. This term includes selling unprocessed honey that will be consumed without further processing or packaging. This term does not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer.

(f) *Honey* means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

(g) *Honey products* mean products where honey is a principal ingredient. For purposes of this subpart, a product shall be considered to have honey as a principal ingredient, if the product contains at least 50 percent honey by weight.

(h) *Order* means the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order.

(i) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of honey or honey products for market and the authority to transfer title to the honey or honey products so produced, handled or imported.

(j) *Referendum agent* or *agent* means the individual or individuals designated by the Department to conduct the referendum.

(k) *Representative period* means the period designated by the Department.

(l) *United States or U.S.* means collectively the 50 states, the District of

Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1212.102 Voting.

(a) Each eligible first handler and eligible importer of honey or honey products shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

§ 1212.103 Instructions.

(a) *Referenda.* The Order shall not become effective unless the Department determines that the Order is consistent with and will effectuate the purposes of the Act; and for initial and subsequent referenda the Order is favored by a majority of eligible persons voting in the referendum and a majority of volume voting in the referendum who, during a representative period determined by the Department, have been engaged in the handling or importation of honey or honey products and are subject to assessments under this Order and excluding those exempt from assessment under Order.

(b) The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(1) Determine the period during which ballots may be cast.

(2) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(3) Give reasonable public notice of the referendum:

(i) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(ii) By such other means as the agent may deem advisable.

(4) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(5) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(6) Prepare a report on the referendum.

(7) Announce the results to the public.

§ 1212.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence or such appointment, shall be performed by the agent.

§ 1212.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1212.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1212.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1212.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0505–0001, OMB control number 0581–0217, and OMB control number 0581–[NEW, to be assigned by OMB].

Dated: May 29, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–2736 Filed 6–1–07; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Monday,
June 4, 2007

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Change in Extinguishing Agent Container Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No.: FAA–2007–26969; Amendment Nos. 121–331 and 135–109]

RIN 2120–AI99

Change in Extinguishing Agent Container Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: On April 20, 2007, the FAA published in the **Federal Register** a direct final rule entitled Change in Extinguishing Agent Container Requirements. The rule aligned the operational and certification requirements regarding airplane extinguishing agent containers or fire bottles; and it removed an obsolete section reference from part 135. This action withdraws the rule because the FAA received several adverse comments.

DATES: The direct final rule published at 72 FR 19793, April 20, 2007, is withdrawn effective May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Joel Schlossberg, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202–267–8908); facsimile: (202–267–5115); e-mail: *joel.schlossberg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2007, the FAA published a direct final rule (Amendment Nos. 121–331 and 135–109, (72 FR 19793)). The rule, to have become effective June 4, 2007, was intended to correct a previous oversight that caused the certification and operational safety requirements regarding over-pressurization of airplane extinguishing agent containers to prevent bursting to be in conflict.

On March 17, 1977, the FAA published in the **Federal Register** a final rule [1] that amended 14 CFR 25.1199 to allow the discharge end of each discharge line from a pressure relief connection to be located so that the discharge of the fire extinguishing container (i.e., fire bottle) would not damage the airplane. In other words, the rule allows for the termination of the discharge line either inside or outside the airplane as long as the discharge of the fire bottle would not damage the airplane. However, the corresponding operational requirements in § 121.267, and by reference in § 135.169, only allow for the termination of the fire bottle discharge line outside the airplane. As a result of this discrepancy, in a request dated July 5, 2006, Aeronautical Charters, Inc. submitted a petition for exemption [2] from § 121.267 for its airplane model (Citation 550) used in part 135 operations. Because the difference between the certification and operational requirements caused confusion and would likely result in more exemption requests, the FAA issued the Change in Extinguishing Agent Container Requirements direct final rule [3] to align the certification and operational requirements.

In addition, the direct final rule removed an obsolete section reference from part 135. In a December 20, 1995 rulemaking,[4] the FAA removed and reserved § 121.213, which contained special airworthiness requirements. We included those requirements in § 121.211 (Applicability). However, we inadvertently left a reference to § 121.213 in § 135.169(a). The direct final rule amended part 135 to remove the reference to § 121.213.

The comment period for the direct final rule closed on May 21, 2007.

Discussion of Comments

We received several adverse comments to the direct final rule from two commenters—Mr. Steve Donohue of ExpressJet, Inc. and Mr. Jason Ostbye of Sun Country Airlines.

Discharge Line Terminates Outside the Airplane (§ 121.267(a)(1))

Both commenters expressed concern about the wording of § 121.267(a) that reads: ''The discharge line from the relief connection must be installed in a manner so it can be inspected from the ground.'' The commenters said this part of the rule does not belong in paragraph (a) because paragraph (a) applies to both subparagraphs (a)(1) (which describes the process for inspection of the fire bottle when the discharge line terminates outside the airplane) and (a)(2) (which describes the process for inspection of the fire bottle when the discharge line terminates inside the airplane). The commenters said the discussion about inspection ''from the ground'' should be placed in paragraph (a)(1).

We agree with the commenters that § 121.267(a) as worded is confusing since it implies that the statement about inspection ''from the ground'' applies to a discharge line that terminates either inside or outside the airplane. We intended for the following text to be placed in § 121.267(a)(1):

> *The discharge line terminates outside the airplane.* The discharge line from the relief connection must be installed in a manner so it can be inspected on the ground * * *

We intend to correct this oversight in a future rulemaking action.

Discharge Line Terminates Inside the Airplane (§ 121.267(a)(2))

Both commenters said § 121.267(a)(2) implies that all fire bottles have pressure indicators; however, many lavatory extinguishers, for example, do not have such indicators. Therefore, to comply with the rule, each lavatory extinguisher would need to be removed and weighed as part of each pre-departure check to ensure that it has not discharged. Mr. Ostbye said operators would incur significant costs as a result.

After further review, we believe the regulation as written may be misleading because it specifies inspection of pressure indicators but some fire bottles do not have such indicators. We intend to clarify this issue in a future rulemaking action.

Mr. Ostbye said the FAA should define the term ''inside the airplane.'' In support of this recommendation, he said the following: The discharge line of an engine fire bottle on a 737NG terminates in the main wheel well. The discharge line of the APU (auxiliary power unit) bottle discharges in the tail compartment. And, cargo fire bottles discharge in the lower lobe of the fuselage. Therefore, compliance with § 121.267(a)(2) [5] would cause operators to incur significant costs because access and inspection of these fire bottles would require a mechanic with a ladder and the removal of cargo compartment panels.

Mr. Ostbye also said the rule should address use of bottle discharge lights in the cockpit in lieu of visually inspecting the bottle pressure indicator. He said if bottle discharge lights in the cockpit satisfy the requirement to visually inspect the pressure indicator, then the process of having a mechanic involved in the inspection and having to remove panels would not be necessary.

[1] Airworthiness Review Program—Amendment No. 4: Powerplant Amendments (42 FR 15034).

[2] Docket FAA–2006–25325.

[3] 72 FR 19793; April 20, 2007.

[4] Commuter Operations and General Certification and Operations Requirements; Air Carrier and Commercial Operator Training Programs; Final Rules (60 FR 65832).

[5] § 121.267(a)(2): As part of a pre-departure check, visually inspect the pressure indicator for the container for loss of pressure within the container.

We do not agree that the term ''inside the airplane'' needs to be defined. As discussed in the preamble to the direct final rule, historically, fire extinguishing agents were corrosive materials that could degrade an airplane. As a result, earlier FAA regulations required any discharge for pressure relief to be outside the airplane. However, when industry developed non-corrosive extinguishing agents, the certification regulations were revised in the 1970s to allow for termination of the pressure relief discharge line in such a way as to not damage the airplane. The intent of § 121.267(a)(2) and (b) was to ensure that when a discharge line terminated inside the airplane, only a non-corrosive extinguishing agent was used so that discharge of the agent would not damage the airplane.

We do agree, however, that any future change to the regulation should take into account current industry practices and approved methods such as inspecting fire bottle discharge lights in the cockpit as a means to determine low pressure or discharge of an extinguishing agent container.

Reason for Withdrawal

As stated in 14 CFR 11.31(c), if the FAA receives an adverse comment to a direct final rule or a comment stating the intent to file such a comment, the FAA advises the public by publishing a notice in the **Federal Register**. The notice may withdraw the direct final rule in whole or in part.

After further review, and in consideration of the comments to the Change in Extinguishing Agent Container Requirements direct final rule, the FAA has determined that the rule should be withdrawn in its entirety. This will allow us more time to further examine the issues the commenters raised and determine the course of action that best serves the public's interest.

Accordingly, the FAA withdraws Amendments Nos. 121–331 and 135–109, published at 72 FR 19793 on April 20, 2007. However, withdrawal of these Amendments does not preclude the FAA from issuing another rule on the subject matter in the future or committing the agency to any future course of action.

Issued in Washington, DC, on May 30, 2007.

Kerry B. Long,

Chief Counsel.

[FR Doc. 07–2784 Filed 5–31–07; 11:32 am]

BILLING CODE 4910–13–P

Federal Register

Monday,
June 4, 2007

Part IV

The President

Proclamation 8150—National Oceans Month, 2007

Proclamation 8151—Black Music Month, 2007

Federal Register
Vol. 72, No. 106
Monday, June 4, 2007

Presidential Documents

Title 3—

The President

Proclamation 8150 of May 30, 2007

National Oceans Month, 2007

By the President of the United States of America

A Proclamation

Our Nation benefits from the oceans that contain precious natural treasures, carry much of our trade, and provide us with food and recreational opportunities. During National Oceans Month, we celebrate these benefits, and we underscore our commitment to being good stewards of the oceans.

Since the release of my Ocean Action Plan in 2004, my Administration has made great strides in ocean conservation by working with State, tribal, and local governments, the private sector, and our international partners in the spirit of cooperative conservation. In June 2006, I designated a national monument in the Northwestern Hawaiian Islands to celebrate the area's natural, cultural, and historical importance. The tropical waters of the Papahanaumokuakea Marine National Monument are a sanctuary for 7,000 marine species. This important Monument is our Nation's largest single conservation area and the largest protected marine area in the world. Earlier this year, I was also proud to sign into law the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 to end overfishing and rebuild our Nation's fish stocks through more effective, market-based management. Internationally, we continue to lead in protecting the maritime environment while preserving the navigational freedoms essential to the security and prosperity of every nation. By working to build a well managed system of offshore aquaculture, we can provide a healthy source of food and reduce pressure on our ocean ecosystems.

During National Oceans Month and throughout the year, we recognize all who are dedicated to making our oceans, coasts, and Great Lakes cleaner, healthier, and more productive, including the many Federal agencies that make up the Committee on Ocean Policy. One of these agencies, the National Oceanic and Atmospheric Administration, celebrates two centuries of dedicated research and conservation of coastal and marine environments. By continuing to work together, we can conserve and enjoy the splendor of these magnificent waters now and for generations to come.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim June 2007 as National Oceans Month. I call upon the people of the United States to learn more about the vital role oceans play in the life of our country and ways we can conserve their many national treasures. I encourage all our citizens to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–2799
Filed 6–1–07; 8:52 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8151 of May 31, 2007

Black Music Month, 2007

By the President of the United States of America

A Proclamation

During Black Music Month, we recognize the outstanding contributions that African-American singers, composers, and musicians have made to our country, and we express our appreciation for the extraordinary music that has enriched our Nation.

The music of African-American musicians has helped shape our national character and become an important part of our musical heritage. Often born out of great pain and strong faith, that music has helped African Americans endure tremendous suffering and overcome injustice with courage, faith, and hope. By speaking to the human experience and expressing heartfelt emotion, African-American artists have inspired people across the generations in America and around the world with their vision and creativity.

This month is an opportunity to honor the men and women who have created some of the best music America has ever produced. Great musical talents such as Ray Charles, Louis Armstrong, Mahalia Jackson, Ella Fitzgerald, Duke Ellington, and James Brown have enriched our culture with innovative talent and artistic legacies that continue to influence musicians today. We remember so many wonderful artists and celebrate the achievements of black musicians whose work reflects the diversity of our citizens and lifts the human spirit.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2007 as Black Music Month. I encourage all Americans to learn more about the history of black music and to enjoy the great contributions of African-American musicians.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–2800
Filed 6–1–07; 8:52 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–062–00001–4)	5.00	[4] Jan. 1, 2007
2	(869–062–00002–2)	5.00	Jan. 1, 2007
3 (2006 Compilation and Parts 100 and 102)	(869–062–00003–1)	35.00	[1] Jan. 1, 2007
4	(869–062–00004–9)	10.00	[5] Jan. 1, 2007
5 Parts:			
1–699	(869–062–00005–7)	60.00	Jan. 1, 2007
700–1199	(869–062–00006–5)	50.00	Jan. 1, 2007
1200–End	(869–062–00007–3)	61.00	Jan. 1, 2007
6	(869–062–00008–1)	10.50	Jan. 1, 2007
7 Parts:			
1–26	(869–062–00009–0)	44.00	Jan. 1, 2007
27–52	(869–062–00010–3)	49.00	Jan. 1, 2007
53–209	(869–062–00011–1)	37.00	Jan. 1, 2007
210–299	(869–062–00012–0)	62.00	Jan. 1, 2007
300–399	(869–062–00013–8)	46.00	Jan. 1, 2007
400–699	(869–062–00014–6)	42.00	Jan. 1, 2007
700–899	(869–062–00015–4)	43.00	Jan. 1, 2007
900–999	(869–062–00016–2)	60.00	Jan. 1, 2007
1000–1199	(869–062–00017–1)	22.00	Jan. 1, 2007
1200–1599	(869–062–00018–9)	61.00	Jan. 1, 2007
1600–1899	(869–062–00019–7)	64.00	Jan. 1, 2007
1900–1939	(869–062–00020–1)	31.00	Jan. 1, 2007
1940–1949	(869–062–00021–9)	50.00	[5] Jan. 1, 2007
1950–1999	(869–062–00022–7)	46.00	Jan. 1, 2007
2000–End	(869–062–00023–5)	50.00	Jan. 1, 2007
8	(869–062–00024–3)	63.00	Jan. 1, 2007
9 Parts:			
1–199	(869–062–00025–1)	61.00	Jan. 1, 2007
200–End	(869–062–00026–0)	58.00	Jan. 1, 2007
10 Parts:			
1–50	(869–062–00027–8)	61.00	Jan. 1, 2007
51–199	(869–062–00028–6)	58.00	Jan. 1, 2007
200–499	(869–062–00029–4)	46.00	Jan. 1, 2007
500–End	(869–066–00030–8)	62.00	Jan. 1, 2007
11	(869–062–00031–6)	41.00	Jan. 1, 2007
12 Parts:			
1–199	(869–062–00032–4)	34.00	Jan. 1, 2007
200–219	(869–062–00033–2)	37.00	Jan. 1, 2007
220–299	(869–062–00034–1)	61.00	Jan. 1, 2007
300–499	(869–062–00035–9)	47.00	Jan. 1, 2007
500–599	(869–062–00036–7)	39.00	Jan. 1, 2007
600–899	(869–062–00037–5)	56.00	Jan. 1, 2007
900–End	(869–062–00038–3)	50.00	Jan. 1, 2007
13	(869–062–00039–1)	55.00	Jan. 1, 2007
14 Parts:			
1–59	(869–062–00040–5)	63.00	Jan. 1, 2007
60–139	(869–062–00041–3)	61.00	Jan. 1, 2007
140–199	(869–062–00042–1)	30.00	Jan. 1, 2007
200–1199	(869–062–00043–0)	50.00	Jan. 1, 2007
1200–End	(869–062–00044–8)	45.00	Jan. 1, 2007
15 Parts:			
0–299	(869–062–00045–6)	40.00	Jan. 1, 2007
300–799	(869–062–00046–4)	60.00	Jan. 1, 2007
800–End	(869–062–00047–2)	42.00	Jan. 1, 2007
16 Parts:			
0–999	(869–062–00048–1)	50.00	Jan. 1, 2007
1000–End	(869–062–00049–9)	60.00	Jan. 1, 2007
17 Parts:			
*1–199	(869–062–00051–1)	50.00	Apr. 1, 2007
200–239	(869–060–00052–6)	60.00	Apr. 1, 2006
240–End	(869–060–00053–4)	62.00	Apr. 1, 2006
18 Parts:			
1–399	(869–060–00054–2)	62.00	Apr. 1, 2006
400–End	(869–060–00055–1)	26.00	[7] Apr. 1, 2006
19 Parts:			
1–140	(869–060–00056–9)	61.00	Apr. 1, 2006
141–199	(869–060–00057–7)	58.00	Apr. 1, 2006
200–End	(869–060–00058–5)	31.00	Apr. 1, 2006
20 Parts:			
1–399	(869–060–00059–3)	50.00	Apr. 1, 2006
400–499	(869–060–00060–7)	64.00	Apr. 1, 2006
500–End	(869–060–00061–5)	63.00	Apr. 1, 2006
21 Parts:			
1–99	(869–060–00062–3)	40.00	Apr. 1, 2006
100–169	(869–060–00063–1)	49.00	Apr. 1, 2006
170–199	(869–062–00064–2)	50.00	Apr. 1, 2007
*200–299	(869–062–00065–1)	17.00	Apr. 1, 2007
300–499	(869–060–00066–6)	30.00	Apr. 1, 2006
500–599	(869–060–00067–4)	47.00	Apr. 1, 2006
*600–799	(869–062–00068–5)	17.00	Apr. 1, 2007
800–1299	(869–060–00069–1)	60.00	Apr. 1, 2006
1300–End	(869–060–00070–4)	25.00	Apr. 1, 2006
22 Parts:			
1–299	(869–060–00071–2)	63.00	Apr. 1, 2006
300–End	(869–060–00072–1)	45.00	[8] Apr. 1, 2006
23	(869–062–00073–7)	45.00	Apr. 1, 2007
24 Parts:			
0–199	(869–060–00074–7)	60.00	Apr. 1, 2006
200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
700–1699	(869–060–00077–1)	61.00	Apr. 1, 2006
1700–End	(869–060–00078–0)	30.00	Apr. 1, 2006
25	(869–060–00079–8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0–1–1.60	(869–060–00080–1)	49.00	Apr. 1, 2006
§§ 1.61–1.169	(869–060–00081–0)	63.00	Apr. 1, 2006
§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–062–00084–7)	56.00	Apr. 1, 2007
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–062–00088–0)	61.00	Apr. 1, 2007
*§§ 1.908–1.1000	(869–062–00089–8)	60.00	Apr. 1, 2007
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–062–00093–6)	60.00	Apr. 1, 2007
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–062–00095–2)	28.00	Apr. 1, 2007
50–299	(869–062–00096–1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
500–599	(869–062–00098–7)	12.00	[6] Apr. 1, 2007
600–End	(869–060–00099–2)	17.00	Apr. 1, 2006
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–062–00102–9)	18.00	Apr. 1, 2007
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
0–99	(869–060–00104–2)	50.00	July 1, 2006
100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[9] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[9] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[10] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[10] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
200–599	(869–060–00220–1)	45.00	Oct. 1, 2006
600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
660–End	(869–060–00222–7)	31.00	Oct. 1, 2006
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,389.00	2007
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2007
Individual copies		4.00	2007
Complete set (one-time mailing)		332.00	2006
Complete set (one-time mailing)		325.00	2005

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.