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Presidential Documents

Title 3—

The President

Executive Order 13436 of June 28, 2007

Further Amending Executive Order 13381, as Amended, To Extend Its Duration by One Year

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend by 1 year the duration of Executive Order 13381 of June 27, 2005 (Strengthening Processes Relating to Determining Eligibility for Access to Classified National Security Information), as amended, it is hereby ordered that:

Section 1. Section 6(a) of Executive Order 13381, as amended, is further amended by striking ''April 1, 2007'' and inserting in lieu thereof ''April 1, 2008''.

Sec. 2. Section 6(b) of Executive Order 13381, as amended, is further amended by striking ''July 1, 2007'' and inserting in lieu thereof ''July 1, 2008''.

THE WHITE HOUSE,
June 28, 2007.

[FR Doc. 07–3258
Filed 7–2–07; 8:45 am]
Billing code 3195–01–P

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13437 of June 28, 2007

Waiver Under the Trade Act of 1974 With Respect to Turkmenistan

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 402(c)(2) and (d) of the Trade Act of 1974, as amended (the ''Act'')(19 U.S.C. 2432(c)(2) and (d)), and having made the report to the Congress set forth in section 402(c)(2), I hereby waive the application of subsections (a) and (b) of section 402 of the Act with respect to Turkmenistan.

THE WHITE HOUSE,
June 28, 2007.

[FR Doc. 07–3259
Filed 7–2–07; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1170

RIN 0581–AC66

[Doc. # AMS–07–0047; DA–06–07]

Dairy Product Mandatory Reporting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes a Dairy Product Mandatory Reporting Program as required by law, on an interim final basis. The Dairy Market Enhancement Act of 2000, and certain provisions of the Farm Security and Rural Investment Act of 2002, amended the Agricultural Marketing Act of 1946 to provide for timely, accurate, and reliable market information to facilitate more informed marketing decisions and promote competition in the dairy product manufacturing industry. The Department will issue a final rule once public comments have been received.

DATES: *Effective Date:* August 2, 2007. The provisions of this rule will expire 12 months from the date of publication unless further regulatory action is taken. Comments must be submitted on or before September 4, 2007.

ADDRESSES: Comments (four copies) should be submitted to John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, STOP 0229–Room 2753, 1400 Independence Ave, SW., Washington, DC 20250–0229 or faxed to (202) 690–0552. Comments may also be submitted at the Federal eRulemaking portal: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments can be viewed in the Office of the Chief Economist during regular business hours, or at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, STOP 0229–Room 2753, 1400 Independence, Ave, SW., Washington, DC 20250–0229, (202) 720–7091.

SUPPLEMENTARY INFORMATION: This interim final rule is a statutory requirement pursuant to the Agricultural Marketing Act of 1946 [7 U.S.C. 1621 *et seq.*], hereinafter referred to as the ''Act'', as amended November 22, 2000, by Pub. L. No. 106–532, 114 Stat. 2541, and further amended May 13, 2002, by Pub. L. No. 107–171, 116 Stat. 207.

Background: The Act provides for and accordingly, this interim final rule establishes, a Dairy Product Mandatory Reporting Program that will: (1) Require persons engaged in manufacturing dairy products to provide to the Department of Agriculture (Department) certain information including the price, quantity, and moisture content, where applicable, of dairy products sold by the manufacturer; and (2) Require manufacturers and other persons storing dairy products to report to the Department information on the quantity of dairy products stored. Under the interim final rule, the National Agricultural Statistics Service (NASS) will collect such information. Any manufacturer that processes and markets less than 1 million pounds of dairy products per calendar year would be exempt from these reporting requirements.

Under this authority, NASS initiated a program to collect the information for Dairy Product Prices. Dairy Products Prices began with the collection of cheese data in 1997. Information on cheddar cheese, butter, dry whey, and nonfat dry milk is now collected and published on a weekly basis. Stocks of butter and cheese have been collected on a voluntary basis since 1916 under the Cold Storage Program. Information on specific cheeses, butter, anhydrous milkfat, butter oil, unsalted butter, nonfat dry milk and dry whey is now collected and published on a monthly basis.

The Act as amended provides the Department with the authority needed to make the reporting of dairy product information mandatory. No new commodities are included under this rule. The Act also provides that the Secretary shall take such actions as the Secretary considers necessary to verify the accuracy of the information submitted or reported. With more complete and accurate information, the Department and the dairy industry can be confident that reported dairy product prices and inventories are more precise indicators of supply and demand conditions.

The Agricultural Marketing Service (AMS) will implement a plan to verify the price information submitted by various dairy product manufacturing plants to NASS per the mandatory dairy product price reporting program using the reports received from NASS. During the first year of verification, AMS will visit all of the entities eligible to file reports at least once. In subsequent years, AMS will visit large entities that account for 80 percent of the yearly reported product volume of each specified dairy product at least once and one-half of the entities that account for the remaining 20 percent of the yearly reported product volume. Entities in the latter category will be visited at least once every two years. During each visit, AMS will review applicable sales transaction records for a sample of reporting periods during the year. AMS will verify that eligible sales transactions agree with information reported to NASS and will check for eligible sales transactions that were not reported to NASS. AMS will report to the Secretary any reporting violations. AMS requests comments on all aspects of this audit program.

Executive Order 12866: Regulatory Planning and Review

This interim final rule has been determined ''significant'' for purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget. A cost benefit analysis (CBA) was conducted and can be viewed on the internet at *http://www.ams.usda.gov/dairy*. The largest possible response to the survey by processors will provide more reliable dairy product prices for use in establishing minimum prices for Class III and Class IV milk under the Federal milk marketing order program. In addition, the use of reliable market prices for dairy products will help

assure that milk producers are paid an equitable price for their milk and that milk processors are paying a competitive price for their milk supply.

Erroneous price information can be costly. For example, during the month of May 2005, the CBA indicates that a 1 cent per pound error in the cheese price announced by NASS would cause a 9.65 cent per hundredweight error in the Class III price and 3.76 cents per hundredweight error in the price paid to producers. Multiplying the price error (3.76 cents) times the quantity of milk marketed in Federal milk marketing order system indicates that either producers would have received $4 million less for their milk in the month of May 2005, than they actually did, or that manufacturers would have paid $4 million more for milk in May 2005 than they actually did. Also, some or all of this error could have affected Class I prices in June 2005.

The CBA estimated the incremental cost of the mandatory reporting program in the first year would be approximately $24,000 for manufacturers who were not already reporting to NASS to comply with this rule. As stated in the CBA, there are a total of 110 cold storage facilities and 98 manufacturing plants that are required to report under the mandatory program. The cost to cold storage facilities completing reports is $132 per facility for a total annual cost of $14,520. The cost to manufacturers reporting product prices is estimated at $381.26 per plant for a total annual cost of $37,363.48. Thus, the total annual cost for submitting information under the mandatory program is $51,883.48. The cost to the Federal Government for implementation of the verification program will be approximately $102,000 the first year and approximately $70,000 in subsequent years.

Executive Order 12988 Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status or protected genetic information. This review included persons that are employees of the entities that are subject to this regulation. This rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule would not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this interim final rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small businesses in the dairy product manufacturing [1] industry have been defined by the Small Business Administration (SBA) as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. There are approximately 98 dairy product manufacturers and 110 manufacturers and other persons storing dairy products that would be subject to the provisions of this rule. According to U.S. Census Bureau Statistics of U.S. Businesses, there were 1,110 dairy manufacturing firms in the United States in 2004. Of these concerns, 1,017 firms had fewer than 500 employees and 93 firms had greater than 500 employees.

Therefore, few of the manufacturers and persons affected by this interim final rule are small businesses under the criteria established by the SBA. Those manufacturers with less than 1 million pounds of annual production are exempted by the Act and most of the entities that would be subject to mandatory reporting already report this information to NASS. The annual cost to manufacturers reporting product prices is estimated at $381.26 per plant. As discussed in the Paperwork Reduction Act section below, AMS believes the records that would be required to be maintained under this interim final rule are already being maintained for at least two years as part of the normal course of business. Thus, there would be no additional burden or cost associated with the maintenance of these records. Therefore, the interim final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included that are utilized to collect the information required by the Act have been previously approved by the Office of Management and Budget (OMB) and were assigned OMB control number 0535–0020 for the Dairy Product Prices Survey and OMB control number 0535–0001 for the Monthly Cold Storage Report.

The primary function of NASS is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of milk production and manufactured dairy products are an integral part of this program. Milk and dairy statistics are used by the Department to help administer the Federal milk marketing order program and are used by the dairy industry in planning, pricing, and projecting supplies of milk and milk products.

The interim final rule does not change the current method and frequency of data collection utilized by NASS. Data collection of Dairy Product Prices is conducted weekly to collect sales transactions data for the previous week. Manufacturers are provided a supply of report forms for the products they are to report. The dairy product manufacturer completes the form with information, including the manufacturer's name, address, plant location, quantities sold, and dollars received or prices of Cheddar cheese, butter, dry whey, and nonfat dry milk. Manufacturers report to NASS by facsimile or by electronic data reporting.

The Monthly Cold Storage Report is mailed each month to manufacturers and other entities storing dairy products. Manufacturers and other entities report to NASS the name, address, and stocks on hand at the end of the month. Reports are returned to NASS.

This interim final rule implements recordkeeping requirements authorized by the Act. Under this regulation, each person required to report information to

[1] North American Industry Classification System (NAICS) code 3115.

the Department shall maintain, and make available to the Department, on request, original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products during the two-year period beginning on the date of the creation of the records. AMS has consulted with several of those entities that are required to maintain records under this interim finale rule and believes the necessary records are already being maintained for at least two years as part of the normal course of business. Therefore, there would be no additional burden or cost associated with the maintenance of these records. AMS invites comment on whether all entities subject to this regulation already maintain the necessary records for at least two years.

Comments should be sent to the USDA in care of John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, STOP 0229—Room 2753, 1400 Independence Ave., SW., Washington, DC 20250–0229 or faxed to (202) 690–0552. All comments received will be available for public inspection during regular business hours at the same address or at *http://www.regulations.gov*.

The reliability of prices announced by NASS is dependent on the accuracy of the reports submitted by manufacturers. To verify that the information submitted to NASS is accurate, all manufacturers required to submit reports will be subject to audits conducted by AMS. Failure on the part of manufacturers or other entities to comply with the data collection and recordkeeping requirements could lead to enforcement action, including the levying of civil penalties provided under section 273 of the Act, as amended [7 U.S.C. 1637b], against the violating person or entity.

Except as otherwise directed by the Secretary or the Attorney General for enforcement purposes, no officer, employee, or agent of the United States shall make available to the public information, statistics, or documents obtained from or submitted by any person under the Acts other than in a manner that ensures that confidentiality is preserved regarding the identity of persons, including parties to a contract, and proprietary business information. All report forms include a statement that individual reports are kept confidential.

With respect to the application of the Privacy Act of 1974 (5 U.S.C. 552a) (''Privacy Act'') to the maintenance of records required by the Act, the Dairy Products Prices survey population consists of Agribusinesses. Data collected by this survey relates to Agribusinesses' dealings and not those of individuals. Records maintained at business sites for verification of information reported to NASS include contracts, agreements, receipts and other material related to sales of specific dairy products. No records about individuals are maintained by NASS for this survey and AMS believes that none would be part of these maintained business papers.

AMS is aware that inaccurate reporting of nonfat dry milk price information to NASS in 2007 resulted in a reduction in prices paid to producers. AMS is aware of the existence of forward pricing sales such as those associated with the inaccurate reporting of nonfat dry milk price information. AMS specifically invites comment on the prevalence of the use of forward contracts and whether they need to be addressed in some way under the mandatory program. As discussed earlier, even relatively small errors in price information can result in significant differences in overall revenues. An audit-based program of dairy price reporting would substantially reduce the likelihood of such errors in reporting. For this reason, and because the required audit-based program is virtually identical to the program which has been operating for a number of years, there is good cause to issue this rule as an interim final rule.

List of Subjects in 7 CFR Part 1170

Butter, Cheese, Dairy products, Nonfat dry milk, Reporting and recordkeeping requirements, Whey.

■ For the reasons set forth in the preamble, Title 7, subtitle B, chapter X is amended by adding part 1170, to read as follows:

PART 1170—DAIRY PRODUCT MANDATORY REPORTING

Sec.
1170.1 Secretary.
1170.2 Act.
1170.3 Person.
1170.4 Dairy products.
1170.5 Manufacturer.
1170.6 Store.

Dairy Product Reporting Program

1170.7 Reporting requirements.
1170.8 Price reporting specifications.
1170.9 Storage reporting specifications.
1170.10 Records.
1170.11 Confidential information.

Verification and Enforcement

1170.12 Verification of reports.
1170.13 Noncompliance procedures.
1170.14 Appeals.
1170.15 Enforcement.

Exemptions

1170.16 Exemptions.

Authority: 7 U.S.C. 1637–1637b, as amended by Pub. L. 106–532, 114 Stat. 2541 and Pub. L. 107–171, 116 Stat. 207.

PART 1170—DAIRY PRODUCT MANDATORY REPORTING

§ 1170.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has been delegated.

§ 1170.2 Act.

Act means the Agricultural Marketing Act of 1946, 7 U.S.C. 1621 *et seq.*, as amended by the Dairy Market Enhancement Act of 2000, Pub. L. No. 106–532, 114 Stat. 2541, and the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107–171, 116 Stat. 207.

§ 1170.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 1170.4 Dairy products.

Dairy Products means—

(a) Manufactured dairy products that are used by the Secretary to establish minimum prices for Class III and Class IV milk under a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937; and

(b) Substantially identical products designated by the Secretary in this Part.

§ 1170.5 Manufacturer.

Manufacturer means any person engaged in the business of buying milk in commerce for the purpose of manufacturing dairy products in one or more locations.

§ 1170.6 Store.

(a) *Store* means to place cheese or butter in a warehouse or facility which is artificially cooled to a temperature of 50 degrees Fahrenheit or lower and hold these dairy products for 30 days or more; or

(b) *Store* means to place nonfat dry milk or dry whey in a manufacturing plant, packaging plant, distribution point, or shipment in transit.

Dairy Product Reporting Program

§ 1170.7 Reporting requirements.

(a) Manufacturers of dairy products shall report on a weekly basis all sales transactions for the previous week, on the appropriate forms supplied by the National Agricultural Statistics Service. The report shall indicate the name,

address, plant location, quantities sold, and dollars received or the prices of dairy products as defined in § 1170.4.

(b) Manufacturers or other persons storing dairy products shall report on a monthly basis stocks of dairy products (as defined in § 1170.4) on hand, on the appropriate forms supplied by the National Agricultural Statistics Service. The report shall indicate the name, address, and stocks on hand at the end of the month for each storage location.

§ 1170.8 Price reporting specifications.

The following are the reporting specifications for each dairy product.

(a) Specifications for Cheddar Cheese Prices:

(1) Sale: When a transaction is completed (for example: cheese is ''shipped out'' and title transfer occurs.)

(2) Variety: Cheddar Cheese.

(3) Style: 40-pound blocks or 500-pound barrels.

(4) Moisture Content: 40-pound blocks, exclude cheese that will be aged. Barrels Report—moisture content of cheese sold, not to exceed 37.7 percent.

(5) Age: Not less than 4 days or more than 30 days on date of sale.

(6) Grade: Barrels—Wisconsin State Brand or USDA Extra Grade or better. 40-pound blocks—Wisconsin State Brand or USDA Grade A or better.

(7) Color: Barrels—White, 40-pound blocks—colored between 6–8 on the National Cheese Institute color chart.

(8) Packaging: 40-pound blocks—Price should reflect cheese wrapped in a sealed, airtight package in corrugated or solid fiberboard containers with a reinforcing inner liner or sleeve. Exclude all other packaging costs from the reported price. Barrels—Exclude all packaging costs from the reported price.

(9) Price: Price should be reported as price per pound or total dollars received. Price is f.o.b. processing plant/storage center.

(10) Include: CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(11) Exclude: Block cheese that will be aged, transportation and clearing charges from price, intra-company sales, resales of purchased cheese and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed).

(b) Specifications for Butter Prices:

(1) Sale: When a transaction is completed (for example: Butter is ''shipped out'' and title transfer occurs.) Report sales of butter that meets USDA Grade AA standards, 80 percent butterfat, salted—fresh or storage.

(2) Price: Price is f.o.b. processing plant/storage center. Prices and quantities are for all 25 kilogram and 68 pound box sales.

(3) Include: CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(4) Exclude: Unsalted and Grade A butter, transportation and clearing charges from price, intra-company sales, resales of purchased butter and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed). This exclusion does not include sales through the Dairy Export Incentive Program (DEIP).

(c) Specifications for Dry Whey Prices:

(1) Sale: When a transaction is completed (for example: dry whey is ''shipped out'' and title transfer occurs.) Sales are for USDA Extra Grade edible nonhygroscopic dry whey.

(2) Price: Prices is f.o.b. processing plant/storage center. Prices and quantities are for all 25 kilogram bag, 50 pound bag, tote and tanker sales.

(3) Exclude: Sales of Grade A dry whey, sales of dry whey more than 180 days old, transportation charges from price, intra-company sales, resales of purchased dry whey and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed.)

(d) Specifications for the Nonfat Dry Milk Prices:

(1) Sale: When a transaction is completed (for example: nonfat dry milk is ''shipped out'' and title transfer occurs.) Sales are for USDA Extra Grade and USPH Grade A, non-fortified, nonfat dry milk.

(2) Price: Price is f.o.b. processing plant/storage center. Prices and quantities are for all 25 kilogram bag, 50 pound bag, tote and tanker sales.

(3) Include: Nonfat dry milk manufactured using low or medium heat process, CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(4) Exclude: Sales of nonfat dry milk more than 180 days old, nonfat dry milk manufactured using high heat process, sales of instant nonfat dry milk, sales of dry buttermilk products, transportation and clearing charges, intra-company sales, resales of purchased nonfat dry milk and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed). This exclusion does not include sales through the Dairy Export Incentive Program (DEIP).

§ 1170.9 Storage reporting specifications.

(a) Reporting universe: (1) Cold Storage Report: All warehouses or facilities, except those described in § 1170.16, artificially cooled to a temperature of 50 degrees Fahrenheit or lower where dairy products generally are placed and held for 30 days or more. Excluded are stocks in refrigerated space maintained by wholesalers, jobbers, distributors, and chain stores; locker plants containing individual lockers; and frozen food processors whose inventories are turned over more than once a month.

(2) Dairy Products Report: All manufacturing plants, packaging plants, distribution points or shipments in transit.

(b) Products required: (1) Natural cheese, domestic and foreign made, including barrel and cheese to be processed; American type cheeses, (cheddar, monterey, colby, etc.), including government owned stocks; Swiss; other natural cheese types (brick, mozzarella, muenster, parmesan, etc.). Exclude processed cheese;

(2) Butter, anhydrous milkfat (AMF), butter oil, and unsalted butter, including government owned stocks;

(3) Nonfat dry milk; and

(4) Dry whey.

§ 1170.10 Records.

Each person required to report information to the Secretary shall maintain, and make available to the Secretary, on request, original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products during the two-year period beginning on the date of the creation of the records.

§ 1170.11 Confidential information.

Except as otherwise directed by the Secretary or the Attorney General for enforcement purposes, no officer, employee, or agent of the United States shall make available to the public information, statistics, or documents obtained from or submitted by any person in compliance with the Dairy Product Mandatory Reporting program other than in a manner that ensures that confidentiality is preserved regarding the identity of person, including parties to a contract, and proprietary business information.

Verification and Enforcement

§ 1170.12 Verification of reports.

For the purpose of assuring compliance and auditing records and reports required to be filed by manufacturers or other persons, the Agricultural Marketing Service, through its duly authorized agents, shall have

access to any premises where applicable records are maintained, where dairy products are produced or stored, and at any time during reasonable business hours shall be permitted to inspect such manufacturer or person, and any original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products.

§ 1170.13 Noncompliance procedures.

(a) When the Secretary becomes aware that a manufacturer or person may have willfully delayed reporting of, or failed or refused to provide, accurate information pursuant to this part, the Secretary may issue a cease and desist order.

(b) Prior to the issuance of a cease and desist order, the Secretary shall provide notice and an opportunity for an informal hearing regarding the matter to the manufacturer or person involved.

(c) The notice shall contain the following information:

(1) That the issuance of a cease and desist order is being considered;

(2) The reasons for the proposed cease and desist order in terms sufficient to put the person on notice of the conduct or lack thereof upon which the notice is based;

(3) That within 30 days after receipt of the notice, the manufacturer or person may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed cease and desist order; and

(4) That if no response to the notice is received within the 30 days after receipt of the notice, that a cease and desist order may be issued immediately.

(d) If a manufacturer or person submits information or requests a hearing, the hearing should be held at a location and time that is convenient to the parties concerned, if possible. The hearing will be held before the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, or a designee. The manufacturer or person may be represented. Witnesses may be called by either party.

(e) The Deputy Administrator, Dairy Programs, Agricultural Marketing Service, or a designee will make a decision on the basis of all the information in the administrative record, including any submission made by the manufacturer or person. The decision of whether a cease and desist order should be issued shall be made within 30 days after receipt of any information and argument submitted by the manufacturer or person. The cease and desist order shall be final unless the affected manufacturer or person requests a reconsideration of the order to the Administrator, Agricultural Marketing Service, within 30 days after the date of the issuance of the order.

§ 1170.14 Appeals.

If the cease and desist order is confirmed by the Administrator, Agricultural Marketing Service, the manufacturer or person may appeal the order in the appropriate United States District Court not later than 30 days after the date of the confirmation of the order.

§ 1170.15 Enforcement.

(a) If a person subject to the Dairy Product Mandatory Reporting program fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Administrator, Agricultural Marketing Service, the United States may apply to the appropriate United States district court for enforcement of the order.

(b) If the court determines that the cease and desist order was lawfully made and duly served and that the manufacturer or person violated the order, the court shall enforce the order.

(c) If the court finds that the manufacturer or person violated the cease and desist order, the manufacturer or person shall be subject to a civil penalty of not more than $10,000 for each offense.

Exemptions

§ 1170.16 Exemptions.

Any manufacturer that processes and markets less than 1 million pounds of dairy products per calendar year is exempt from these regulations.

Dated: June 28, 2007.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 07–3235 Filed 6–28–07; 3:15 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2007–28010, Airspace Docket No. 07–ANE–91]

Establishment of Class E Airspace; Dean Memorial Airport, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule that establishes a Class E airspace area at Dean Memorial Airport, Haverhill, NH (K5B9) to provide for adequate controlled airspace for those aircraft using the new Area Navigation (RNAV) Instrument Approach Procedure to the Airport.

DATES: Effective 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, System Support, AJO2–E2, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5570; fax (404) 305–5099.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on May 8, 2007 (72 FR 25964). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 5, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in College Park, GA on June 7, 2007.

Mark D. Ward,

Group Manager, System Support Group, AJO2–E2 Eastern Service Center.

[FR Doc. 07–3202 Filed 07–2–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2007–27512, Airspace Docket No. 07–AEA–01]

Establishment of Class E Airspace; Front Royal-Warren County, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action establishes a Class E airspace area at Front Royal-Warren County Airport, Front Royal, VA (KFFR) to provide for adequate controlled airspace for those aircraft using the new Area Navigation (RNAV) Instrument Approach Procedure to the Airport.

DATES: Effective 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, System Support, AJ02–E2, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5570; fax (404) 305–5099.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on May 9, 2007 (72 FR 26287–26288). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 5, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in College Park, GA on June 7, 2007.

Mark D. Ward,

Group Manager, System Support Group, AJO2–E2, Eastern Service Center.

[FR Doc. 07–3201 Filed 7–2–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28477; Airspace Docket No. 07–ASW–4]

RIN 2120–AA66

Revision of Area Navigation Route Q–22; South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises area navigation (RNAV) route Q–22 over the South Central United States by changing a waypoint name to eliminate confusion with similar sounding waypoints in close proximity to each other. The FAA is taking this action to enhance safety and to improve the efficient use of the navigable airspace.

DATES: *Effective Date:* 0901 UTC, August 30, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2005, the FAA published in the **Federal Register** a final rule to establish three RNAV routes (Q–20, Q–22, and Q–24) over the Southwestern and South Central United States in support of the High Altitude Redesign program (70 FR 74197). Subsequent to the establishment of Q–22, it was determined that the waypoint, RUBAE, sounded similar to another existing waypoint in the area. To eliminate confusion that may result from similar sounding waypoints, the FAA is taking action by changing the waypoint name ''RUBAE'' to ''ACMES.''

High Altitude RNAV routes are published in paragraph 2006 of FAA Order 7400.9P, dated September 1, 2006 and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The high altitude RNAV routes listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising RNAV route Q–22 over the South Central United States within the airspace assigned to the Fort Worth Air Route Traffic Control Center (ARTCC). The FAA believes that this action will enhance safety for en route instrument flight rules operations within the Fort Worth ARTCC's areas of responsibility. This action merely changes a waypoint name in the legal description and makes no geographical changes to Q–22. Therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with Paragraphs 311(a) and 311(g) of FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. This airspace action is not expected to cause any potentially significant impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006 and effective September 15, 2006, is amended as follows:

Paragraph 2006 Area Navigation Routes.

* * * * *

Q–22 GUSTI to CATLN [Revised]

GUSTI	FIX	(Lat. 29°58′15″ N., long. 092°54′35″ W.)
OYSTY	FIX	(Lat. 30°28′15″ N., long. 090°11′49″ W.)
ACMES	WP	(Lat. 30°55′27″ N., long. 088°22′11″ W.)
CATLN	FIX	(Lat. 31°18′26″ N., long. 087°34′48″ W.)

* * * * *

Issued in Washington, DC, on June 21, 2007.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E7–12683 Filed 7–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 285

[Docket No: 070517136–7137–01]

RIN 0693–AB58

National Voluntary Laboratory Accreditation Program; Operating Procedures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final Rule.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, is amending the regulations found at 15 CFR Part 285 pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP) to reflect changes in the information for obtaining and inspecting applicable ISO/IEC documents. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations and communication with its stakeholders.

DATES: This final rule is effective on July 3, 2007.

FOR FURTHER INFORMATION CONTACT: Sally S. Bruce, Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140, telephone number (301) 975–4016, e-mail address *sally.bruce@nist.gov.*

SUPPLEMENTARY INFORMATION:

Description and Explanation of Proposed Changes

This final rule amends NIST's regulations to reflect the address change of the NVLAP office and the change in ordering information for the American National Standards Institute by replacing the outdated addresses in § 285.15(b) (15 CFR 285.15(b)) with the new information.

Copies of all ISO/IEC documents are available for purchase from the American National Standards Institute's eStandards Store at *http://webstore.ansi.org.* You may inspect copies of all applicable ISO/IEC documents at the National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Room B115, Gaithersburg, MD. For access to the NIST campus, please contact NVLAP by phone at 301–975–4016 or by e-mail at *NVLAP@nist.gov* to obtain instructions for visitor registration.

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 applicable ISO/IEC documents may be inspected. In addition, this rule is not a substantive rule as it merely revises the regulations to identify a new address. Therefore, this rule is not subject to the 30-day delay in effectiveness. 5 U.S.C. 553(d).

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 does not involve a new collection of information subject to the Paperwork Reduction Act (PRA). The collection of information for NVLAP has been approved by the Office of Management and Budget (OMB) under control number 0693–0003. 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 285

Accreditation, Business and industry, Calibration, Commerce, Conformity assessment, Laboratories, Measurement standards, Testing.

■ For the reasons set forth in the preamble, title 15 of the Code of Federal Regulations is amended as follows:

PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

■ 1. The authority citation for 15 CFR Part 285 continues to read as follows:

Authority: 15 U.S.C. 272 *et seq.*

■ 2. Section 285.15 is amended by revising paragraph (b) to read as follows:

§ 285.15 Obtaining documents.

* * * * *

(b) Copies of all ISO/IEC documents are available for purchase from the American National Standards Institute's eStandards Store at *http://webstore.ansi.org.* You may inspect copies of all applicable ISO/IEC documents at the National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Room B115, Gaithersburg, MD. For access to the NIST campus, please contact NVLAP by phone at 301–975–4016 or by e-mail at *NVLAP@nist.gov* to obtain instructions for visitor registration.

Dated: June 27, 2007.

James M. Turner,

Deputy Director.

[FR Doc. E7–12853 Filed 7–2–07; 8:45 am]

BILLING CODE 3510–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–55970; File No. S7–21–06]

RIN 3235–AJ76

Regulation SHO and Rule 10a–1

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending the short sale price test under the Securities Exchange Act of 1934 (''Exchange Act''). The amendments are intended to provide a more consistent regulatory environment for short selling by removing restrictions on the execution prices of short sales (''price tests'' or ''price test restrictions''), as well as prohibiting any self-regulatory organization (''SRO'') from having a price test. In addition, the Commission is amending Regulation SHO to remove the requirement that a broker-dealer mark a sell order of an equity security as ''short exempt,'' if the seller is relying on an exception from a price test.

DATES: *Effective Date:* July 3, 2007.

Compliance Date: July 6, 2007.

FOR FURTHER INFORMATION CONTACT: James A. Brigagliano, Associate Director, Josephine J. Tao, Assistant Director, Lillian Hagen, Special Counsel, Victoria L. Crane, Special Counsel, Office of Trading Practices and Processing, Division of Market Regulation, at (202) 551–5720, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: The Commission is removing Rule 10a–1 [17 CFR 240.10a–1], amending Rule 200 of Regulation SHO [17 CFR 242.200], and adding Rule 201 of Regulation SHO [17 CFR 242.201] under the Exchange Act.

I. Introduction

A. Executive Summary

In December 2006, the Commission proposed amendments to remove the price test of Rule 10a–1 and add Rule 201 of Regulation SHO to provide that no price test, including any price test of any SRO, shall apply to short sales in any security.[1] In addition, we proposed to prohibit any SRO from having a price test.[2] We also proposed to amend Rule 200(g) of Regulation SHO to remove the requirement that a broker-dealer mark a sell order of an equity security as ''short exempt'' if the seller is relying on an exception from a price test.[3]

The proposed amendments were designed to modernize and simplify short sale regulation and, at the same time, provide greater regulatory consistency by removing restrictions where they no longer appear effective or necessary.

We received twenty-seven comment letters in response to the proposed amendments. Commenters included individual investors, attorneys, an academic, individual traders, brokerage firms, the New York Stock Exchange LLC (''NYSE''), the International Association of Small Broker-Dealers and Advisors (''IASBDA''), the Securities Traders Association (''STA''), the Managed Funds Association (''MFA''), the Securities Industry and Financial Markets Association (''SIFMA'') and the American Stock Exchange LLC (''Amex''). While most commenters supported the Commission's proposals, some expressed concerns regarding particular provisions.[4] We discuss specific comments below in connection with the discussion of the amendments.

After carefully considering the comments, we are adopting the amendments as proposed. In particular, we are removing Rule 10a–1 and adding Rule 201 of Regulation SHO to provide that no price test, including any price test by any SRO, shall apply to short selling in any security. In addition, Rule 201, as adopted, will prohibit any SRO from having a price test.

Because we are adopting our proposal to remove all current price test restrictions, as well as prohibit any SRO from having its own price test, we are also amending Rule 200(g) of Regulation SHO[5] to remove the requirement that a broker-dealer mark a sell order of an equity security as ''short exempt'' if the seller is relying on an exception from the price test of Rule 10a–1, or any price test of any exchange or national securities association.[6]

B. Background

The Commission originally adopted Rule 10a–1 in 1938 to restrict short selling in a declining market.[7] Paragraph (a) of Rule 10a–1 covers short sales in securities registered on, or admitted to unlisted trading privileges (''UTP'') on, a national securities exchange (''listed securities''), if trades of the security are reported pursuant to an ''effective transaction reporting plan'' and information regarding such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information.[8]

Rule 10a–1(a)(1) provides that, subject to certain exceptions, a listed security may be sold short (A) at a price above the price at which the immediately preceding sale was effected (plus tick), or (B) at the last sale price if it is higher than the last different price (zero-plus tick).[9] Short sales are not permitted on minus ticks or zero-minus ticks, subject to narrow exceptions. The operation of these provisions is commonly described as the ''tick test.''

The core provisions of Rule 10a–1 have remained virtually unchanged since its adoption almost 70 years ago. Over the years, however, in response to changes in the securities markets, including changes in trading strategies and systems used in the marketplace, the Commission has added exceptions to Rule 10a–1 and granted numerous written requests for relief from the rule's restrictions.[10] These requests for exemptive relief have increased dramatically in recent years in response to significant developments in the securities markets, such as the increased use of matching systems that execute trades at independently derived prices during random times within specific time intervals and the spread of fully automated markets. Also, decimal pricing increments have substantially reduced the difficulty of short selling on an uptick. In addition, under current price test regulation, different price tests apply to different securities trading in

[1] *See* Exchange Act Release No. 54891 (Dec. 7, 2006), 71 FR 75068 (Dec. 13, 2006) (''Proposing Release'').

[2] *See id.*

[3] *See id.*

[4] A number of comment letters received in response to the proposed amendments discussed issues unrelated to the Proposing Release. We have included a summary of these comment letters in Section IV. Other Comments, below.

[5] 17 CFR 242.200(g).

[6] These amendments affect price tests and related marking requirements only. They do not relate to other provisions of Regulation SHO. We note, however, that on June 13, 2007, at an Open Commission Meeting, we approved amendments to eliminate the ''grandfather'' provision of Regulation SHO, and proposed amendments to eliminate the options market maker exception of Regulation SHO. These amendments do not alter the amendments to eliminate the grandfather provision, or the proposal to eliminate the options market maker exception.

[7] *See* Exchange Act Release No. 1548 (Jan. 24, 1938), 3 FR 213 (Jan. 26, 1938).

[8] Rule 10a–1 uses the term ''effective transaction reporting plan'' as defined in Rule 600 of Regulation NMS (17 CFR 242.600) under the Exchange Act. *See* 17 CFR 240.10a–1(a)(1)(i).

[9] The last sale price is the price reported pursuant to an effective transaction reporting plan, *i.e.*, the consolidated tape, or to the last sale price reported in a particular marketplace. Under Rule 10a–1, the Commission gives market centers the choice of measuring the tick of the last trade based on executions solely on their own exchange rather than those reported to the consolidated tape. *See* 17 CFR 240.10a–1(a)(2).

[10] *See* Proposing Release, 71 FR at 75071–75072 (discussing exceptions to Rule 10a–1 added by the Commission and relief granted by the Commission from the rule's restrictions in recent years).

different markets and apply generally only to large or more actively-traded securities.[11]

In 2004, we adopted Rule 202T of Regulation SHO,[12] which established procedures for the Commission to temporarily suspend price tests so that the Commission could study the effectiveness of these tests.[13] Pursuant to the process established in Rule 202T of Regulation SHO, we issued an order (''First Pilot Order'') creating a one year pilot (''Pilot'') temporarily suspending the provisions of Rule 10a–1(a) and any price test of any exchange or national securities association for short sales of certain securities.[14]

The Pilot was designed to assist the Commission in assessing whether changes to current short sale regulation are necessary in light of current market practices and the purposes underlying short sale regulation.[15] The Commission stated in the Regulation SHO Adopting Release that conducting a pilot pursuant to Rule 202T would ''allow us to obtain data on the impact of short selling in the absence of a price test to assist in determining, among other things, the extent to which a price test is necessary to further the objectives of short sale regulation, to study the effects of relatively unrestricted short selling on market volatility, price efficiency, and liquidity, and to obtain empirical data to help assess whether a price test should be removed, in part or in whole, for some or all securities, or if retained, should be applied to additional securities.'' [16] As noted in the Regulation SHO Adopting Release, the empirical data from the Pilot was to be obtained and analyzed ''as part of [the Commission's] assessment as to whether the price test should be removed or modified, in part or whole, for actively-traded securities or other securities.'' [17]

Thus, the Commission's Office of Economic Analysis (''OEA'') gathered the data made public during the Pilot, analyzed this data and provided the Commission with a summary report on the Pilot.[18] The OEA Staff's Summary Pilot Report examined several aspects of market quality including the overall effect of price tests on short selling, liquidity, volatility and price efficiency. The Pilot data was also designed to allow the Commission and members of the public to examine whether the effects of price tests are similar across stocks.[19]

In addition, the Commission encouraged outside researchers to examine the Pilot. In response to this request, the Commission received four completed studies (the ''Academic Studies'') from outside researchers that specifically examine the Pilot data.[20] The Commission also held a public roundtable (the ''Regulation SHO Roundtable'') that focused on the empirical evidence learned from the Pilot data (the OEA Staff's Draft Summary Pilot Report, Academic Studies, and Regulation SHO Roundtable are referred to collectively herein as, the ''Pilot Results'').[21] The Pilot Results contained a variety of observations, which we considered in determining whether or not to propose removal of current price test restrictions and whether to adopt the amendments today. Generally, the Pilot Results supported removal of current price test restrictions.[22]

Based on our review of the Pilot Results and of the status of current price test restrictions, we proposed to remove Rule 10a–1 and add Rule 201 of Regulation SHO to provide that no price test, including any price test of any SRO, shall apply to short sales in any security. Rule 201 would also prohibit any SRO from having a price test. In addition, because we proposed to remove all current price test restrictions,

[11] Rule 10a–1's tick test is based on the last reported sale and applies to securities listed on a national securities exchange. The NASD's and Nasdaq's bid tests are based on the last bid rather than the last reported sale and apply only to short sales in Nasdaq Global Market securities. *See* NASD Rule 5100, *available at http://nasd.complinet.com/nasd/display/display.html?rbid=1189&record_id=1159007939&element_id=1159006014&highlight=5100#r1159007939; Nasdaq Rule 3350, available at http://nasdaq.complinet.com/nasdaq/display/display.html?rbid=1705&element_id=16.* Thus, under the current market structure, Nasdaq Global Market securities traded on Nasdaq or the over-the-counter (''OTC'') market and reported to an NASD facility are subject to Nasdaq's or the NASD's bid tests; other listed securities traded on an exchange, or otherwise, are subject to Rule 10a–1's tick test. Nasdaq-listed securities traded on exchanges other than Nasdaq are not subject to any short sale price test restrictions. In addition, smaller and more thinly-traded securities, such as Nasdaq Capital Market securities and securities quoted on the OTC bulletin board (''OTCBB'') and pink sheets, are not subject to any price test restrictions wherever traded.

[12] 17 CFR 242.202T.

[13] *See id.; see also* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48012–48013 (Aug. 6, 2004) (''Regulation SHO Adopting Release'').

[14] Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (Aug. 6, 2004). Specifically, the First Pilot Order suspended price tests for: (1) Short sales in the securities identified in Appendix A to the First Pilot Order; (2) short sales in the securities included in the Russell 1000 index effected between 4:15 p.m. EST and the open of the consolidated tape on the following day; and (3) short sales in any security not included in paragraphs (1) and (2) effected in the period between the close of the consolidated tape and the open of the consolidated tape on the following day. In addition, the First Pilot Order provided that the Pilot would commence on January 3, 2005 and terminate on December 31, 2005, and that the Commission might issue further orders affecting the operation of the First Pilot Order. *Id.* at 48033. On November 29, 2004, we issued an order resetting the Pilot to commence on May 2, 2005 and end on April 28, 2006 to give market participants additional time to make systems changes necessary to comply with the Pilot. Exchange Act Release No. 50747 (Nov. 29, 2004), 69 FR 70480 (Dec. 6, 2004). On April 20, 2006, we issued an order (''Third Pilot Order'') extending the termination date of the Pilot to August 6, 2007, the date on which temporary Rule 202T of Regulation SHO expires. Exchange Act Release No. 53684 (April 20, 2006), 71 FR 24765 (April 26, 2006). The purpose of the Third Pilot Order was to maintain the status quo with regard to price tests for Pilot securities while the staff completed its analysis of the Pilot data and the Commission conducted any additional short sale rulemaking.

[15] 69 FR at 48032.

[16] Regulation SHO Adopting Release, 69 FR at 48009.

[17] *Id.* at 69 FR at 48013. In the Regulation SHO Adopting Release we noted that ''the purpose of the [P]ilot is to assist the Commission in considering alternatives, such as: (1) Eliminating a Commission-mandated price test for an appropriate group of securities, which may be all securities; (2) adopting a uniform bid test, and any exceptions, with the possibility of extending a uniform bid test to securities for which there is currently no price test; or (3) leaving in place the current price tests.'' *Id.* at 69 FR at 48010.

[18] *See* Office of Economic Analysis U.S. Securities and Exchange Commission, *Economic Analysis of the Short Sale Price Restrictions Under the Regulation SHO Pilot* (Feb. 6, 2007) (the ''OEA Staff's Summary Pilot Report''), available at *https://www.sec.gov/news/studies/2007/regshopilot020607.pdf. See also* Office of Economic Analysis U.S. Securities and Exchange Commission, *Economic Analysis of the Short Sale Price Restrictions Under the Regulation SHO Pilot* (Sept. 14, 2006) (the ''OEA Staff's Draft Summary Pilot Report''), available at *http://www.sec.gov/about/economic/shopilot091506/draft_reg_sho_pilot_report.pdf.* Prior to the publication of the Proposing Release, OEA made available on the Commission's Internet Web site, the OEA Staff's Draft Summary Pilot Report. The conclusions reached in the OEA Staff's Summary Pilot Report do not differ from those in the OEA Staff's Draft Summary Pilot Report.

[19] In the Regulation SHO Adopting Release, the Commission stated its expectation that data on trading during the Pilot would be made available to the public to encourage independent researchers to study the Pilot. *See* Regulation SHO Adopting Release, 69 FR at 48009, n.9. Accordingly, nine SROs began publicly releasing transactional short selling data on January 3, 2005. The nine SROs were the AMEX, ARCA, BSE, CHX, NASD, Nasdaq, National Stock Exchange, NYSE and Phlx. The SROs agreed to collect and make publicly available trading data on each executed short sale involving equity securities reported by the SRO to a securities information processor. The SROs publish the information on a monthly basis on their Internet Web sites.

[20] *See* Karl Diether, Kuan Hui Lee and Ingrid M. Werner, *It's SHO Time! Short-Sale Price-Tests and Market Quality,* June 20, 2006; Gordon J. Alexander and Mark A. Peterson, *The Effect of Price Tests on Trader Behavior and Market Quality: An Analysis of Reg. SHO* (forthcoming in *Journal of Financial Markets*); J. Julie Wu, *Uptick Rule, short selling and price efficiency,* August 14, 2006; Lynn Bai, *The Uptick Rule of Short Sale Regulation—Can it Alleviate Downward Price Pressure from Negative Earnings Shocks?* 2006 (''Bai'').

[21] A transcript from the roundtable (''Roundtable Transcript'') is available at *http://www.sec.gov/about/economic/shopilottrans091506.pdf.*

[22] *See* Proposing Release, 71 FR at 75072–75075 (discussing the Pilot Results).

and prohibit any price test by any SRO, we proposed to amend Rule 200(g) of Regulation SHO to remove the requirement that a broker-dealer mark a sell order of an equity security as ''short exempt'' if the seller is relying on an exception from the price test of Rule 10a–1, or any price test of any exchange or national securities association.

II. Removal of Price Test Restrictions

We proposed to remove Rule 10a–1 and add Rule 201 of Regulation SHO to provide that no price test, including any price test of any SRO, shall apply to short sales in any security. In addition, we proposed to prohibit any SRO from having a price test. We are adopting the amendments, as proposed.

A. Comments Summary

The comments on the proposed amendments varied. Most commenters (including individual traders, academics, broker-dealers, MFA, STA, NYSE, and SIFMA) advocated removing all price test restrictions.[23] These commenters believe that price test restrictions are no longer necessary in today's markets, which are more transparent and where there is real-time regulatory surveillance that can easily monitor for and detect any short sale manipulation.[24] In addition, these commenters noted that market developments, such as technological innovations and decimalization, have transformed the trading landscape since Rule 10a–1 was first adopted and has changed the impact of price test restrictions.[25]

In supporting the proposal, one commenter expressed its view that ''short selling enhances market liquidity and contributes to stock pricing efficiency, and thus is an important part of our securities markets, and that the existing restrictions on the execution prices of short sales * * * inhibit the free-market price discovery mechanism of an efficient market.''[26] In addition, this commenter noted the significant financial, technology and human resources it expends on ensuring compliance with price test restrictions.[27] This commenter believes that the compliance costs and loss of market benefits created by short sales (such as, added liquidity and price efficiency) outweigh any potential or theoretical regulatory benefits of price tests.[28]

In expressing its support for prohibiting SROs from having their own price tests, SIFMA noted that without this prohibition SROs ''could feel pressured to maintain a price test as a marketing tool for attracting issuer listings. This would lead to an environment, as exists today, where there would be disparate price tests, or even no price test, depending on the market on which a security trades. Such a result imposes unnecessary compliance costs upon broker-dealers (without also providing real benefits to investors) and leads to regulatory arbitrage.''[29]

Similarly, the STA commented that eliminating price test restrictions and prohibiting SROs from implementing the same would eliminate regulatory arbitrage in short sale regulation and would allow marketplaces to compete with each other on the basis of execution quality, rather than on regulatory disparities, which it believes, would increase public investor confidence in the markets.[30] The NYSE stated its belief that all equity markets should be regulated equally, noting that ''[i]t is inappropriate that the federal securities laws, through the application of Rule 10a–1, requires trading of NYSE-listed securities to be held to a different standard than those listed on other markets.''[31] The NYSE further noted that it believes the ''practical effect of the proposed amendments will be to level the playing field in the area of short sales and establish a more consistent and uniform regulatory regime across all markets.''[32]

Two commenters (both individual investors) opposed the proposed amendments noting the need for price tests to prevent ''bear raids.''[33] Other commenters (including individual traders and E*Trade), however, noted that sharp market declines, such as those induced by ''bear raids,'' are highly unlikely to occur in today's markets which are characterized by much smaller spreads, higher liquidity, and greater transparency than when the rule was adopted almost 70 years ago.[34]

One commenter, although generally in support of removing all price test restrictions, believes that at some level unrestricted short selling should be collared.[35] This commenter supported having a 10% circuit breaker to prevent panic in the event there is a major market collapse.[36] The NYSE also noted its concern about unrestricted short selling during periods of unusually rapid and large market declines. This commenter stated that the effects of an unusually rapid and large market decline could not be measured or analyzed during the Pilot because such decline did not occur during the period studied. Accordingly, the NYSE commented that it believes SROs should be permitted to propose rules to be

[23] *See, e.g.*, letter from Howard Teitelman, CSO, Trillium Trading (Feb. 6, 2007) (''Teitelman Letter''); letter from S. Kevin An, Deputy General Counsel, E*TRADE (Feb. 9, 2007) (''E*TRADE Letter''); letter from Carl Giannone (Feb. 11, 2007) (''Giannone Letter''); letter from David Schwarz (Feb. 12, 2007) (''Schwarz Letter''); letter from John G. Gaine, President, MFA (Feb. 12, 2007) (''MFA Letter''); letter from Lisa M. Utasi, Chairman of the Board and John C. Giesea, President and CEO, STA (Feb. 12, 2007) (''STA Letter''); letter from Gerard S. Citera, Executive Director, U.S. Equities, UBS (Feb. 14, 2007) (''UBS Letter''); letter from Mary Yeager, Assistant Secretary, NYSE (Feb. 14, 2007) (''NYSE Letter''); letter from James J. Angel, PhD, CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University (Feb. 14, 2007) (''Angel Letter''); letter from Ira D. Hammerman, SIFMA Managing Director and General Counsel (Feb. 16, 2007) (''SIFMA Letter'').

[24] *See, e.g.*, Giannone Letter, *supra* note 23; E*TRADE Letter, *supra* note 23; STA Letter, *supra* note 23; UBS Letter, *supra* note 23.

[25] *See, e.g.*, MFA Letter, *supra* note 23.

[26] E*TRADE Letter, *supra* note 23. *See also,* MFA Letter, *supra* note 23 (stating that the MFA regards short selling as an essential method by which investors, including fiduciaries managing others' assets, can manage risk, hedge their portfolios, and reflect their view that the current market price of a security is higher than it should be).

[27] *See* E*TRADE Letter, *supra* note 23.

[28] *See id. See also,* UBS Letter, *supra* note 23 (noting that there are substantial programming, implementation, and ongoing compliance costs associated with maintaining price test restrictions).

[29] SIFMA Letter, *supra* note 23. *See also,* E*TRADE Letter, *supra* note 23 (commenting that allowing SROs to have their own price tests would increase compliance and systems change costs to market participants, including broker-dealers executing customer short sales). In addition, in its letter, SIFMA commented that allowing SROs to have their own price tests could raise best execution concerns for broker-dealers determining how best to route short sale orders, *i.e.*, in that a broker-dealer would need to consider whether to route short sale orders received to a market that has a price test, as opposed to a market which does not and which could thus perhaps provide a faster execution. *See* SIFMA Letter, *supra* note 23.

[30] *See* STA Letter, *supra* note 23.

[31] NYSE Letter, *supra* note 23.

[32] *Id.*

[33] *See, e.g.*, letter from Jim Ferguson (Dec. 19, 2006); letters from David Patch (Jan. 1, 2007; Jan. 12, 2007) (''Patch Letters''). A ''bear raid'' involves the active selling of a security short to drive down the security's price in the hopes of convincing less informed investors of a negative material perception of the security, triggering sell orders. Falling prices could trigger margin calls and possibly forced liquidations of the security, depressing the price further. This unrestricted short selling could exacerbate a declining market in a security by eliminating bids, and causing a further reduction in the price of a security by creating an appearance that the security's price is falling for fundamental reasons. At the time, many people blamed ''bear raids'' for the 1929 stock market crash and the market's prolonged inability to recover from the crash. *See* 8 Louis Loss & Joel Seligman, *Securities Regulations,* section 8–B–3 (3d ed. 2006).

[34] *See, e.g.*, E*Trade Letter, *supra* note 23; Giannone Letter, *supra* note 23; Schwarz Letter, *supra* note 23. In addition, we note that panelists at the Regulation SHO Roundtable stated the belief that price test restrictions do not provide protection from bear raids. *See* Roundtable Transcript.

[35] *See* Giannone Letter, *supra* note 23.

[36] *See id.*

applied in such situations should they deem it appropriate.[37]

As an alternative to removing all price test restrictions, one commenter suggested extending the Pilot to include more securities to better evaluate the benefits of completely eliminating current price test restrictions.[38] Another commenter, the IASBDA, noted that while it believes that the staff makes a compelling case for the removal of price test restrictions for the Russell 3000 securities, it fails to address whether the issuers of other securities should have some choice in whether they want their stock subject to a price test.[39] IASBDA commented that ''[b]y insisting that it must be all or none the staff may unnecessarily force small issuers to accept an environment which is most unkind to their securities.'' [40] Furthermore, IASBDA criticized the Pilot for not including OTCBB stocks and other small stocks.[41] This commenter noted that ''[t]he Russell 3000 is a broad based index in terms of capitalization but there are roughly 9000 stocks in the publicly reporting universe. The Russell 3000 Index offers investors access to the broad U.S. equity universe representing approximately 98% of the U.S. market, but roughly 33% of individual stocks. The SEC's Advisory Committee Report on Small Public Companies Final report concluded there were 9,428 companies listed including the OTCBB. Report at p.5.'' [42] Thus, IASBDA stated that there may be an argument for phasing in the elimination by starting with the larger stocks and concluding with the OTCBB and smaller segments of the market. IASBDA suggested that this methodology might allow the Commission to learn something from its observance of the large stocks without a tick test.[43]

Similarly, Amex believes that it is premature to remove price tests from smaller securities pending further analysis.[44] In its comment letter, Amex stated that it has ''noted numerous statements in the Proposing Release, the OEA Staff's Draft Summary Pilot Report, and the Roundtable Transcript that suggest that the impact of eliminating short sale price tests may differ between large capitalization and small capitalization securities. Such a differential impact would obviously be of great concern to the Amex, which has a large concentration of small capitalization issuers.'' [45] Thus, Amex commented that while it is not suggesting that price test restrictions be extended to additional securities, nor is it adamantly opposing the ultimate removal of price test restrictions from small capitalization securities to which price tests currently apply, it is advocating additional study before such action is taken in connection with small capitalization securities.[46]

We noted in the Proposing Release that in connection with the Pilot, nine reporting markets have been making public information about short selling transactions,[47] and we requested comment regarding whether it would be in the public interest to request that markets continue to release this information.[48] In response, the NYSE expressed its objection to the Commission continuing to require the markets to collect and make this information publicly available, noting that collecting and producing such information has proven to be costly and time-consuming.[49] The MFA commented that it believes such information should only be made available to law enforcement authorities.[50] Another commenter, however, urged the Commission to work with the SROs to ensure that data similar to that made publicly available during the Pilot, continues to be available to researchers after the Pilot.[51]

In its letter, the NYSE stated that it believes that ''the stated purpose for publicly releasing such data during the pilot—*i.e.*, encouraging independent researchers to study the pilot's effects—has already been successfully accomplished, as evidenced by the academic studies published and public roundtable held concerning the results of the pilot data.'' [52] The NYSE also did not believe that we should request that the SROs submit periodic reports regarding the effects of the removal of price test restrictions at regular intervals, such as on a semi-annual or annual basis, stating that such a requirement, in addition to collecting and making publicly available data on short sale transactions, would ''greatly exacerbate costs.'' [53]

B. Response to Comments

We have carefully considered all the comments we received regarding the proposed amendments. In particular, we note the comments regarding the need for price test restrictions to prevent the use of short selling to drive down the market in ''bear raids.'' One of the Commission's stated objectives when it adopted Rule 10a–1 in 1938 was to prevent short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers.[54] In addition, in the Proposing Release, we noted that although short selling serves useful market purposes, such as increasing market liquidity and price efficiency, it also may be used to illegally manipulate stock prices.[55] Because of the Commission's stated objective when it adopted Rule 10a–1 and our concerns about the potential use of short sales to manipulate stock prices, OEA examined the Pilot data for any indication that there is an association between extreme price movements and price test restrictions. OEA, however, did not find any such association.[56] We also note that although we are removing current price test restrictions, today's markets are characterized by high levels of transparency and regulatory surveillance. These characteristics greatly reduce the risk of undetected manipulation and permit regulators to

[37] *See* NYSE Letter, *supra* note 23. The NYSE also noted that it believes that SROs should be permitted to maintain existing rules consistent with this concept, such as NYSE Rule 80(A)(a) (requiring the entry of any index arbitrage order to sell any component stock of the S&P 500 Stock Price Index℠ with the instruction ''sell plus'' on any trading day when the NYSE Composite Index® declines below its closing value on the prior trading day by at least the ''two-percent'' value, as calculated according to the methodology found in NYSE Rule 80A.10). *See id.*

[38] *See* Teitelman Letter, *supra* note 23.

[39] *See* letter from Peter Chepucavage, General Counsel, Plexus Consulting, on behalf of International Association of Small Broker-Dealers and Advisors (Dec. 19, 2006) (''IASBDA Letter'').

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *See id.*

[44] *See* letter from Claire P. McGrath, Senior Vice President and General Counsel, Amex (Feb. 16, 2007) (''Amex Letter'').

[45] *Id.*

[46] *See id.*

[47] *See* Proposing Release, 71 FR at 75069; *see also, supra* note 19.

[48] *See* Proposing Release, 71 FR at 75077. Specifically, we sought comment regarding whether requesting the markets to continue to release such information would improve transparency of short selling. In addition, we asked whether it would help the Commission monitor the markets for potential abuses if the Commission were to approve the removal of price tests. We also asked for comment regarding how costly it would be for the markets to continue to produce the data and whether there are any less costly alternatives to the current information being released by the markets.

[49] *See* NYSE Letter, *supra* note 23.

[50] *See* MFA Letter, *supra* note 23. The MFA commented that it is ''concerned that public transactional short selling data may fuel frivolous issuer lawsuits against market participants with a legitimate but different view of the value of an issuer's securities.'' *Id.*

[51] *See* Angel Letter, *supra* note 23.

[52] NYSE Letter, *supra* note 23.

[53] *See id.*

[54] *See* Exchange Act Release No. 13091 (Dec. 21, 1976), 41 FR 56530 (Dec. 28, 1976).

[55] *See* Proposing Release, 71 FR at 75070.

[56] *See* OEA Staff's Summary Pilot Report at 56, *supra* note 18.

monitor for the types of activities that current price test restrictions are designed to prevent. In addition, we note that the general anti-fraud and anti-manipulation provisions of the federal securities laws continue to prohibit activity designed to improperly influence the price of a security.[57]

In addition, with respect to comments regarding the Commission allowing SROs to adopt price test restrictions in the event of unusually rapid and large market declines, we have determined not to take such action at this time.[58] We believe that allowing SROs to adopt price test restrictions under such circumstances could undermine a primary objective of the proposed amendments of achieving regulatory uniformity and simplicity.[59] For the same reasons, we do not believe that we should implement a circuit breaker for short sales at this time.

We note, however, that pursuant to Section 36 of the Exchange Act, in the future the Commission could determine that circumstances have arisen that justify the issuance of an exemption from the provisions of Rule 201.[60] Should an SRO request the Commission issue such an exemption in conjunction with the filing of an SRO proposed rule change to establish a price test restriction, when considering any such request, the Commission would consider, among other things, whether the proposed rule change is consistent with the objectives of today's amendments of providing regulatory simplicity and consistency. In addition, to issue an exemption pursuant to Section 36, the Commission would have to find that such an exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[61]

In response to IASBDA's comment regarding allowing issuers to have a choice as to whether or not they want their stock to be subject to a price test, we have determined not to take such action at this time. A primary goal of the amendments is to bring uniformity to, and simplify, short sale regulation. To allow issuers to have a choice as to whether or not their stock is subject to a price test would undermine this primary objective. In addition, we note that in the Proposing Release we specifically requested comment from issuers regarding their views of the impact of the proposed amendments on their securities.[62] We did not, however, receive any comments from issuers.[63]

In addition, with respect to IASBDA's comment regarding the universe of securities subject to the Pilot and, in particular, that the Pilot did not include securities quoted on the OTCBB, we note that the Pilot did not include this class of securities because securities quoted on the OTCBB are not currently subject to any price test restrictions.

Both the IASBDA and Amex suggested removing price tests from larger securities first to allow time to study the impact of the permanent removal of price test restrictions before such action is taken for smaller securities. We do not believe that such an approach would provide new results relevant to smaller securities.[64] As we noted in the Proposing Release, while there is some evidence supporting the application of price test restrictions to smaller securities, the evidence is not strong enough to warrant the continuation of current price test restrictions to any subset of securities.[65] Such continuation would also undermine a primary goal of these amendments of providing greater uniformity and simplicity to short sale regulation.

In connection with whether we should request that SROs continue to make public information regarding short sale transactions similar to that obtained during the Pilot, we note that the SROs have provided such information during the Pilot at our request so that researchers could provide the Commission with their own empirical analyses of the Pilot.[66] We have determined at this time not to propose to require the SROs to make information similar to that obtained during the Pilot publicly available on a regular basis.

With respect to whether the SROs should submit periodic reports regarding the effects of the removal of price tests, and in response to commenters concerns that traders may have been on ''good behavior'' during the Pilot,[67] we note that while we believe that current price test restrictions are no longer effective or necessary, we intend to closely monitor for potentially abusive trading activities. We expect that the markets will similarly continue to surveil for trading abuses. To the extent we obtain evidence of possible violations of the federal securities laws, we will pursue investigations and law enforcement actions as warranted.

We have carefully considered the comments and continue to believe that the amendments are appropriate in light of market developments that have occurred in the securities industry since the Commission adopted Rule 10a–1 in 1938, such as decimalization, the increased use of matching systems that execute trades at independently derived prices during random times within specific time intervals, and, most recently, the spread of fully automated markets. We believe the amendments will bring increased uniformity to short sale regulation, level the playing field for market participants, and remove an opportunity for regulatory arbitrage.

In addition, we note that only one commenter questioned the economic evidence supporting the amendments, but we believe that the critique is

[57] *See, e.g.*, Securities Act of 1933 Section 17(a), Exchange Act Section 9(a), 10(b), and 15(c), and Rule 10b–5 thereunder.

[58] *See* NYSE Letter, *supra* note 23.

[59] We note, however, that Section 12(k)(2) of the Exchange Act provides that the Commission, ''in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors (i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities); (ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or (iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of (I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets, or (II) the transmission or processing of securities transactions (other than transactions in exempted securities).'' In addition, SROs may also continue to have rules consistent with the concept of circuit breakers.

[60] *See* 15 U.S.C. 78mm.

[61] *See id.*

[62] *See* Proposing Release, 71 FR at 75076.

[63] We note that the IASBDA is an advocacy group for small broker-dealers and advisers (including lawyers and hedge funds).

[64] *See* IASBDA Letter, *supra* note 39; Amex Letter, *supra* note 44. We note that many smaller or thinly-traded securities, such as Nasdaq Capital Market securities and securities quoted on the OTCBB and pink sheets, are not currently subject to any price test restrictions.

[65] *See* Proposing Release, 71 FR at 75076. In addition, we note that academics have previously examined short selling in a matched sample of Nasdaq National Market stocks, which were subject to price test restrictions, and Nasdaq SmallCap stocks, which were not, during a period of high volatility and rapidly declining stock prices (September 2000 to August 2001). In this study's sample of 2,275 observations, the study found no significant differences in the overall level of short selling, or the frequency of days with abnormally negative returns and abnormally high short selling. *See* Michael G. Ferri, Stephen E. Christophe, and James J. Angel, *A short look at bear raids: Testing the bid test,* 2004.

[66] *See* Regulation SHO Adopting Release, 69 FR at 48009.

[67] For example, in its letter, Amex noted a comment by OEA in the OEA Staff's Draft Summary Pilot Report that it is possible that traders might behave differently if a rule were permanently and completely removed than if it is only temporarily and incompletely removed, and that traders with manipulative intentions might be on good behavior if they believe that heightened scrutiny during the Pilot increases their chances of getting caught. *See* Amex Letter, *supra* note 44.

inapplicable.[68] The Pilot was designed to assist the Commission in assessing whether changes to current short sale regulation are necessary in light of current market practices and the purposes underlying price test regulation.[69] During the comment period, we received one additional study examining the results of the Pilot.[70] This study found results that are consistent with other Pilot studies previously submitted to, and discussed by, the Commission, which generally found that current price test restrictions do not enhance market quality.[71]

Thus, after carefully considering the comments received, we are adopting the amendments, as proposed.

III. Removal of ''Short Exempt'' Marking Requirement

Because we proposed to remove Rule 10a–1 and prohibit any SRO from having a price test, we also proposed to amend Rule 200(g) of Regulation SHO[72] to remove the requirement that a broker-dealer mark a sell order of an equity security as ''short exempt'' if the seller is relying on an exception from the tick test of Rule 10a–1, or any price test of any exchange or national securities association.[73] We are adopting the amendment as proposed.

Rule 200(g) of Regulation SHO provides that a broker-dealer must mark all sell orders of any security as ''long,'' ''short,'' or ''short exempt.''[74] Further, Rule 200(g)(2) of Regulation SHO provides that a short sale order must be marked ''short exempt'' if the seller is ''relying on an exception from the tick test of 17 CFR 240.10a–1, or any short sale price test of any exchange or national securities association.''[75] The ''short exempt'' marking requirement provides a record that short sellers are availing themselves of the various exceptions to, or exemptions from, the application of the restrictions of Rule 10a–1 or of any price test of any exchange or national securities association.

A. Comments Summary

We received five comment letters, from the MFA, STA, UBS, NYSE, and SIFMA in response to the proposed amendment.[76] Generally, the commenters supported the Commission's proposal to remove the 'short exempt' marking requirement.[77]

Although the STA stated that it supports the proposal to remove the ''short exempt'' marking requirement in Regulation SHO, the STA commented that it believes that securities currently marked ''short exempt'' pursuant to Rule 203(b)(2)(ii) of Regulation SHO[78] should be marked ''long'' rather than ''short'' because marking such orders ''short'' ''does not accurately describe the customer's ownership of the same and could cause confusion and anger from public investors when they receive confirmation of the sale of a security they understood they owned.''[79] Similarly, SIFMA commented that its member firms would encourage the Commission to amend the definition of a ''long'' sale to include these types of sales ''to avoid unintended consequences and mistaken perceptions by issuers and others as to the nature of the sale.''[80]

In addition, SIFMA commented that rather than removing the ''short exempt'' marking requirement, SIFMA firms generally would prefer that the Commission preserve the ''short exempt'' marking requirement, specifically amending Regulation SHO to indicate that a sale should be marked ''short exempt'' if effected in reliance on an exception from the ''locate'' requirement, pursuant to Rule 203(b)(2) of Regulation SHO.[81] According to SIFMA, firms ''generally are of the view that preserving ''short exempt'' marking for such situations should assist their compliance efforts by identifying short sales for which a locate is not required to be obtained.''[82]

The MFA and NYSE responded to our request for comment in the Proposing Release regarding whether, in the absence of price test restrictions, the marking of sell orders would continue to need to be transparent to market makers and specialists.[83] Currently, to

[68] One commenter expressed concern about the methodologies used in the Pilot studies. *See* Patch Letters, *supra* note 33 (stating that ''the methods in which the OEA conducted their analysis (specifically the duration of time) is flawed. Bear raids do not last for months but over days or weeks and such analysis by the OEA, looking over large windows of time without looking at micro trading, is a flawed approach''). *But see,* OEA Staff's Summary Pilot Report at 9, *supra* note 18 (stating that OEA focused its investigation on price patterns that might indicate manipulative behavior at a daily or intraday frequency). In addition, we note that panelists from the Regulation SHO Roundtable were asked to critique the studies and all panelists generally agreed with the results. *See* Roundtable Transcript at 49–57, 72–80, *supra* note 21.

[69] 69 FR at 48032. *See also,* Proposing Release, 71 FR at 75068–75069, 75072–75073 (discussing the Pilot and the Pilot Results).

[70] *See* Bai, *supra* note 20. *See also,* OEA Staff's Summary Pilot Report at 85, *supra* note 18.

[71] Bai found that the Pilot had no effect on stock price reactions to negative earnings shocks. *See* Bai, *supra* note 20. *See also,* Proposing Release, 71 FR at 75072–75075 (discussing the Pilot Results).

[72] 17 CFR 242.200(g).

[73] Broker-dealers would, however, continue to be required to mark sell orders as either ''long'' or ''short'' in compliance with Rule 200(g).

[74] *See* 17 CFR 242.200(g).

[75] *See id.* at 242.200(g)(2).

[76] *See* MFA Letter, *supra* note 23; STA Letter, *supra* note 23; UBS Letter, *supra* note 23; NYSE Letter, *supra* note 23; SIFMA Letter, *supra* note 23.

[77] *See* MFA Letter, *supra* note 23; STA Letter, *supra* note 23; UBS Letter, *supra* note 23. In its letter, the MFA noted that it believes broker-dealers are in the best position to raise compliance issues related to their systems and the ''short exempt'' marking requirement. Thus, the MFA urged the Commission to carefully consider any compliance concerns raised by broker-dealers in considering this proposal. *See* MFA Letter, *supra* note 23.

[78] 17 CFR 242.203(b)(2)(ii). Rule 203(b)(2)(ii) of Regulation SHO excepts from the locate requirement of Regulation SHO any sale of a security that a person is deemed to own pursuant to Rule 200 of Regulation SHO, provided that the broker-dealer has been reasonably informed that the person intends to deliver such security as soon as all restrictions on delivery have been removed. If the person has not delivered such security within 35 days after the trade date, the broker-dealer that effected the sale must borrow securities or close out the short position by purchasing securities of like kind and quantity. Such circumstances could include the situation where a convertible security, option, or warrant has been tendered for conversion or exchange, but the underlying security is not reasonably expected to be received by settlement date. Another situation could be where a customer owns stock that was formerly restricted, but pursuant to Rule 144 under the Securities Act of 1933, the security may be sold without restriction. In connection with the sale of such security, the security may not be capable of being delivered on settlement date due to processing to remove the restricted legend.

[79] STA Letter, *supra* note 23.

[80] SIFMA Letter, *supra* note 23.

[81] *Id.* Rule 203(b)(2) provides an exception from the locate requirement of Rule 203(b)(1) for: ''(i) A broker or dealer that has accepted a short sale order from another registered broker or dealer that is required to comply with paragraph (b)(1) of this section, unless the broker or dealer relying on this exception contractually undertook responsibility for compliance with paragraph (b)(1) of this section; (ii) Any sale of a security that a person is deemed to own pursuant to § 242.200, provided that the broker or dealer has been reasonably informed that the person intends to deliver such security as soon as all restrictions on delivery have been removed. If the person has not delivered such security within 35 days after the trade date, the broker-dealer that effected the sale must borrow securities or close out the short position by purchasing securities of like kind and quantity; (iii) Short sales effected by a market maker in connection with bona-fide market making activities in the security for which this exception is claimed; and (iv) Transactions in security futures.''

[82] SIFMA Letter, *supra* note 23. SIFMA noted in its letter that, if the Commission decides not to amend the definition of a ''long'' sale in Rule 200(g) as suggested by SIFMA, it would strongly urge the Commission to continue to allow firms to mark sales ''short exempt,'' in reliance on the exception from the Regulation SHO ''locate'' requirement in Rule 203(b)(2)(ii) of Regulation SHO. *Id.* UBS also commented that we should retain the ''short exempt'' marking requirement to ''identify certain short sale transactions as exempt from the affirmative determination requirements for regulatory and compliance requirements.'' UBS Letter, *supra* note 23.

[83] *See* Proposing Release, 71 FR at 75078. Specifically, in the Proposing Release we stated that: ''To facilitate the application of Rule 10a–1, NASD Rule 5100, and Nasdaq Rule 3350, market makers and specialists receive information allowing them to distinguish short sales from other sales. In other words, the information on whether an order

Continued

facilitate the application of price test restrictions, market makers and specialists receive information allowing them to distinguish short sales from other sales.

In its comment letter, the MFA stated that ''[i]n protecting the confidentiality of customer orders and maintaining a level playing field for all market participants, MFA supports the idea of availing order marking information only to brokers preparing order tickets.'' [84] The MFA believes that the ''best safeguard for maintaining the integrity of order information is by limiting order marking information to those necessary in carrying out compliance functions.'' [85]

NYSE, on the other hand, expressed its belief that it is ''necessary that the overall short interest in a security, as well as information on whether a particular sell order introduced to the Exchange is long or short, continue to be transparent intra-day to specialists in the securities in which they are registered.'' [86] NYSE noted that ''[f]or a specialist, making the correct determination regarding the necessity of a dealer transaction at any given moment includes an understanding of the general market conditions in a particular security, including the actual or reasonably anticipated needs of the market. The intra-day short interest position in a security as well as whether particular orders are long or short are critical pieces of information in the overall mix of factors that combine to form the ''market'' in that security.'' [87] The NYSE believes that the absence of such information would result in poorer overall market quality.[88]

B. Response to Comments

We have carefully considered all the comments we received. In response to the STA's and SIFMA's comments regarding revising the definition of when an order should be marked ''long'' to include sales of securities excepted from the locate requirement pursuant to Rule 203(b)(2)(ii) of Regulation SHO, we have determined not to take such action at this time. Although these are sales of securities that a person is ''deemed to own'' pursuant to Rule 200 of Regulation SHO,[89] the securities will not be delivered in time for settlement of the transaction and, therefore, we believe that such sales are more appropriately marked as ''short'' rather than ''long'' sales.[90]

In addition, in response to STA's comment that the marking of these orders as ''short'' does not accurately describe the customer's ownership of the same and could cause confusion and anger from public investors when they receive confirmation of the sale of a security they understood they owned, we note that the order marking requirements are to facilitate the surveillance and monitoring of compliance with other provisions of Regulation SHO, such as the borrowing and delivery requirements for long sales under Rule 203(a),[91] and the locate requirements for short sales under Rule 203(b).[92] Regulation SHO does not require that a broker-dealer reveal an order marking to its customer. Nor do we believe at this time that it is necessary for a customer to receive such information.

In addition, we have determined not to retain the ''short exempt'' marking requirement or revise the definition of when an order should be marked ''short exempt'' to include those circumstances in which a short sale is excepted from the locate requirements of Rule 203(b)(2) of Regulation SHO.[93] The ''short exempt'' marking requirement has only ever applied if the seller is relying on an exception from a price test. It has never applied to sales that do not have to comply with the locate requirement of Regulation SHO.[94] Today's amendment to remove the ''short exempt'' marking requirement is necessitated by the fact that we are removing current price test restrictions and prohibiting any SRO from having a price test. Thus, we do not believe that it is appropriate at this time to re-define the order marking requirements of Regulation SHO as suggested by commenters. We will, however, consider separately whether further action in this area is necessary or warranted.

With respect to the MFA's and NYSE's comments regarding the transparency of order markings to market participants other than those broker-dealers with responsibility for compliance with the marking requirements of Regulation SHO, we have determined at this time to not take any action to limit the transparency of order markings in this way.[95] We will continue, however, to review whether further action by the Commission on this matter is necessary or warranted.

After carefully considering the comments received, we are adopting the proposed amendment without modification.

IV. Other Comments

We received eight comment letters from individual investors discussing other provisions of Regulation SHO,[96] most notably the grandfather provision of that rule.[97] In addition, these commenters expressed concerns about naked short selling. This release discusses amendments that will affect price tests and related marking requirements only. They do not relate to other provisions of Regulation SHO or naked short selling, which are the subject of other Commission rulemaking.[98]

V. Paperwork Reduction Act

The adopted amendments to Regulation SHO impose a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995;[99] however, the collection of information is covered by the approved collection for Exchange Act Rule 19b–4.[100] Rule 201(a) of Regulation SHO provides that no price test, including any price test of any SRO, shall apply to short sales in any security. In addition, Rule 201(b) of Regulation SHO prohibits any SRO from having a price test. Thus, to the extent that any SRO currently has a price test,

is marked ''long,'' ''short,'' or ''short exempt'' is made transparent to market makers and specialists but not to other market participants or the public. In the absence of price test restrictions, would the marking of sell orders need to be transparent to market makers and specialists? Would there be any systems or market quality costs/benefits associated with not revealing this information to specialists and market makers?''

[84] MFA Letter, *supra* note 23.

[85] *Id.*

[86] NYSE Letter, *supra* note 23.

[87] *Id.*

[88] *See id.*

[89] 17 CFR 242.200(a)–(f).

[90] Regulation SHO provides that an order can only be marked ''long'' if the seller is deemed to own the security being sold pursuant to paragraphs (a) through (f) of Rule 200 of Regulation SHO and either: (i) The security to be delivered is in the physical possession or control of the broker or dealer; or (ii) It is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than settlement of the transaction. *See* 17 CFR 242.200(g). Thus, Regulation SHO contemplates that only those sell orders that will be available for delivery on settlement date can be marked ''long.''

[91] 17 CFR 242.203(a).

[92] 17 CFR 242.203(b).

[93] 17 CFR 242.203(b)(2).

[94] *See id.*

[95] Currently, which market participants are able to see the marking for a sell order is established by SRO rule and varies among the SROs.

[96] *See* 17 CFR 242.200 *et seq.*

[97] *See* letter from Joan Oleary (Jan. 22, 2007); letter from Candice Grant (Jan. 21, 2007); letter from Roland L. Pitts (Dec. 28, 2006); letter from Charles P. Bennett, M.D. (Jan. 18, 2007); letter from Carlos Molina (Jan. 17, 2007); letter from Lars D. Roose (Feb. 11, 2007); letter from Hillary Thomas (Feb. 11, 2007); letter from H. Glenn Bagwell, Jr. (Feb. 12, 2007). These comment letters relate to File No. S7–12–06 regarding proposed amendments to Regulation SHO and were considered in connection with that rulemaking.

[98] *See* Regulation SHO Amendments Proposing Release, 71 FR 41710; *see also,* supra n.[6].

[99] 44 U.S.C. 3501 *et seq.*

[100] 17 CFR 240.19b–4.

that SRO is required to amend its rules to comply with these amendments to Regulation SHO. Any such amendments will need to be filed with the Commission as proposed rule changes, pursuant to Section 19(b) of the Exchange Act [101] and Rule 19b–4 thereunder. This collection of information, however, will be collected pursuant to Exchange Act Rule 19b–4 and, therefore, will not be a new collection of information for purposes of the amendments.

VI. Consideration of Costs and Benefits of Proposed Amendments to Rule 10a–1 and Regulation SHO

The Commission is sensitive to the costs and benefits that result from our rules. Thus, in the Proposing Release, we solicited comments related to the costs and benefits associated with the proposed amendments.[102] We explicitly requested that commenters provide supporting empirical data for any positions advanced. In addition, we specifically requested comment regarding the costs and benefits of unrestricted short selling activity and any costs associated with complying with the proposed amendments, if the Commission were to adopt the proposed amendments. We also requested comment regarding any costs relating to the removal of price test restrictions adopted by the SROs. In addition, we requested comment on the potential costs for any modification to both computer systems and surveillance mechanisms and for information gathering, management, and recordkeeping systems or procedures, as well as any potential benefits resulting from the proposals for registrants, issuers, investors, brokers or dealers, other securities industry professionals, regulators, and other market participants.

Four commenters, the STA, UBS, SIFMA, and Amex provided comments related to the costs and benefits of the proposed rule amendments.[103] We discuss these comment letters below.

A. Removal of Price Test Restrictions

1. Benefits

In the Proposing Release, we solicited comment on any benefits that could be realized if the Commission adopts the proposed amendments, including both short-term and long-term benefits. In addition, we solicited comment regarding benefits to market efficiency, pricing efficiency, market stability, market integrity, and investor protection. Only the STA submitted comments noting benefits of the proposed amendments.[104]

In its comment letter, the STA noted that it does not believe that the proposed amendments would result in higher trading costs or wider spreads.[105] In addition, the STA stated that it believes the proposed amendments would lead to a reduction in surveillance and compliance costs.[106]

We believe that this is an appropriate time to remove existing price test restrictions because current price test regulation is inconsistent across markets, potentially creates an unlevel playing field, allows for regulatory arbitrage and has not kept pace with the types of trading systems and strategies currently used in the marketplace. In addition, today's markets are characterized by high levels of transparency and regulatory surveillance. These characteristics greatly reduce the risk of undetected manipulation and permit regulators to monitor for the types of activities that Rule 10a–1 and other price tests are designed to prevent.

We believe that the removal of current price test restrictions will benefit market participants by providing market participants with the ability to execute short sales in all securities in all market centers without regard to price test restrictions. In addition, market centers will be competing for executions on a level playing field because they will not be affected by the existence or non-existence of price test restrictions.

We also believe that removing all current price test restrictions is preferable to applying different tests in different markets, which can require market participants to apply different rules to different securities depending on which market the trade is executed. Thus, we believe that the amendments will reduce confusion and compliance difficulties for market participants.

We also believe that the amendments will benefit exchanges and other market centers because market participants will no longer be able to select a market on which to execute a short sale based on the applicability of price test restrictions. The amendments will remove a competitive disadvantage purportedly experienced by some market centers because market participants will no longer route orders to avoid application of a market center's price test. Nor will market centers that do not have a price test be able to use that factor to attract order flow away from market centers that have a price test.

In addition, the amendments will result in benefits associated with systems and surveillance mechanisms because these systems and mechanisms will no longer need to be programmed to account for price test restrictions based on last sale and last bid information. We also note that in the absence of price test restrictions, new staff (compliance personnel, associated persons, etc.) will no longer need to be trained regarding rules relating to price tests. Over the long run, we believe this will likely lead to decreased training and compliance costs for market participants.

We also believe that the amendments will lead to a reduction in costs because market participants and their lawyers, both in-house and outside counsel, will no longer need to make either informal (phone calls) or formal (letters) requests for exemptions from Rule 10a–1.

In addition, we anticipate that the removal of price test restrictions may result in increased price efficiency because prices will be determined by buy and sell interest, without any artificial restraints on short selling.

2. Costs

We recognize that the amendments may result in some costs to market participants. As an aid to evaluating the costs of the proposed amendments, we solicited comment in the Proposing Release. In particular, we sought comment regarding the costs of the proposed amendments to market participants, including broker-dealers and SROs, related to systems changes to computer hardware and software, reprogramming costs, and surveillance and compliance costs, including whether these costs would be incurred on a one-time or ongoing basis.[107] Four commenters, the STA, UBS, SIFMA and Amex submitted comments regarding costs associated with the proposed amendments.[108]

In their comment letters, the STA, UBS and SIFMA noted potential reprogramming costs that market participants may incur if the Commission does not act on the proposed amendments prior to market participants reprogramming their systems in response to the new regulatory framework created by

[101] 15 U.S.C. 78s(b).

[102] *See* Proposing Release, 71 FR at 75078–75079.

[103] *See* STA Letter, *supra* note 23; UBS Letter, *supra* note 23; SIFMA Letter, *supra* note 23; Amex Letter, *supra* note 44.

[104] *See* STA Letter, *supra* note 23.

[105] *See id.*

[106] *See id.*

[107] *See* Proposing Release, 71 FR at 75079–75080.

[108] *See* STA Letter, *supra* note 23; UBS Letter, *supra* note 23; SIFMA Letter, *supra* note 23; Amex Letter, *supra* note 44.

Regulation NMS [109] and the desire of investors and other market participants for more automated and efficient trading services.[110] On January 24, 2007, we extended the date for all automated trading centers (both SRO trading facilities and Alternative Display Facility participants) to have fully operational Regulation NMS-compliant trading systems to July 9, 2007 (the ''Regulation NMS Compliance Date'').[111] In meeting the Regulation NMS Compliance Date, market participants have been developing new systems or modifying existing systems to be Regulation NMS-compliant.

In their comment letters, STA, UBS, and SIFMA urged the Commission to act on the proposed amendments prior to the Regulation NMS Compliance Date.[112] In its letter, STA noted that ''[i]f the SEC's proposal is implemented subsequent to the operation of Regulation NMS to certain securities, it will require industry-wide reprogramming of Regulation NMS compliance systems during the infancy of the Rules implementation, a most sensitive time period. As a result, the immediate success of Regulation NMS could be compromised.'' [113] As discussed in Section IX below, these amendments will be effective immediately upon publication in the **Federal Register**. Thus, market participants will have notice and time prior to the Regulation NMS Compliance Date to reprogram their systems without regard to current price test restrictions.

In its comment letter, Amex stated that ''[w]hile it is difficult to predict future trading activities and the resultant need for new or different regulatory programs, [its] best estimate is that there would probably be no material impact on [its] regulatory costs.'' [114] Amex noted that although staff time and technology resources would no longer be required to monitor compliance with price tests, surveillance by Amex staff of order marking violations would still be required. In addition, Amex commented that ''the absence of a tick test to discourage potential ''bear raids'' and other manipulative activities could result in the need to devote additional resources to such regulatory programs than is currently the case.'' [115]

We believe that costs associated with the amendments will be minimal because the infrastructure necessary to comply with the amendments are, for the most part, already be in place. Market participants have needed to establish or modify their systems and surveillance mechanisms to exempt those securities included in the Pilot from all price test restrictions.[116] In addition, any further changes to systems and surveillance mechanisms or procedures will be relatively minor because the amendments will remove all price test restrictions rather than, for example, impose a modified price test. We also believe that market participants will not need to incur costs to purchase new systems, or increase staffing based solely on the implementation of the amendments.

Although we recognize that market participants may incur costs to modify, establish or implement existing or new supervisory and compliance procedures due to the amendments, these costs will be minimal because market participants already have in place supervisory or compliance procedures to monitor for trading activity that current price test restrictions are designed to deter.

We recognize that SROs that have adopted price tests will incur costs associated with removing such price tests. For example, the NASD and Nasdaq have their own bid tests that, under the amendments, will no longer be applicable.[117] In addition, some exchanges have adopted rules in conformity with the provisions of Rule 10a–1, which will no longer be applicable. SROs may incur costs associated with the processes to remove such rules, including filing rule changes with the Commission, as well as reprogramming systems designed to enforce these rules. Although we requested comment regarding these costs, including costs relating to preparing and filing any necessary rule changes with the Commission,[118] we did not receive any comments.

We also recognize that the amendments may increase transaction costs, decrease quoted depth, and increase intraday price volatility, particularly in small stocks. The Pilot results suggest, however, that these changes are small in magnitude and would not significantly increase costs or reduce liquidity.[119]

B. Removal of ''Short Exempt'' Marking Requirement

1. Benefits

We are amending Rule 200(g) of Regulation SHO to remove the ''short exempt'' marking requirement.[120] Rule 200(g)(2) of Regulation SHO provides that a short sale order must be marked ''short exempt'' if the seller is ''relying on an exception from the tick test of 17 CFR 240.10a–1, or any short sale price test of any exchange or national securities association.'' [121] Thus, because we are removing all current price test restrictions, as well as prohibiting any SRO from having a price test, the ''short exempt'' marking requirement will no longer be applicable. In addition, we note that removing the ''short exempt'' marking requirement will promote regulatory simplification because the marking requirement will no longer be applicable.

2. Costs

Although we sought public comment on costs, we did not receive any such comments relating to this proposed amendment. We recognize, however, that there may be some costs associated with removing the ''short exempt'' marking requirement. Some market participants, including broker-dealers and SROs, may have to reprogram systems and update supervisory procedures due to the removal of the ''short exempt'' marking requirement. Sales of securities previously marked ''short exempt,'' however, will continue to be marked either ''long'' or ''short.'' Thus, we believe that such costs will be minor.

[109] *See* Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[110] *See* STA Letter, *supra* note 23; UBS Letter, *supra* note 23; SIFMA Letter, *supra* note 23.

[111] *See* Exchange Act Release No. 55160 (Jan. 24, 2007), 72 FR 4202 (Jan. 30, 2007).

[112] *See* STA Letter, *supra* note 23; UBS Letter, *supra* note 23; SIFMA Letter, *supra* note 23.

[113] STA Letter, *supra* note 23. In addition, in its comment letter, SIFMA urged the Commission to take steps to eliminate price test restrictions prior to the Regulation NMS Compliance Date to alleviate the necessity for firms to, in the course of instituting programming changes to meet the new requirements of Regulation NMS, program systems to comply with price test restrictions, only to be required to reverse such programming costs shortly thereafter. SIFMA stated that cost estimates for firms to program for such changes varied, from as low as approximately $200,000 for some firms to as high as $2 million for others. *See* SIFMA Letter, *supra* note 23.

[114] Amex Letter, *supra* note 44.

[115] *Id.*

[116] The Pilot exempts a select group of securities from price test restrictions during regular trading hours. Between the close of the consolidated tape and the open of the consolidated tape on the following day, however, all equity securities are exempted from price test restrictions. *See* 69 FR at 48033.

[117] *See* NASD Rule 5100, *available at http://nasd.complinet.com/nasd/display/display.html?rbid=1189&record_id=1159007939&element_id=1159006014&highlight=5100#r1159007939*; Nasdaq Rule 3350, available at *http://nasdaq.complinet.com/nasdaq/display/display.html?rbid=1705&element_id=16*.

[118] *See* Proposing Release, 71 FR at 75079–75080.

[119] *See id.* at 75072–75075 (discussing the results of the Pilot).

[120] 17 CFR 242.200(g).

[121] *See id.* at § 242.200(g)(2).

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and whenever it is required to consider or determine if an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.[122] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[123] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release, we solicited comment on the proposed amendments' effects on efficiency, competition, and capital formation. In addition, we requested, but did not receive, comments regarding the impact of the proposed amendments on the economy generally pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[124]

We have considered the proposed amendments to Rule 10a–1 and Regulation SHO in light of the standards of Section 23(a)(2) of the Exchange Act and believe the adopted amendments will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

The amendments will remove the price test restrictions of Rule 10a–1 [125] and provide that no price test, including any price test of any SRO, shall apply to short sales in any security. The amendments will also prohibit any SRO from having a price test. In addition, the amendments will remove the ''short exempt'' marking requirement of Rule 200(g) of Regulation SHO because this marking requirement applies only if the seller is relying on an exception from the tick test of Rule 10a–1 or any short sale price test of any exchange or national securities association.

Current short sale regulation is inconsistent. For example, Rule 10a–1 applies only to short sale transactions in listed securities. The NASD's and Nasdaq's bid tests apply only to Nasdaq Global Market securities. No price tests apply to short sales in Nasdaq Capital Market securities or securities quoted on the OTCBB or pink sheets. In addition, no price test applies to short sales of Nasdaq Global Market securities executed on exchanges trading Nasdaq securities on a UTP basis, unless the market on which the securities are being traded has adopted its own price test. Moreover, the current exceptions to, and exemptions from, the price tests for a wide range of short selling activities have limited the applicability of the restrictions contained in these rules. The end result is inconsistent short sale regulation of securities, depending on the market where the securities are trading, and the type of short selling activity. Thus, the amendments are intended to promote regulatory simplification and uniformity by no longer permitting the current price test restrictions on short selling.

We believe that the amendments will not harm efficiency because the empirical evidence from the Pilot Results shows that the Pilot did not adversely impact price efficiency. Further, market participants will no longer have to apply different price tests to securities trading in different markets.

In addition, we believe that the amendments will not have an adverse impact on capital formation because the empirical evidence from the Pilot Results shows that the price tests have very little impact on overall market quality and, particularly in large securities, may be harmful to overall market quality.

We believe that the amendments will promote competition among exchanges and other market centers because market participants will no longer be able to select a market on which to execute a short sale based on the applicability of price test restrictions. The amendments will remove a purported competitive disadvantage experienced by some market centers because market participants will no longer route orders to avoid application of a market center's price test. Nor will market centers that do not have a price test be able to use that factor to attract order flow away from market centers that have a price test. Moreover, the amendments will level the playing field for all market participants by requiring that no price test shall apply to any short sale in any security in any market.[126]

VIII. Final Regulatory Flexibility Analysis

The Commission has prepared the Final Regulatory Flexibility Analysis (''FRFA''), in accordance with the provisions of the Regulatory Flexibility Act (''RFA''),[127] regarding the proposed amendments to Rule 10a–1 and Regulation SHO, Rules 200 and 201, under the Exchange Act.

A. Need for the Amendments

Based on the Pilot Results as well as our review of the status of short sale regulation in the context of the current application of Rule 10a–1 and other price tests, including the exceptions to the current rules and grants of relief from Rule 10a–1 by the Commission for a wide range of short selling activities, we believe it is necessary to remove Rule 10a–1 and to amend Regulation SHO to provide that no price test, including any price test by any SRO, shall apply to short selling in any security. In addition, the amendments will prohibit any SRO from having a price test. These amendments are designed to modernize and simplify short sale regulation in light of current short selling systems and strategies used in the marketplace, while providing greater regulatory consistency to short selling. We are also removing the ''short exempt'' marking requirement of Regulation SHO because this requirement only applies if a seller is relying on an exception to a price test.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Analysis (''IRFA'') appeared in the Proposing Release.[128] We requested comment in the IRFA on the impact the proposed amendments would have on small entities and how to quantify the impact. We received two comment letters generally discussing the impact of the proposed amendments to remove price test restrictions on small issuers,[129] which we discuss below.

[122] 15 U.S.C. 78c(f).

[123] 15 U.S.C. 78w(a)(2).

[124] Pub. L. 104–121, tit. II, 110 Stat. 857 (1996).

[125] 17 CFR 242.10a–1.

[126] Although we recognize there could conceivably be a need in the future for SROs to propose new price test restrictions, in considering whether to approve any such proposals, the Commission would, among other things, determine whether or not such proposals are consistent with the objectives of today's amendments. Additionally, in order for an SRO to adopt new price test restrictions pursuant to Section 19(b) of the Exchange Act, an exemption from the provisions of Rule 201 pursuant to Section 36 of the Exchange Act would be necessary.

[127] 5 U.S.C. 604.

[128] *See* Proposing Release, 71 FR at 75081–75082.

[129] *See* IASBDA Letter, *supra* note 39; Amex Letter, *supra* note 44. IASBDA expressed concern that the proposed amendments might ''unnecessarily force small issuers to accept an environment which is most unkind to their securities.'' *See* IASBDA Letter, *supra* note 39. In its letter, Amex advocated for additional study of the effects of price test restrictions on small capitalization securities before the Commission removes such restrictions on these securities. *See* Amex Letter, *supra* note 44.

C. Small Entities Subject to the Rule

The entities covered by the amendment will include small broker-dealers, small businesses, and any investor who effects a short sale that qualifies as a small entity. Although it is impossible to quantify every type of small entity that may be able to effect a short sale in a security, Paragraph (c)(1) of Rule 0–10 under the Exchange Act [130] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. In the IRFA in the Proposing Release, we estimated that as of 2005, there were approximately 910 broker-dealers that qualified as small entities as defined above.[131] Presently, we estimate that as of 2006 there are approximately 894 broker-dealers that qualify as small entities, as defined above.[132]

Paragraph (e) of Rule 0–10 under the Exchange Act [133] states that the term ''small business'' or ''small organization,'' when referring to an exchange, means any exchange that: (1) Has been exempted from the reporting requirements of Rule 11Aa3–1 under the Exchange Act; and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization, as defined by Rule 0–10. No national securities exchanges are small entities because none meets these criteria. There is one national securities association (NASD) that is subject to these amendments. NASD is not a small entity as defined by 13 CFR 121.201.

Any business, however, regardless of industry, will be subject to the amendments if it effects a short sale. The Commission believes that, except for the broker-dealers discussed above, an estimate of the number of small entities that fall under the amendments is not feasible.

D. Reporting, Recordkeeping, and Other Compliance Requirements

We recognize that the amendments may impose some new or additional reporting, recordkeeping, or compliance costs on any affected party, including broker-dealers, that are small entities.

As discussed above, three commenters noted potential reprogramming costs that market participants may incur if the Commission does not act on the proposed amendments prior to the Regulation NMS Compliance Date. In meeting the Regulation NMS Compliance Date, market participants have been developing new systems or modifying existing systems to be Regulation NMS-compliant. In their comment letters, STA, UBS, and SIFMA urged the Commission to act on the proposed amendments prior to the Regulation NMS Compliance Date.[134] In its letter, STA noted that ''[i]f the SEC's proposal is implemented subsequent to the operation of Regulation NMS to certain securities, it will require industry-wide re-programming of Regulation NMS compliance systems during the infancy of the Rules implementation, a most sensitive time period. As a result, the immediate success of Regulation NMS could be compromised.'' [135] As discussed in Section IX below, these amendments will be effective immediately upon publication in the **Federal Register**. Thus, market participants will have notice and time prior to the Regulation NMS Compliance Date to reprogram their systems without regard to current price test restrictions.

In order to comply with the Pilot when it became effective on May 2, 2005, small entities needed to modify their systems and surveillance mechanisms to exempt those securities included in the Pilot from current price test restrictions. Thus, the systems and surveillance mechanisms required to comply with the amendments are already in place. We believe that any necessary additional systems and surveillance changes will be small because, due to the Pilot, systems are currently programmed to exempt many securities from price test restrictions prior to the close of the consolidated tape and exempt all securities from price test restrictions between the close of the consolidated tape and the open of the consolidated tape on the following day.

We believe that any reprogramming costs or updating of surveillance mechanisms associated with the removal of the ''short exempt'' marking requirement will be minimal because sales of securities will continue to be required to be marked either ''long'' or ''short.'' The amendments will merely remove an alternative marking requirement.

E. Agency Action To Minimize the Effect on Small Entities

The RFA directs the Commission to consider significant alternatives that will accomplish the stated objective, while minimizing any significant adverse impact on small entities. Pursuant to Section 3(a) of the RFA,[136] the Commission considered the following types of alternatives in connection with the amendments: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

The amendments are intended to modernize and simplify price test regulation by removing restrictions on the execution prices of short sales contained in current price tests, such as Rule 10a–1. As such, we believe that imposing different compliance requirements, and possibly a different timetable for implementing compliance requirements, for small entities would undermine the goal of the amendments. In particular, the request by IASBDA and Amex for a gradual phase-in of the amendments to permit price test restrictions to continue for small securities pending further study, would cause considerable uncertainty, such as how to treat securities that episodically move between the definition of small and large capitalization. Moreover, we do not believe that such an approach would provide new results relevant to smaller securities. As we noted in the Proposing Release, while there is some evidence supporting the application of price test restrictions to smaller securities, the evidence is not strong enough to warrant its continuation in any subset of securities.[137] In addition, we note that many smaller or thinly-traded securities, such as Nasdaq Capital Market securities, and securities

[130] 17 CFR 240.0–10(c)(1).

[131] These numbers are based on OEA's review of 2005 FOCUS Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

[132] These numbers are based on OEA's review of 2006 FOCUS Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent in their FOCUS Report filings.

[133] 17 CFR 240.0–10(e).

[134] *See* STA Letter, *supra* note 23; UBS Letter, *supra* note 23; SIFMA Letter, *supra* note 23.

[135] STA Letter, *supra* note 23.

[136] 5 U.S.C. 603(c).

[137] *See* Proposing Release, 71 FR at 75076. *See also, supra,* note 65 (discussing a prior study by academics of price test restrictions on smaller securities).

quoted on the OTCBB and pink sheets, are not currently subject to any price test restrictions.

Thus, we have concluded that it would be inconsistent with the goal of the amendments to phase-in small capitalization securities or to further clarify, consolidate, or simplify the amendments for small entities. Finally, the amendments will impose performance standards rather than design standards.

IX. Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act (''APA'') generally provides that a substantive rule may not be made effective less than 30 days after notice is published in the **Federal Register**.[138] Two exceptions to the 30-day requirement, among others, are (i) for a substantive rule that relieves a restriction, and (ii) an agency's finding of good cause for providing a shorter effective date.[139]

The amendments will remove all current restrictions on the price at which a security can be sold short. Because the amendments relieve a restriction on short selling, these amendments may be made effective less than 30 days after notice is published in the **Federal Register**.

In addition, we note that a number of commenters to the proposed amendments discussed potential reprogramming costs that market participants may incur if the proposed amendments are not effective prior to the Regulation NMS Compliance Date.[140] In meeting the Regulation NMS Compliance Date, market participants have been developing new systems or modifying existing systems to be Regulation NMS-compliant. Immediate effectiveness of these amendments is necessary to provide market participants with sufficient notice and time prior to the Regulation NMS Compliance Date to reprogram their systems without regard to current price test restrictions.

Specifically, immediate effectiveness of the amendments is expected to alleviate any necessity for market participants to, in the course of instituting programming changes to meet the requirements of Regulation NMS, program systems to comply with price test restrictions, only to be required to reverse such programming shortly thereafter. Absent immediate effectiveness, market participants may expend unnecessary time and resources programming systems to comply with price test restrictions that are being removed. Thus, the Commission finds that there is good cause for making the amendments effective immediately upon publication in the **Federal Register**.

X. Statutory Authority and Text of the Amendments

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 6, 9(a), 10(a), 11A, 15, 15A, 17, 17A, 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78f, 78i(a), 78j(a), 78k–1, 78o, 78o–3, 78q, 78q–1, 78w(a), the Commission is removing Rule 10a–1, § 240.10a–1, and amending Regulation SHO, §§ 242.200 and 201.

Text of the Amendments to Rule 10a–1 and Regulation SHO

List of Subjects in 17 CFR Parts 240 and 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et. seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 240.10a [Removed]

■ 2. Section 240.10a–1 is removed and reserved and the undesignated heading preceding the section is removed.

PART 242—REGULATIONS M, SHO, ATS, AC AND NMS, AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 3. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 4. Section 242.200 is amended by revising the introductory text of paragraph (g) and removing and reserving paragraph (g)(2) to read as follows:

§ 242.200 Definition of ''short sale'' and marking requirements.

* * * * *

(g) A broker or dealer must mark all sell orders of any equity security as ''long'' or ''short.''

* * * * *

■ 5. Section 242.201 is added to read as follows:

§ 242.201 Price test.

(a) No short sale price test, including any short sale price test of any self-regulatory organization, shall apply to short sales in any security.

(b) No self-regulatory organization shall have any rule that is not in conformity with, or conflicts with, paragraph (a) of this section.

Dated: June 28, 2007.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–12868 Filed 7–2–07; 8:45 am]

BILLING CODE 8010–01–P

[138] 5 U.S.C. 553(d).

[139] *See id.* at 553(d)(1), 553(d)(3).

[140] *See, e.g.,* STA Letter, *supra* note 23; UBS Letter, *supra* note 23; SIFMA Letter, *supra* note 23.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 402

[Regulation No. 2; Docket No.—SSA–2007–0020]

RIN 0960–AG46

Technical Amendments To Correct Cross-References; Correction

AGENCY: Social Security Administration.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations published in the **Federal Register** of Thursday, March 29, 2007 (72 FR 14669). The regulations were intended to correct incorrect cross-references in the CFR.

DATES: *Effective Date:* Effective on July 3, 2007.

FOR FURTHER INFORMATION CONTACT: Rosemarie A. Greenwald, Social Insurance Specialist, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call (410) 966–7813 or TTY 1–800–325–0778 for information about these correcting amendments. For information on eligibility or filing for benefits, call our national toll-free numbers 1–(800)–772–1213 or TTY 1–(800)–325–0778. You may also contact Social Security online at *http://www.socialsecurity.gov/*.

SUPPLEMENTARY INFORMATION:

Background

The final regulations published March 29, 2007, changed cross-references in 20 CFR 402.35(b)(2) from §§ 404.984(b), 410.610c(b) and 416.1484(b) to §§ 404.985(c), 410.670c(b) and 416.1485(c), respectively. However, two of the new cross-references, §§ 404.985(c) and 416.1485(c) should have been §§ 404.985(b) and 416.1485(b). In addition, we omitted another set of corrections in the same CFR section. The next-to-last sentence incorrectly cites 20 CFR 404.984, 410.610, and 416.1484, which should correctly read as 20 CFR 404.985(c), 410.670c, and 416.1485(c), respectively.

Need for Correction

As published, the final regulations contained errors at 20 CFR 402.35(b)(2). Therefore, we are changing the last two sentences of that section to reflect correct CFR citations and cross-references.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance and 96.006 Supplemental Security Income.)

List of Subjects in 20 CFR Part 402

Administrative practice and procedure; Freedom of information.

Dated: June 27, 2007.

Paul Kryglik,

Acting SSA Regulations Officer.

■ Accordingly, part 402 of chapter III of title 20 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

■ 1. The authority citation for part 402 continues to read as follows:

Authority: Secs. 205, 702(a)(5), and 1106 of the Social Security Act; (42 U.S.C. 405, 902(a)(5), and 1306); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905; 26 U.S.C. 6103; 30 U.S.C. 923(b); 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 2. Section 402.35 is being corrected by revising the second and third sentences of paragraph (b)(2) to read as follows:

§ 402.35 Publication.

* * * * *

(b) * * *

(2) * * * They are binding on all components of the Social Security Administration, except with respect to claims subject to the relitigation procedures established in 20 CFR 404.985(c), 410.670c, and 416.1485(c). For a description of Social Security Acquiescence Rulings, see 20 CFR 404.985(b), 410.670c(b), and 416.1485(b) of this title.

* * * * *

[FR Doc. E7–12828 Filed 7–2–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 2007N–0198]

Medical Devices; General Hospital and Personal Use Devices; Classification of the Filtering Facepiece Respirator for Use by the General Public in Public Health Medical Emergencies

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the filtering facepiece respirator for use by the general public in public health medical emergencies into class II (special controls). The agency is classifying these devices into class II (special controls) in order to provide a reasonable assurance of the safety and effectiveness of these devices and is specifying what those special controls are.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document entitled, ''Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Filtering Facepiece Respirator for Use by the General Public in Public Health Medical Emergencies.'' This guidance document will serve as one of the special controls, along with certification of the respirator by the National Institute for Occupational Safety and Health (NIOSH) in accordance with its regulations for non-powered air-purifying particulate respirators, found in 42 CFR part 84, as specified in the classification regulation.

DATES: This rule is effective August 2, 2007. The classification was effective May 8, 2007.

FOR FURTHER INFORMATION CONTACT: Sheila A. Murphey, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3700.

SUPPLEMENTARY INFORMATION:

I. What is the Background of this Rulemaking?

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

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

In accordance with section 513(f)(1) of the act, FDA issued an order on August 30, 2006, classifying the two 3M filtering facepiece respirators intended for use by the general public in public health medical emergencies (designated at that time as the 3M™ N95 Home Respirator with Fluid Resistance and 3M™ N95 Home Respirator) in class III, because each device was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or class II. On October 3, 2006, 3M Inc. submitted a petition requesting initial classification of these devices under section 513(f) (2) of the act. The manufacturer recommended that the

devices be classified into class II (Ref. 1). In response to FDA requests for additional information, 3M supplemented its petition on March 22, 2007.

In accordance with section 513(f) (2) of the act, FDA reviewed the petition in order to classify the devices under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition and its supplements, FDA determined that the 3M™ filtering facepiece respirator devices, now known as the 3M™ 8612F Respirator for Use by the General Public in Public Health Medical Emergencies and 3M™ 8670F Respirator for Use by the General Public in Public Health Medical Emergencies can be classified into class II with the establishment of special controls. FDA believes that special controls, in addition to general controls, are adequate to provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish special controls to provide such assurance.

The device is assigned the generic name ''Filtering Facepiece Respirator for use by the General Public in Public Health Medical Emergencies'' and is identified as a device that is a disposable half-facepiece non-powered air-purifying particulate respirator intended for use to cover the nose and mouth of the wearer to help reduce wearer exposure to pathogenic biological airborne particulates during a public health medical emergency. The device is made of polymeric materials and is intended to fit closely to the face and to function by filtering particulate material.

FDA believes that special controls are needed to help address the following issues affecting the safety and effectiveness of the filtering facepiece respirator for use by the general public in public health medical emergencies.

A. Assuring Filtration and Breathability

For this type of respirator to reduce wearer exposure to pathogenic biological airborne particulates, it must be made of filter material that is highly efficient in filtering such particles. At the same time, because this type of device depends on the wearer's normal respiration to draw ambient air through the respirator materials and into the lungs, the respirator material must also permit adequate respiration.

B. Assuring Proper Fit

The device must fit closely to the wearer's face without any gaps that would allow air to reach the wearer's respiratory tract without passing through the filter material. Otherwise, improper fit of the respirator could result in inhalation of pathogenic biological airborne particulates carried in air that passes around the sides of the device.

C. Avoiding Adverse Skin Reaction

Reducing wearer exposure to pathogenic biological airborne particulates requires that the device be properly fitted to the face. If the respirator material in contact with the skin is not biocompatible, it may cause adverse reactions such as redness, pruritus, and skin irritation.

D. Assuring Proper Use

While a filtering facepiece respirator for use by the general public in public health medical emergencies can help to reduce wearer exposure to pathogenic biological airborne particulates in a public health medical emergency where there is a serious risk from such exposure, these devices do not provide complete protection against infection. Even when used correctly and consistently, a filtering facepiece respirator does not eliminate all respiratory exposure, and for many pathogens that may be transmitted through airborne particulates, transmission via other routes is also possible. (Because filtering facepiece respirators for use by the general public in public health medical emergencies have not been tested against specific microorganisms, the extent of protection to be expected against specific pathogens is not known and would vary with particular conditions in any event.)

The respirator should always be used in conjunction with other infection control and respiratory protection measures. In addition, because the outside of the respirator may be contaminated with infectious materials during normal use, proper handling and disposal is important to avoid the respirator itself becoming a vector of transmission of infectious agents.

Further, failure of the user to assure proper fit of the respirator could result in exposure to pathogenic biological airborne particles. Certain populations such as children will be unlikely to achieve a proper fit because respirators are designed and sized for adults.

For users with certain underlying cardiac, pulmonary or related medical conditions, achieving the fit necessary to help reduce their exposure to pathogenic biological airborne particulates may exacerbate their underlying medical conditions raising a concern about their safe use for these populations.

Finally, these respirators have not been established to be safe or effective if reused, and use of a single respirator by multiple users may result in the respirator itself becoming a vector of transmission.

To address these issues, the class II special controls guidance document provides recommendations for labeling and for information to be provided to meet premarket notification (510(k)) submission requirements for the device, including recommendations for fit testing and biocompatibility testing. In addition, this classification regulation specifies another special control, certification of the respirator by NIOSH as a non-powered air-purifying particulate respirator with a minimum filtration efficiency classification of N95, in accordance with 42 CFR part 84. The respirators that were the subject of the initial classification order described in this document and that are the initial legal predicate devices for this new device classification were certified by NIOSH under these requirements, as revised as of October 1, 2006. FDA's determination that NIOSH certification is an appropriate special control to help assure the safety and effectiveness of the respirator for its intended use under this classification rests on the assurance of filtration efficiency and breathability provided by NIOSH certification under these requirements, as effective on May 8, 2007, the date of FDA's classification order. Should NIOSH revise the requirements for certification in the future, FDA will evaluate whether certification under such revised NIOSH regulations is an appropriate special control for devices within this classification and may revise FDA's regulation using appropriate procedures.

FDA believes that these special controls, designated in this rule, in addition to general controls, address the issues identified previously and provide reasonable assurance of the safety and effectiveness of the device type. Thus, on May 8, 2007, FDA issued an order to the petitioner classifying the device type into class II. FDA is codifying this classification at 21 CFR 880.6260.

Following the effective date of the final classification rule, manufacturers will need to demonstrate NIOSH certification of any filtering facepiece respirator for use by the general public in public health medical emergencies,

as set forth in 21 CFR 880.6260(b)(1), and address the issues covered in the special controls guidance. With respect to the issues addressed only in the special control guidance, however, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For filtering facepiece respirators for use by the general public in public health medical emergencies, however, FDA has determined that premarket review of fit performance data, labeling, and other requirements as outlined in 21 CFR 807.87, is necessary to provide reasonable assurance that acceptable levels of performance for both safety and effectiveness will be addressed before marketing clearance. Thus, persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device type.

II. What is the Environmental Impact of This Rule?

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

III. What is the Economic Impact of This Rule?

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

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

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

IV. Does This Final Rule Have Federalism Implications?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

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

This final rule contains no new information collection provisions but refers to NIOSH regulations in 42 CFR part 84 that contain information collection provisions that have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), under OMB Control No. 0920–0109. Based on information from NIOSH regarding submissions for respirator certification received in the past 3 years, FDA concludes that specification of NIOSH certification as a special control will not result in the collection of any additional information by NIOSH not already covered by NIOSH's burden estimates. This final rule also designates a guidance document as a special control. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of that guidance document, ''Class II Special Controls Guidance Document: Filtering Facepiece Respirators for Use by the General Public in Public Health Medical Emergencies,'' which contains a Paperwork Reduction Act analysis for that guidance.

VI. What References are on Display?

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

1. Petition from 3M.
2. 42 CFR part 84, as revised as of October 1, 2006.

List of Subjects in 21 CFR part 880

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 880 is amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

■ 1. The authority citation for 21 CFR part 880 continues to read as follows:

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

■ 2. Section 880.6260 is added to subpart G to read as follows:

§ 880.6260 Filtering facepiece respirator for use by the general public in public health medical emergencies.

(a) *Identification.* A filtering facepiece respirator for use by the general public in public health medical emergencies is a device that is a disposable half-facepiece non-powered air-purifying particulate respirator intended for use to cover the nose and mouth of the wearer to help reduce wearer exposure to pathogenic biological airborne particulates during a public health medical emergency. The device is made of polymeric materials and is intended to fit closely to the face and to function by filtering particulate material.

(b) *Classification.* Class II (special controls). The special controls are:

(1) Certification by the National Institute for Occupational Safety and Health (NIOSH) as a non-powered air-

purifying particulate respirator with a minimum filtration efficiency classification of N95, in accordance with 42 CFR part 84.

(2) The FDA guidance document entitled: ''Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Filtering Facepiece Respirator for use by the General Public in Public Health Medical Emergencies.'' See § 880.1(e) for information on obtaining a copy of this guidance document.

Dated: June 22, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–12789 Filed 7–2–07; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0510; FRL–8334–4]

RIN 2060–AO46

Amendments to National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting and Secondary Copper Smelting Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the national emission standards for primary copper smelting area sources and secondary copper smelting area sources published on January 23, 2007. The amendments to the national emission standards for primary copper smelting area sources clarify when plants must exhaust gases to a control device and what control devices may be used for this requirement; numbering errors are also corrected. The amendments to the national emission standards for secondary copper smelting area sources clarify the date which defines a new copper smelter and correct a cross-referencing error.

DATES: This direct final rule is effective on October 1, 2007 without further notice, unless EPA receives adverse comment by August 2, 2007. If the effective date is delayed, timely notice will be published in the **Federal Register**. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments in this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0510 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* National Emission Standards for Hazardous Air Pollutants for Four Area Source Categories Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0510. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Four Area Source Categories Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2825; fax number: (919) 541–3207; e-mail address: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Why is EPA using a direct final rule?
II. Does this action apply to me?
III. Where can I get a copy of this document?
IV. What should I consider as I prepare my comments to EPA?
V. What are the changes to the NESHAP for primary copper smelting and secondary copper smelting area source?
  A. NEHSAP for Primary Copper Smelting Area Sources
  B. NESHAP for Secondary Copper Smelting Area Sources
VI. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer Advancement Act
  J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act

I. Why is EPA using a direct final rule?

EPA is publishing the rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. The amendments to the national emission standards for primary copper smelting area sources (40 CFR part 63, subpart EEEEEE) and secondary copper smelting area sources (40 CFR part 63, subpart FFFFFF) consist of technical and editorial corrections that do not make material changes to the rule requirements. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to make these amendments if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on the rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

The regulated categories and entities potentially affected by the final rule include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331411	Primary copper smelting area source facilities that produce copper from copper sulfide ore concentrates using pyrometallurgical techniques.
	331423	Area source facilities that process copper scrap in a blast furnace and converter or use another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11146 of subpart EEEEEE (National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Copper Smelting Area Sources) or 40 CFR 63.11153 of subpart FFFFFF (NESHAP for Secondary Copper Smelting Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

III. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

IV. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR–2006–0510. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

V. What are the changes to the NESHAP for primary copper smelting and secondary copper smelting area source?

A. NESHAP for Primary Copper Smelting Area Sources

On January 23, 2007 (72 FR 2944), we issued the NESHAP for Primary Copper Smelting Area Sources (40 CFR part 63, subpart EEEEEE). The final rule establishes air emission control requirements for new and existing primary copper smelters that use continuous or batch smelting technologies.

The final rule makes two technical clarifications to this NESHAP in paragraph (a)(2)(ii) of 40 CFR 63.11148 (What are the standards and compliance requirements for existing sources using batch copper converters?). The existing provision states that ''during periods when no copper ore concentrate feed is charged to or molten material tapped from the smelting vessel but the smelting vessel remains in operation to temporarily hold molten material in the vessel before resuming copper production, you must exhaust the process off gas from the smelting vessel to an electrostatic precipitator or baghouse prior to discharge to the atmosphere.'' As stated, this provision contains conflicting language because molten materials cannot be tapped from and held in a smelting vessel at the same time. Accordingly, we are removing the phrase ''or molten materials tapped from'' to clarify that the operating conditions when the owner or operator must exhaust the process off gas from a smelting vessel to an appropriate particulate matter (PM) control device is when no copper ore concentrate feed is charged to the smelting vessel but the smelting vessel remains in operation to temporarily hold molten material in the vessel before resuming copper production.

In addition, we are adding to this same provision in paragraph (a)(2)(ii) of 40 CFR 63.11148 ''wet scrubber'' as one of the types of PM control devices listed. Wet scrubbers are PM control devices that are used at some primary copper smelters for controlling PM emissions from smelting vessels during temporary holding operations. As we mentioned in the preamble to this NESHAP (72 FR 2932, 2938), we developed the standards for existing primary copper area source smelters

that use batch technology based on operations at batch converting facilities that we had determined to be effectively controlling their hazardous air pollutant emissions. One of these facilities uses a wet scrubber to control PM emissions from smelting vessels during the temporary holding operations described above. Having established the generally available control technology based on the use of a wet scrubber, we clearly did not intend to then exclude wet scrubbers from the types of PM control devices that affected owners and operators can use to comply with the rule requirement, nor would we have a basis for such exclusion. Accordingly, we are correcting 40 CFR 63.11148(a)(2)(ii) to include wet scrubbers as one of the types of control devices that can be used to meet the requirement in that provision.

We are also correcting numbering errors in paragraph (c) of 40 CFR 63.11150 (What general provisions apply to this subpart?). Currently paragraph (c) contains two paragraphs numbered as (c)(3), and the introductory text to paragraph (c) makes a reference to four instead of five paragraphs. Accordingly, in the paragraph (c) introductory text, the reference to paragraphs (c)(1) through (4) is corrected to (c)(1) through (5), and the numbering for paragraphs (c)(3), (4), (5) is corrected.

B. NESHAP for Secondary Copper Smelting Area Sources

On January 23, 2007 (72 FR 2952), we issued the NESHAP for Secondary Copper Smelting Area Sources (40 CFR part 63, subpart FFFFFF). The final rule corrects the date in § 63.11153(b), which defines a new affected source under this NESHAP. Both section 112(a)(4) of the Clean Air Act and the part 63 General Provisions at 40 CFR 63.2 define a ''new'' affected source as one for which construction or reconstruction commenced on or after the date EPA first proposes a relevant emission standard under section 112. In § 63.11153(b), we inadvertently defined a new source as being constructed or reconstructed before the date of proposal of this NESHAP (October 6, 2006). Therefore, we are amending § 63.11153(b) to correctly state that a new affected source is one that is constructed or reconstructed on or after October 6, 2006. We are also correcting a cross reference in 40 CFR 63.11157(b)(5). Paragraph (b)(5) of this section is corrected to refer to the work practice standard in § 63.11155(g) instead of § 63.11157(g), which is not only an incorrect reference but is also nonexistent.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA is taking this action to make certain technical and editorial corrections in the NESHAP for primary and secondary copper smelting area sources. These corrections do not include any information collection requirement.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of the area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (less than 1,000 employees for primary copper smelting and less than 750 employees for secondary copper smelting); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that small businesses in these area source categories will not incur any adverse impacts because EPA is taking this action to make certain technical and editorial corrections in the NESHAP for primary and secondary copper smelting area sources, and these corrections do not create any new requirements or burdens. No costs are associated with these amendments to the two NESHAP.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed

under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA is taking this action to make certain technical and editorial corrections to the NESHAP for primary and secondary copper smelting area sources. No costs are associated with these corrections. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. The technical and editorial corrections made through this action contain no requirements that apply to such governments, impose no obligations upon them, and will not result in any expenditures by them or any disproportionate impacts on them. Therefore, the final rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The final rule does not have federalism implications. The final rule makes certain technical and editorial corrections to the NESHAP for primary and secondary smelting area sources. These final corrections do not impose requirements on State and local governments. They have no 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. Thus, Executive Order 13132 does not apply to the final rule.

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

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule does not have tribal implications, as specified in Executive Order 13175. The final rule makes certain technical and editorial corrections to the NESHAP for primary and secondary copper smelting area sources. These final corrections do not impose requirements on tribal governments. They also have no direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to the final rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

EPA interprets Executive Order 13045 as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it makes technical and editorial corrections to NESHAP that are based on technology performance and not on health or safety risks.

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

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

I. National Technology Transfer Advancement Act

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

The final rule does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The technical and editorial corrections in the final rule do not change the level of control required by the NESHAP.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General

of the United States. EPA will submit a report containing these final rule amendments 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 final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on October 1, 2007.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and Recordkeeping requirements.

Dated: June 27, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart EEEEEE—[Amended]

■ 2. Section 63.11148 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 63.11148 What are the standards and compliance requirements for existing sources using batch copper converters?

(a) * * *

(2) * * *

(ii) During periods when no copper ore concentrate feed is charged to the smelting vessel but the smelting vessel remains in operation to temporarily hold molten material in the vessel before resuming copper production, you must exhaust the process off gas from the smelting vessel to an electrostatic precipitator, wet scrubber, or baghouse prior to discharge to the atmosphere.

* * * * *

■ 3. Section 63.11150 is amended as follows:

■ a. By revising paragraph (c) introductory text.

■ b. By redesignating paragraph (c)(4) as paragraph (c)(5).

■ c. By redesignating the second paragraph (c)(3) as paragraph (c)(4).

§ 63.11150 What General Provisions apply to this subpart?

* * * * *

(c) If you own or operate an existing affected source subject to § 63.11148, your notification of compliance status required by § 63.9(h) must include the information specified in paragraphs (c)(1) through (5) of this section.

* * * * *

Subpart FFFFFF—[Amended]

■ 4. Section 63.11153 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 63.11153 Am I subject to this subpart?

* * * * *

(b) * * * Your secondary copper smelter is a new affected source if you commenced constructed or reconstruction of the affected source on or after October 6, 2006.

* * * * *

■ 5. Section 63.11157 is amended by revising paragraph (b)(5) to read as follows:

§ 63.11157 What General Provisions apply to this subpart?

* * * * *

(b) * * *

(5) This certification of compliance, signed by a responsible official, for the work practice standard in § 63.11155(g): ''This facility has an approved monitoring plan in accordance with § 63.11155(g).''

[FR Doc. E7–12847 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Time and Material and Labor Hour (T&M/LH) Contracts for Commercial Items

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards (CAS) Board, has adopted, without change, a final rule to provide an exemption for T&M/LH contracts for commercial items. This rulemaking is authorized pursuant to Section 26 of the Office of Federal Procurement Policy Act.

DATES: *Effective Date:* July 3, 2007.

FOR FURTHER INFORMATION CONTACT: Laura Auletta, Manager, Cost Accounting Standards Board, 725 17th Street, NW., Room 9013, Washington, DC 20503 (telephone: 202–395–3256).

SUPPLEMENTARY INFORMATION:

A. Background

On January 4, 2006, the Cost Accounting Standards Board published a proposed rule with request for comment (71 FR 313) for the purpose of providing an exemption for T&M/LH contracts for commercial items. The final rule adopts the proposed rule without change, thereby exempting T&M/LH contracts from CAS coverage.

The Board's action is consistent with its previous actions to exempt those types of contracts permitted by Congress for the acquisition of commercial items. For example, on June 6, 1997, 1996, the Board issued a final rule implementing the Federal Acquisition Reform Act (FARA) by providing an exemption from CAS for contracts for the acquisition of commercial items that are firm fixed price and fixed price with economic price adjustment (except when the adjustment is made on the basis of actual costs). At the time the CAS Board implemented this exemption, FAR limited the permissible contract types for the acquisition of commercial items to firm fixed price and fixed price with economic price adjustment. Effective February 12, 2007, FAR was amended to add T&M/LH contracts as an acceptable contract type for acquiring commercial items. This final rule is consistent with that FAR amendment.

B. Public Comments

The Board received six sets of public comments in response to the Proposed Rule.

1. Support Issuance of the Proposed Rule

Comment: Three commenters supported the issuance of the final rule.

Response: The Board thanks the commenters for their comments.

2. The Proposed Exemption Is Not Required by SARA

Comment: One commenter opined that the proposed exemption is not required by SARA and that the CAS Board made an ''erroneous leap of logic to state that a CAS exemption exists when the statute provides that CAS is not mandatory.''

Response: The Board believes an exemption is appropriate at this time in light of the recently promulgated final FAR rule that implements Section 1432 of the National Defense Authorization Act for Fiscal Year 2004 (SARA) (Pub. L. 108–136), which expressly authorized the use of time-and-materials (T&M) and labor-hour (LH) contracts for the

acquisition of certain categories of commercial services. Based on the provisions in the final FAR rule, the Board believes there is no significant benefit to the application of CAS to T&M/LH contracts for commercial items. The Board's specific rationale is discussed below.

Under the FAR provisions, a T&M contract is composed of a ''time'' element and a ''materials'' element, while a LH contract is only composed of a ''time'' element. The time element in a T&M/LH contract is a fixed hourly rate by labor category. Under the FAR provisions for T&M/LH contracts for commercial items, these fixed hourly rates are determined based on adequate price competition without the submission of cost or pricing data. These fixed rates apply to both prime and subcontractor labor (except subcontracts for incidental services). These fixed hourly rates are akin to a firm fixed price contract awarded on the basis of adequate competition without submission of cost or pricing data. Such contracts are currently exempt from CAS requirements because there is no discernible benefit from applying CAS. The Board believes the same logic applies to these fixed hourly rates, and thus there is no benefit to applying CAS to the ''time'' element of a T&M/LH contract for commercial items.

In regards to the materials element, the FAR provisions for T&M contracts for commercial items define materials as including indirect costs, direct materials, and other direct costs. Under these FAR provisions, indirect costs are reimbursed at a fixed amount established at the time of contract award, *i.e.*, there is no adjustment for indirect costs based on actual costs occurred. Thus, consistent with the prior discussion regarding the fixed hourly rate, there is no benefit to applying CAS to these fixed amounts.

Conversely, the FAR provisions provide for reimbursement of direct materials and other direct costs based on actual costs. However, the FAR also includes some limitations on such reimbursement. For example, the FAR provides for reimbursement of the actual cost of these materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the contractor has made payments for the materials in accordance with the terms and conditions of the agreement or invoice, or makes these payments within 30 days of the submission of the Contractor's payment request to the Government. The FAR also requires the contractor to obtain the materials at the most advantageous prices available (with due regard to securing prompt delivery of satisfactory materials) and to give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract. Furthermore, the FAR provision limits reimbursement of other direct costs to those cost elements specifically listed in the contract.

Based on the above discussion, the Board believes the existing FAR provisions provide adequate coverage regarding the reimbursement of direct materials and other direct costs. As noted earlier, the remainder of the contract price/cost is based on fixed hourly rates and/or amounts established at the time of award based on adequate competition without the submission of cost or pricing data. Thus, the Board has concluded that it is appropriate to exempt T&M/LH contracts for commercial items from CAS coverage. The Board notes that this position is consistent with the Board's May 1992 Statement of Objectives, Policies and Concepts (''the cost of an accounting application should not exceed its benefit'').

3. T&M/LH Contracts Should Be Considered Cost-Reimbursement Type Contracts

Comment: One commenter asserted that T&M/LH contracts should be considered cost-reimbursement type contracts because the premise that labor rates are fixed under a T&M/LH contract is faulty, and T&M/LH contracts ''can never be subject to adequate price competition'' because there is no price established at the time the contract is awarded. The commenter also opined that the proposed CAS exemption removes the protection against a contractor's double-counting of costs, the inclusion of unallowable costs and the inconsistent application of the accounting period under fixed T&M/LH contacts.

Response: As noted in those comments, there are some elements of a T&M contract for commercial items that are fixed (*e.g.*, fixed hourly rates and fixed indirect costs) and others that are based on actual cost (*e.g.* direct materials and other direct costs). As such, it is necessary to analyze each aspect of the T&M/LH contract to determine if an exemption is appropriate, rather than trying to classify T&M contracts as ''cost reimbursement'' or ''fixed price.'' The Board's rationale in response to Comment 2 provides this necessary analysis.

4. CAS Applicability to Large Dollar Sole Source T&M/LH Contracts

Comment: One commenter opined that the proposed rule should not exempt ''very large dollar value T&M/LH task and delivery orders to be awarded on what is effectively a sole source basis without the protections afforded by CAS.''

Response: The commenter asserts that this exemption may be used to exempt from CAS indefinite delivery/indefinite quantity contracts under which very large dollar value T&M/LH task or delivery orders are awarded on ''effectively a sole source basis.'' The statute and the FAR provisions both require that awards be made on the basis of adequate competition without the submission of cost or pricing data. As such, the Board does not believe the contract could be awarded on a sole source basis and still comply with the statutory and regulatory requirements.

5. T&M/LH Contract Exceeding CAS Applicability Thresholds Should Be Subject to Some Existing Standards

Comment: One commenter suggests that the Board analyze which of its standards should be made applicable to T&M/LH contracts for the acquisition of commercial items or services, and take the necessary steps to ensure that these contracts comply with the selected standards. The commenter suggests that such contracts should be subject, at a minimum, to the provisions of CAS 401, 402, 405, 406, 407 and 411.

Response: The Board disagrees with the commenter since the application of CAS to T&M/LH contracts for commercial items and services would serve no purpose, regardless of the dollar value of a particular contract. As discussed in the response to Comment 2 above, the ''time'' element of T&M/LH contracts is fixed price, not cost reimbursable, and the contracts are awarded based on adequate price competition. In addition, the FAR provides limitations on the reimbursement of direct materials and other direct costs that the Board believes adequately protect the Government's interest. The application of CAS to these T&M/LH contracts would be of no benefit to the Government since it would not affect the contract price (but, see last sentence of response to comment 6).

6. The Board Is Required To Issue Guidance

Comment: One commenter asserted that the Board failed to implement the requirements of the Conference Report on Section 4205 of FARA because it did

not issue guidance for the allocation of costs to commercial item contracts when other than firm fixed-price and fixed price economic price adjustment contracts are authorized.

Response: The CAS Board recognizes the discussion in the Conference Report. However, the Board does not believe that guidance is needed at this time in light of the restrictions on the use of T&M and labor-hour contracts in the FAR. First, the Board believes that it was envisioned that reimbursable actual direct material and other direct costs will be incidental to the overall contract price. Second, the restrictions in the FAR provide the appropriate protections at this time. However, should the FAR requirements be revised or should direct material/other direct costs become more than incidental, the CAS Board will re-examine this issue.

7. CAS Applicability to Hybrid Contracts

Comment: One commenter opined that ''CAS should not be applicable to portions of a contract whose price is not based on certified cost or pricing data or whose payment is not based on actual costs incurred'' and urged the Board to place hybrid contracts on their near-term agenda. The commenter also recommended granting contracting officers the authority to determine CAS applicability to selected portions of a contract.

Response: Since the Board has determined that it is appropriate to exempt all T&M/LH contracts for commercial items from CAS coverage, the issue of whether a portion of the contract should be exempt is moot. The Board will consider commenter's recommendation when it formulates its future agenda actions.

8. Other Contract Types for Commercial Items

Comment: Three commenters, while supporting the proposed revision, noted the difference between the permissible contract types specified at FAR 12.207 and the proposed CAS exemption. The commenters recommended that the Board adopt their interpretation of the exemption language contained at Section 4204 of the Clinger-Cohen Act (Pub. L. 104–106)—''contracts or subcontracts for the acquisition of commercial items.''

Response: The Board did not deliberate this recommendation because it was outside the scope of the proposed rule to provide an exemption for T&M/LH contracts. The Board will consider this recommendation when it formulates future agenda items.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rulemaking, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Executive Order 12866 and the Regulatory Flexibility Act

The Board certifies that this rule will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses are exempt from the application of the Cost Accounting Standards.

List of Subjects in 48 CFR Part 9903

Accounting, Government procurement.

Paul A. Denett,

Administrator, Office of Federal Procurement Policy.

■ For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

PART 9903—CONTRACT COVERAGE

■ 1. The authority citation for part 9903 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

Subpart 9903.2—CAS Program Requirements

■ 2. Section 9903.201–1(b)(6) is revised to read as follows:

9903.201–1 CAS Applicability.

* * * * *

(b) * * *

(6) Firm fixed-priced, fixed-priced with economic price adjustment (provided that price adjustment is not based on actual costs incurred), time-and-materials, and labor-hour contracts and subcontracts for the acquisition of commercial items.

* * * * *

[FR Doc. E7–12888 Filed 7–2–07; 8:45 am]

BILLING CODE 3110–01–P

Proposed Rules

Federal Register
Vol. 72, No. 127
Tuesday, July 3, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28381; Directorate Identifier 2006–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 Airplanes, and Model 720 and 720B Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 707 Airplanes, and Model 720 and 720B series airplanes. This proposed AD would require revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD would also require the initial performance of certain repetitive AWL inspections to phase in those inspection, and repair if necessary. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by August 17, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

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

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

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28381; Directorate Identifier 2006–NM–164–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions

associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

We have reviewed the following sections of Boeing 707/720 Airworthiness Limitations (AWL) Document D6–7552–AWL, Original Release March 2006 (referred to hereafter as ''D6–7552–AWL March 2006'' or ''document D6–7552–AWL,'' depending upon the associated text):

- Section B, ''FUEL SYSTEMS AIRWORTHINESS LIMITATIONS''
- Section C, ''SYSTEM AWL PAGE FORMAT''
- Section D, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS''

Those sections of D6–7552–AWL March 2006 describe new airworthiness limitations (AWLs) for fuel tank systems. The new AWLs include:

- An AWL inspection, which is a periodic inspection of certain features for latent failures that could contribute to an ignition source; and
- Critical design configuration control limitations (CDCCL), which are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require revising the FAA-approved maintenance program by incorporating the information in the service information described previously. The proposed AD also would require initial accomplishment of the repetitive inspection specified in the AWLs to phase in that repetitive inspection, and repair if necessary.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for efficient and coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD, instead of the 18-month compliance time recommended by Boeing.

Rework Required When Implementing AWLs Into an Existing Fleet

The maintenance program revision for the fuel tank systems specified in paragraph (g) of this proposed AD, which involves incorporating the information specified in D6–7552–AWL March 2006, would affect how operators maintain their airplanes. After doing the maintenance program revision, operators would need to do any maintenance on the fuel tank system as specified in the CDCCLs. Maintenance done before doing the maintenance program revision specified in paragraph (g) would not need to be redone in order to comply with paragraph (g). For example, the AWL that requires fuel pumps to be repaired and overhauled per an FAA-approved component maintenance manual (CMM) applies to fuel pumps repaired after the AWLs are revised; spare or on-wing fuel pumps do not need to be reworked. For AWLs that require repetitive inspections, the initial inspection interval (threshold) starts from the date the maintenance program revision specified in paragraph (g) is done, except as provided by paragraph (h) of this proposed AD. This proposed AD would require only the maintenance program revision specified in paragraph (g), and initial inspection specified in paragraph (h). No other fleet-wide inspections need to be done.

Changes to Fuel Tank System AWLs

Paragraph (g) of this proposed AD would require revising the maintenance program by incorporating certain information specified in D6–7552–AWL March 2006. Paragraph (g) also allows accomplishing the maintenance program revision in accordance with later revisions of D6–7552–AWL March 2006 as an acceptable method of compliance if they are approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. In addition, D6–7552–AWL March 2006 specifies that any deviations from the published AWL instructions, including AWL intervals, in document D6–7552–AWL must be approved by the Manager, Seattle ACO. Therefore, after doing the maintenance program revision, any further revision to an AWL or AWL interval should be done as an AWL change, not as an alternative method of compliance (AMOC). For U.S.-registered airplanes, operators must make requests through an appropriate FAA Principal Maintenance Inspector (PMI) or Principal Avionics Inspector (PAI) for approval by the Manager, Seattle ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency.

Exceptional Short-Term Extensions

D6–7552–AWL March 2006 has provisions for an exceptional short-term extension of 30 days. An exceptional short-term extension is an increase in an AWL interval that may be needed to cover an uncontrollable or unexpected situation. For U.S.-registered airplanes, the FAA PMI or PAI must concur with any exceptional short-term extension before it is used, unless the operator has identified another appropriate procedure with the local regulatory authority. The FAA PMI or PAI may grant the exceptional short-term extensions described in D6–7552–AWL March 2006. without consultation with the Manager, Seattle ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency. As explained in D6–7552–AWL March 2006, exceptional short-term extensions must not be used for fleet AWL extensions. An exceptional short-term extension should not be confused with an operator's short-term escalation authorization approved in accordance with the Operations Specifications or the operator's reliability program.

Ensuring Compliance With Fuel Tank System AWLs

Boeing has revised their applicable maintenance manuals and task cards to address AWLs and to include notes about CDCCLs. Operators that do not use Boeing's revision service should revise their maintenance manuals and task cards to highlight actions that are tied to CDCCLs to ensure that maintenance personnel are complying with the CDCCLs. Appendix A of D6–7552–AWL March 2006 contains a list of Air Transport Association (ATA) sections for the revised maintenance manuals. Operators may wish to use the appendix as an aid to implement the AWLs.

Recording Compliance With Fuel Tank System AWLs

The applicable operating rules of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 129) require operators to maintain records with the identification of the current inspection status of an airplane. One AWL cited in D6–7552–AWL March 2006 is an inspection for which the applicable sections of the operating rules apply. The other AWLs are CDCCLs, which are tied to on-condition maintenance actions. An entry into an operator's existing maintenance record system for corrective action is sufficient for recording compliance with CDCCLs, as long as the applicable maintenance manual and task cards identify actions that are CDCCLs.

Changes to CMMs Cited in Fuel Tank System AWLs

Some of the AWLs in D6–7552–AWL March 2006 refer to specific revision levels of the CMMs as additional sources of service information for doing the AWLs. Boeing is referencing the CMMs by revision level in the applicable AWL for certain components rather than including information directly in document D6–7552–AWL because of the volume of that information. As a result, the Manager, Seattle ACO must approve the CMMs. Any later revision of those CMMs will be handled like a change to the AWL itself. Any use of parts (including the use of parts manufacturer approval (PMA) approved parts), methods, techniques, and practices not contained in the CMMs need to be approved by the Manager, Seattle ACO, or governing regulatory authority. For example, operators that have developed pump repair/overhaul manuals must get them approved by the Manager, Seattle ACO.

Changes to AMMs Referenced in Fuel Tank System AWLs

In other AWLs in D6–7552–AWL March 2006, the AWLs contain all the necessary data. The applicable section of the maintenance manual is usually included in the AWLs. Boeing intended this information to assist operators in maintaining the maintenance manuals. A maintenance manual change to these tasks can be made without approval by the Manager, Seattle ACO, through an appropriate FAA PMI or PAI, by the governing regulatory authority, or by using the operator's standard process for revising maintenance manuals. An acceptable change would have to maintain the information specified in the AWL such as the pass/fail criteria or special test equipment.

Costs of Compliance

There are about 213 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 76 airplanes of U.S. registry. The proposed actions would take about 8 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $48,640, or $640 per airplane.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28381; Directorate Identifier 2006–NM–164–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections and maintenance actions. Compliance with these limitations is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 43.16 and 91.403(c), the operator must request approval for revision to the airworthiness limitations (AWLs) in the Boeing 707/720 Airworthiness

Limitations (AWL) Document D6–7552–AWL, Original Release March 2006, as specified in paragraph (g) or (i) of this AD, as applicable.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Service Information

(f) The term ''D6–7552–AWL March 2006,'' as used in this AD, means Boeing 707/720 Airworthiness Limitations Document D6–7552–AWL, Original Release March 2006.

Revision of AWLs Section

(g) Before December 16, 2008, revise the FAA-approved maintenance program by incorporating the information in the sections specified in paragraphs (g)(1) through (g)(3) of this AD, except that the initial inspection specified in paragraph (h) of this AD must be done at the time specified in paragraph (h). Accomplishing the revision in accordance with a later revision of Boeing 707/720 Airworthiness Limitations Document D6–7552–AWL is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Section B., ''FUEL SYSTEMS AIRWORTHINESS LIMITATIONS,'' of D6–7552–AWL March 2006.

(2) Section C., ''SYSTEM AWL PAGE FORMAT,'' of D6–7552–AWL March 2006.

(3) Section D., ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' of D6–7552–AWL March 2006.

Initial Inspection and Repair if Necessary

(h) At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD: Do a detailed inspection of external wires over the center fuel tank for damaged or loose clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank, in accordance with Section D, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' AWL number 28–AWL–01, of D6–7552–AWL March 2006. If any discrepancy is found during this inspection, repair the discrepancy before further flight in accordance with D6–7552–AWL March 2006. Accomplishing the actions required by this paragraph in accordance with a later revision of D6–7552–AWL March 2006 is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO.

(1) Before the accumulation of 36,000 total flight cycles, or within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(2) Within 72 months after the effective date of this AD.

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

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on June 22, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–12818 Filed 7–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28389; Directorate Identifier 2006–NM–171–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200, –200LR, –300, and –300ER Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777–200, –200LR, –300, and –300ER series airplanes. This proposed AD would require revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD also would require the initial performance of certain repetitive inspections specified in the AWLs to phase in those inspections, and repair if necessary. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by August 17, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

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

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

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28389; Directorate Identifier 2006–NM–171–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date

and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, Single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

We have reviewed the following sections of Boeing 777 Maintenance Planning Data (MPD) Document D622W001–9, Section 9, Revision March 2006 (hereafter referred to as ''Revision March 2006 of the MPD''):

- Section D., ''AIRWORTHINESS LIMITATIONS—SYSTEMS, FUEL SYSTEMS AIRWORTHINESS LIMITATIONS''; and
- Section E., ''PAGE FORMAT: SYSTEMS AIRWORTHINESS LIMITATIONS.''

Those sections of Revision March 2006 of the MPD describe new airworthiness limitations (AWLs) for fuel tank systems. The new AWLs include:

- AWL inspections, which are periodic inspections of certain features for latent failures that could contribute to an ignition source; and
- Critical design configuration control limitations (CDCCL), which are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration changes that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require revising the AWL section of the Instructions for Continued Airworthiness by incorporating the information in the service information described previously. The proposed AD also would require the initial performance of certain repetitive inspections specified in the AWLs to phase in those inspections, and repair if necessary.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for efficient and coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD, instead of the 18-month compliance time recommended by Boeing.

Rework Required When Implementing AWLs Into an Existing Fleet

The AWL revision for the fuel tank systems specified in paragraph (g) of this proposed AD, which involves incorporating the information specified in Revision March 2006 of the MPD, would affect how operators maintain their airplanes. After doing that AWL revision, operators would need to do any maintenance on the fuel tank system as specified in the CDCCLs. Maintenance done before the AWL revision specified in paragraph (g) would not need to be redone in order to comply with paragraph (g). For example, the AWL that requires fuel pumps to be repaired and overhauled per an FAA-approved component maintenance manual (CMM) applies to fuel pumps repaired after the AWLs are revised; spare or on-wing fuel pumps do

not need to be reworked. For AWLs that require repetitive inspections, the initial inspection interval (threshold) starts from the date the AWL revision specified in paragraph (g) is done, except as provided by paragraph (h) of this proposed AD. This proposed AD would require only the AWL revision specified in paragraph (g), and initial inspections specified in paragraph (h). No other fleet-wide inspections need to be done.

Changes to Fuel Tank System AWLs

Paragraph (g) of this proposed AD would require revising the AWL section of the Instructions for Continued Airworthiness by incorporating certain information specified in Revision March 2006 of the MPD into the MPD. Paragraph (g) allows accomplishing the AWL revision in accordance with later revisions of the MPD as an acceptable method of compliance if they are approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. In addition, Section E. of Revision March 2006 of the MPD specifies that any deviations from the published AWL instructions, including AWL intervals, in that MPD must be approved by the Manager, Seattle ACO. Therefore, after the AWL revision, any further revision to an AWL or AWL interval should be done as an AWL change, not as an alternative method of compliance (AMOC). For U.S.-registered airplanes, operators must make requests through an appropriate FAA Principal Maintenance Inspector (PMI) or Principal Avionics Inspector (PAI) for approval by the Manager, Seattle ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency.

Exceptional Short-Term Extensions

Section D. of Revision March 2006 of the MPD has provisions for an exceptional short-term extension of 30 days. An exceptional short-term extension is an increase in an AWL interval that may be needed to cover an uncontrollable or unexpected situation. For U.S.-registered airplanes, the FAA PMI or PAI must concur with any exceptional short-term extension before it is used, unless the operator has identified another appropriate procedure with the local regulatory authority. The FAA PMI or PAI may grant the exceptional short-term extensions described in Section D. without consultation with the Manager, Seattle ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency. As explained in Revision March 2006 of the MPD, exceptional short-term extensions must not be used for fleet AWL extensions. An exceptional short-term extension should not be confused with an operator's short-term escalation authorization approved in accordance with the Operations Specifications or the operator's reliability program.

Ensuring Compliance With Fuel Tank System AWLs

Boeing has revised applicable maintenance manuals and task cards to address AWLs and to include notes about CDCCLs. Operators that do not use Boeing's revision service should revise their maintenance manuals and task cards to highlight actions tied to CDCCLs to ensure that maintenance personnel are complying with the CDCCLs. Appendix 1 of this proposed AD contains a list of Air Transport Association (ATA) sections for the revised maintenance manuals. Operators might wish to use the appendix as an aid to implement the AWLs.

Recording Compliance With Fuel Tank System AWLs

The applicable operating rules of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 129) require operators to maintain records with the identification of the current inspection status of an airplane. Some of the AWLs contained in Section E of Revision March 2006 of the MPD are inspections for which the applicable sections of the operating rules apply. Other AWLs are CDCCLs, which are tied to conditional maintenance actions. An entry into an operator's existing maintenance record system for corrective action is sufficient for recording compliance with CDCCLs, as long as the applicable maintenance manual and task cards identify actions that are CDCCLs.

Changes to CMMs Cited in Fuel Tank System AWLs

Some of the AWLs in Section E of Revision March 2006 of the MPD refer to specific revision levels of the CMMs as additional sources of service information for doing the AWLs. Boeing is referring to the CMMs by revision level in the applicable AWL for certain components rather than including information directly in the MPD because of the volume of that information. As a result, the Manager, Seattle ACO, must approve the CMMs. Any later revision of those CMMs will be handled like a change to the AWL itself. Any use of parts (including the use of parts manufacturer approval (PMA) approved parts), methods, techniques, and practices not contained in the CMMs needs to be approved by the Manager, Seattle ACO, or governing regulatory authority. For example, pump repair/overhaul manuals must be approved by the Manager, Seattle ACO.

Changes to AMMs Referenced in Fuel Tank System AWLs

In other AWLs in Section E of Revision March 2006 of the MPD, the AWLs contain all the necessary data. The applicable section of the maintenance manual is usually included in the AWLs. Boeing intended this information to assist operators in maintaining the maintenance manuals. A maintenance manual change to these tasks may be made without approval by the Manager, Seattle ACO, through an appropriate FAA PMI or PAI, by the governing regulatory authority, or by using the operator's standard process for revising maintenance manuals. An acceptable change would have to maintain the information specified in the AWL such as the pass/fail criteria or special test equipment.

Costs of Compliance

There are about 564 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 125 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD at an average labor rate of $80 per work hour.

ESTIMATED COSTS

Actions	Work hours	Cost per airplane	Fleet cost
Maintenance program revision	8	$640	$80,000
Inspections	8	640	80,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28389; Directorate Identifier 2006–NM–171–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200, –200LR, –300, and –300ER series airplanes; certificated in any category; with an original standard airworthiness certificate or original export certificate of airworthiness issued before June 1, 2006.

Note 1: Airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued on or after June 1, 2006, must be already in compliance with the airworthiness limitations specified in this AD because those limitations were applicable as part of the airworthiness certification of those airplanes.

Note 2: This AD requires revisions to certain operator maintenance documents to include new inspections and maintenance actions. Compliance with these limitations is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 43.16 and 91.403(c), the operator must request approval for revision to the airworthiness limitations (AWLs) in the Boeing 777 Maintenance Planning Data (MPD) Document D622W001–9 according to paragraph (g) or (i), as applicable, of this AD.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Service Information

(f) The term ''Revision March 2006 of the MPD'' as used in this AD, means Section 9 of Boeing 777 MPD Document D622W001–9, Revision March 2006.

Revision of AWLs Section

(g) Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness by incorporating the information in the sections specified in paragraphs (g)(1) and (g)(2) of this AD into the MPD, except that the initial inspections specified in paragraph (h) of this AD must be done at the compliance times specified in paragraph (h) of this AD. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Section D., ''AIRWORTHINESS LIMITATIONS—SYSTEMS, FUEL SYSTEMS AIRWORTHINESS LIMITATIONS,'' of Revision March 2006 of the MPD.

(2) Section E., ''PAGE FORMAT: SYSTEMS AIRWORTHINESS LIMITATIONS,'' of Revision March 2006 of the MPD.

Initial Inspections and Repair

(h) Do the inspections described in paragraphs (h)(1) and (h)(2) of this AD at the compliance times specified in paragraphs (h)(1) and (h)(2); in accordance with the AWLs described in Section E., ''PAGE FORMAT: SYSTEMS AIRWORTHINESS LIMITATIONS,'' of Revision March 2006 of the MPD. If any discrepancy is found during this inspection, repair the discrepancy before further flight in accordance with Revision March 2006 of the MPD. Accomplishing the actions in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO.

(1) At the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD, do a detailed inspection of external wires over the center fuel tank for damaged clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank, and repair any discrepancy; in accordance with 28–AWL–01.

(i) Before the accumulation of 36,000 total flight cycles, or within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(ii) Within 72 months after the effective date of this AD.

Note 3: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(2) At the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD, do a special detailed inspection (resistance test) of the lightning shield-to-ground termination of the out tank wiring of the fuel quantity indicating system (FQIS) and, as applicable, repair (restore) the bond to ensure the shield-to-ground termination meets specified resistance values; in accordance with 28–AWL–03.

(i) Before the accumulation of 36,000 total flight cycles, or within 120 months since the date of issuance of the original standard

airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(ii) Within 24 months after the effective date of this AD.

Note 4: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

Alternative Methods of Compliance (AMOCs)

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

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

APPENDIX 1.—FUEL TANK SYSTEM AIRWORTHINESS LIMITATIONS—APPLICABLE MAINTENANCE MANUALS

AWL No.	ALI/CDCCL	ATA Section or CMM document [1]	Task title	Task
28–AWL–01	ALI	AMM 28–11–00/601	External Wires Over the Center Tank—Inspection.	28–11–00–210–801.
28–AWL–02	CDCCL	SWPM 20–10–11	Wiring Assembly and Installation Configuration.	
28–AWL–03	ALI	AMM 05–55–54/601	Fuel Quantity Indicator System (FQIS)—Inspection/Check.	05–55–54–200–801.
28–AWL–04	CDCCL	SWPM 20–10–15	Assemble Shield Ground Wires.	
28–AWL–05	CDCCL	AMM 28–22–15/401	Install Fuel Line, Fitting and Coupling.	28–22–15–400–802–002.
28–AWL–06	CDCCL	AMM 29–11–60/401	Install Heat Exchanger	29–11–60–000–801.
			Bonding Resistances of the Hydraulic Tubes for the Heat Exchanger.	29–11–60–765–801.
28–AWL–07	CDCCL	CMM 28–20–42, revision 7; CMM 28–20–45, revision 3; CMM 28–20–47, revision 2; or subsequent revisions.		
28–AWL–08	CDCCL	AMM 28–11–06/401	Install Sump Drain Valve	28–11–06–400–801.
28–AWL–09	CDCCL.			
28–AWL–10	CDCCL	AMM 28–22–06/401	Install Override/Jettison Pump Motor-Impeller.	28–22–06–400–801.
			Install Override/Jettison Pump Housing.	28–22–06–400–802.
		AMM 28–22–05/401	Install Boost Pump Motor-Impeller.	28–22–05–400–801.
			Install Boost Pump Housing	28–22–05–400–802.
28–AWL–11	CDCCL	SWPM 20–10–11	Wiring Assembly and Installation Configuration.	
28–AWL–12	CDCCL	AMM 28–21–02/401	Install Refuel Valve	28–21–02–400–801.
28–AWL–13	CDCCL	CMM 28–47–69, revision 1; CMM 28–47–65, revision 3; or subsequent revisions.		
28–AWL–14	CDCCL	CMM 28–47–58, revision 4; CMM 28–47–59, revision 1; CMM 28–47–60, revision 4; CMM 28–48–03, revision 2; or subsequent revisions.		
28–AWL–15	CDCCL	SWPM 20–14–12	Repair FQIS Wire Harness.	
		AMM 28–41–05/401	Install FQIS In-Tank Wire Harness.	28–41–05–404–801.
28–AWL–16	CDCCL	AMM 28–11–01/401	Install Main Tank Access Door.	28–11–01–400–801.
		AMM 28–11–02/401	Install Center Tank Access Door.	28–11–02–400–801.
		AMM 28–11–07/401	Replace Rubber Door Seal	28–11–07–900–801.
		AMM 28–11–03/401	Install Surge Tank Access Door.	28–11–03–400–801.
		AMM 28–13–05/401	Install Surge Tank Vent Flame Arrestor.	28–13–05–420–801.
28–AWL–17	CDCCL	FIM 28–22–00/201.		
28–AWL–18.				
28–AWL–19	CDCCL	AMM 28–22–02/401	Install Engine Fuel Spar Valve Actuator.	28–22–02–400–802.
		AMM 28–22–01/401	Install Engine Fuel Spar Valve Adapter/Shaft.	28–22–01–400–803.
		AMM 28–22–03/401	Install Engine Fuel Crossfeed Valve Adapter/Shaft.	28–22–03–400–803.

APPENDIX 1.—FUEL TANK SYSTEM AIRWORTHINESS LIMITATIONS—APPLICABLE MAINTENANCE MANUALS—Continued

AWL No.	ALI/CDCCL	ATA Section or CMM document [1]	Task title	Task
		AMM 28–22–04/401	Install FWD/AFT Fuel Crossfeed Valve Actuator.	28–22–04–400–802.
		AMM 28–26–01/401	Install Defuel Valve Adapter/Shaft.	28–26–01–400–803.
		AMM 28–26–02/401	Install Defuel Valve Actuator	28–26–02–400–802.
		AMM 28–31–02/401	Install Fuel Jettison Nozzle Valve Adapter/Shaft.	28–31–02–400–801.
		AMM 28–31–03/401	Install Fuel Nozzle Valve Actuator.	28–31–03–400–801.
		AMM 28–31–04/401	Install Fuel Jettison Isolation Valve Adapter/Shaft.	28–31–04–400–803.
		AMM 28–31–05/401	Install Fuel Jettison Isolation Valve Actuator.	28–31–05–400–802.
28–AWL–20	CDCCL	CMM 28–20–21.		

[1] CMMs per applicable manufacturer.

Issued in Renton, Washington, on June 22, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–12835 Filed 7–2–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28380; Directorate Identifier 2007–NM–088–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F Series Airplanes; Model 757–200 Series Airplanes; and Model 767–200, 767–300, and 767–300F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–400, 747–400D, 747–400F, 757–200, 767–200, 767–300, and 767–300F series airplanes. This proposed AD would require inspecting to determine the date code of the time delay relay for the cargo fire suppression system, and replacing the relay if necessary. This proposed AD results from a report indicating that failure of a time delay relay on an ELMS (electrical load management system) panel led to testing of other time delay relays at Boeing and at the supplier. Similar relays are used in the cargo fire suppression system. The time delay relay controls when the fire bottles discharge. We are proposing this AD to ensure there is sufficient fire suppressant to control a cargo fire if the airplane is more than the relay delay time from a suitable airport, which could result in an uncontrollable fire in the cargo compartment.

DATES: We must receive comments on this proposed AD by August 17, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28380; Directorate Identifier 2007–NM–088–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that failure of a time delay relay on a Boeing Model 777 ELMS (electrical load management system) panel led to testing of other time delay relays at Boeing and at the supplier. Similar relays are used in the cargo fire suppression system. Although there have been no reported in-service failures of the cargo fire suppression time delay relays, the testing showed that, at elevated temperatures, thermal expansion can cause pre-existing cracks in the timing module substrates to widen and cause an electrical open circuit that prevents power from reaching the relay coil. The relay operates normally at reduced temperatures.

The time delay relays of the fire suppression system in Boeing Model 747–400, 747–400D, 747–400F, 757–200, 767–200, 767–300, and 767–300F series airplanes can have the same condition. There are two Halon bottles in the cargo fire suppression system on these airplanes. The first bottle discharges immediately after the cargo fire discharge switch is pressed. The second bottle of fire suppressant discharges after a period of time controlled by the time delay relay. If there is a cargo fire and the time delay relay has failed, the second bottle will not discharge. Although the first bottle discharges, the available Halon may not be enough to control a cargo fire. This condition, if not corrected, could result in insufficient fire suppressant to control a cargo fire if the airplane is more than the relay delay time from a suitable airport, which could result in an uncontrollable fire in the cargo compartment.

Relevant Service Information

We have reviewed the Boeing service bulletins listed in the following table.

BOEING SERVICE BULLETINS

Boeing Special Attention Service Bulletin—	For Boeing Model—
747–26–2281, dated July 24, 2006	747–400, 747–400D, and 747–400F series airplanes.
757–26–0051, dated July 28, 2006	757–200 series airplanes.
767–26–0131, dated July 24, 2006	767–200, 767–300, and 767–300F series airplanes.

The service bulletins describe procedures for inspecting the time delay relay in the Main Equipment Center to determine if it was manufactured during a certain date range, and replacing any relay within that date range with a relay not manufactured during that date range, or with a relay that has been tested by the supplier and found to be unaffected by the thermal expansion. The service bulletins permit flight for 30 days after finding a relay that was manufactured within the suspect date range. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Operators should note that, consistent with the Boeing service information, this proposed AD allows operators to continue flight for 30 days after finding a relay that was manufactured within the suspect date range. In making this determination, we consider that, in the case of this AD, long-term continued operational safety is adequately assured by replacing a suspect relay within the specified time limit.

Costs of Compliance

There are about 1,871 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 702 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $56,160, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28380; Directorate Identifier 2007–NM–088–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Boeing airplane models, certificated in any category, identified in the service bulletins specified Table 1 of this AD.

TABLE 1.—APPLICABILITY OF THIS AD

Boeing model—	As identified in Boeing Special Attention Service Bulletin—
747–400, 747–400D, and 747–400F series airplanes	747–26–2281, dated July 24, 2006.
757–200 series airplanes	757–26–0051, dated July 28, 2006.
767–200, –300, and –300F series airplanes	767–26–0131, dated July 24, 2006.

Unsafe Condition

(d) This AD results from a report indicating that failure of a time delay relay on a Boeing Model 777 ELMS (electrical load management system) panel led to testing of other time delay relays at Boeing and at the supplier. Similar relays are used in the cargo fire suppression system. We are issuing this AD to ensure there is sufficient fire suppressant to control a cargo fire if the airplane is more than the relay delay time from a suitable airport, which could result in uncontrollable fire in the cargo compartment.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 747–400, 747–400D, and 747–400F series airplanes: Boeing Special Attention Service Bulletin 747–26–2281, dated July 24, 2006;

(2) For Model 757–200 series airplanes: Boeing Special Attention Service Bulletin 757–26–0051, dated July 28, 2006; and

(3) For Model 767–200, –300, and –300F series airplanes: Boeing Special Attention Service Bulletin 767–26–0131, dated July 24, 2006.

Inspection

(g) Within 24 months after the effective date of this AD: Do a general visual inspection of the part number (P/N) TDH6103–1204, –1804, and –6003 time delay relay, as applicable, in the Main Equipment Center to determine if the relay was manufactured during a certain date range, in accordance with the applicable service bulletin.

Replacement

(h) Within 30 days after finding a relay manufactured during the date range specified in the service bulletin, as required by paragraph (g) of this AD: Replace the relay with a relay that was not manufactured during the specified date range, or with a relay that has been tested by the supplier and found to be unaffected by thermal expansion, in accordance with the applicable service bulletin.

Parts Installation

(i) As of the effective date of this AD, no person may install a time delay relay, P/N TDH6103–1204, –1804, or –6003, on any airplane if the relay has a date code between 0000 and 0343 and does not have an additional date code with the letter ''T.''

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on June 22, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–12836 Filed 7–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28385; Directorate Identifier 2006–NM–181–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. This proposed AD would require revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD would also require the initial inspection of certain repetitive AWL inspections to phase in those inspections, and repair if necessary. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by August 17, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

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

p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Ave, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28385; Directorate Identifier 2006–NM–181–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747-CMR, Revision March 2006 (hereafter referred to as ''Revision March 2006 of Document D6–13747-CMR''). (For the purposes of Revision March 2006 of Document D6–13747-CMR, the Model 747SR series airplane is basically a Model 747–100 series airplane with certain modifications to improve fatigue life.) Section D of Revision March 2006 of Document D6–13747-CMR describes new AWLs for fuel tank systems. The new AWLs include:

- AWL inspections, which are periodic inspections of certain features for latent failures that could contribute to an ignition source; and
- Critical design configuration control limitations (CDCCLs), which are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require revising the FAA-approved maintenance program by incorporating the information in Section D of Revision March 2006 of Document D6–13747–CMR. This proposed AD would also require the initial inspection of certain repetitive AWL inspections to phase in those inspections, and repair if necessary.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To

provide for efficient and coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD, instead of the 18-month compliance time recommended by Boeing.

Rework Required When Implementing AWLs Into an Existing Fleet

The maintenance program revision for the fuel tank systems specified in paragraph (g) of this proposed AD, which involves incorporating the information specified in Revision March 2006 of Document D6–13747-CMR, would affect how operators maintain their airplanes. After doing that maintenance program revision, operators would need to do any maintenance on the fuel tank system as specified in the CDCCLs. Maintenance done before the maintenance program revision specified in paragraph (g) would not need to be redone in order to comply with paragraph (g). For example, the AWL that requires fuel pumps to be repaired and overhauled per an FAA-approved component maintenance manual (CMM) applies to fuel pumps repaired after the maintenance programs are revised; spare or on-wing fuel pumps do not need to be reworked. For AWLs that require repetitive inspections, the initial inspection interval (threshold) starts from the date the maintenance program revision specified in paragraph (g) is done, except as provided by paragraph (h) of this proposed AD. This proposed AD would require only the maintenance program revision specified in paragraph (g), and initial inspections specified in paragraph (h). No other fleet-wide inspections need to be done.

Changes to Fuel Tank System AWLs

Paragraph (g) of this proposed AD would require revising the FAA-approved maintenance program by incorporating certain information specified in Section D of Revision March 2006 of Document D6–13747–CMR. Paragraph (g) allows accomplishing the maintenance program revision in accordance with later revisions of Document D6–13747–CMR as an acceptable method of compliance if they are approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Paragraph (h) allows accomplishing the initial inspections and repair in accordance with later revisions of Document D6–13747–CMR as an acceptable method of compliance if they are approved by the Manager, Seattle ACO. In addition, Section D specifies that any deviations from the published AWL instructions, including AWL intervals, must be approved by the Manager, Seattle ACO. Therefore, after the maintenance program revision, any further revision to an AWL or AWL interval should be done as an AWL change, not as an alternative method of compliance (AMOC). For U.S.-registered airplanes, operators must make requests through an appropriate FAA Principal Maintenance Inspector (PMI) or Principal Avionics Inspector (PAI) for approval by the Manager, Seattle ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency.

Exceptional Short-Term Extensions

Section D of Revision March 2006 of Document D6–13747–CMR has provisions for an exceptional short-term extension of 30 days. An exceptional short-term extension is an increase in an AWL interval that may be needed to cover an uncontrollable or unexpected situation. For U.S.-registered airplanes, the FAA PMI or PAI must concur with any exceptional short-term extension before it is used, unless the operator has identified another appropriate procedure with the local regulatory authority. The FAA PMI or PAI may grant the exceptional short-term extensions described in Section D without consultation with the Manager, Seattle ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency. As explained in Revision March 2006 of Document D6–13747–CMR, exceptional short-term extensions must not be used for fleet AWL extensions. An exceptional short-term extension should not be confused with an operator's short-term escalation authorization approved in accordance with the Operations Specifications or the operator's reliability program.

Ensuring Compliance With Fuel Tank System AWLs

Boeing has revised applicable maintenance manuals and task cards to address AWLs and to include notes about CDCCLs. Operators that do not use Boeing's revision service should revise their maintenance manuals and task cards to highlight actions tied to CDCCLs to ensure that maintenance personnel are complying with the CDCCLs. Appendix 1 of this proposed AD contains a list of Air Transport Association (ATA) sections for the revised maintenance manuals. Operators might wish to use the appendix as an aid to implement the AWLs.

Recording Compliance With Fuel Tank System AWLs

The applicable operating rules of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 129) require operators to maintain records with the identification of the current inspection status of an airplane. Some of the AWLs contained in Section D of Revision March 2006 of Document D6–13747–CMR are inspections for which the applicable sections of the operating rules apply. Other AWLs are CDCCLs, which are tied to conditional maintenance actions. An entry into an operator's existing maintenance record system for corrective action is sufficient for recording compliance with CDCCLs, as long as the applicable maintenance manual and task cards identify actions that are CDCCLs.

Changes to CMMs Cited in Fuel Tank System AWLs

Some of the AWLs in Section D of Revision March 2006 of Document D6–13747–CMR refer to specific revision levels of the CMMs as additional sources of service information for doing the AWLs. Boeing is referring to the CMMs by revision level in the applicable AWL for certain components rather than including information directly in Document D6–13747–CMR because of the volume of that information. As a result, the Manager, Seattle ACO, must approve the CMMs. Any later revision of those CMMs will be handled like a change to the AWL itself. Any use of parts (including the use of parts manufacturer approval (PMA) approved parts), methods, techniques, and practices not contained in the CMMs need to be approved by the Manager, Seattle ACO, or governing regulatory authority. For example, pump repair/overhaul manuals must be approved by the Manager, Seattle ACO.

Changes to AMMs Referenced in Fuel Tank System AWLs

In other AWLs in Section D of Revision March 2006 of Document D6–13747–CMR, the AWLs contain all the necessary data. The applicable section of the maintenance manual is usually included in the AWLs. Boeing intended this information to assist operators in maintaining the maintenance manuals. A maintenance manual change to these tasks may be made without approval by the Manager, Seattle ACO, through an appropriate FAA PMI or PAI, by the governing regulatory authority, or by using the operator's standard process for revising maintenance manuals. An acceptable change would have to maintain the information specified in

the AWL such as the pass/fail criteria or special test equipment.

Costs of Compliance

There are about 308 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	8	None	$640	93	$59,520
Inspections	8	None	640	93	59,520

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28385; Directorate Identifier 2006–NM–181–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections and maintenance actions. Compliance with these limitations is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 43.16 and 91.403(c), the operator must request approval for revision to the airworthiness limitations in the Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, according to paragraph (g) or (i) of this AD, as applicable.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Service Information Reference

(f) The term ''Revision March 2006 of Document D6–13747–CMR'' as used in this AD, means Boeing 747–100/200/300/SP AWLs and CMRs, D6–13747–CMR, Revision March 2006. (For the purposes of Revision March 2006 of Document D6–13747–CMR, the Model 747SR series airplane is basically a Model 747–100 series airplane with certain modifications to improve fatigue life.)

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the information in Section D of Revision March 2006 of Document D6–13747–CMR; except that the initial inspections required by paragraph (h) of this AD must be done at the applicable compliance time specified in that paragraph. Accomplishing the revision in accordance with a later revision of Document D6–13747–CMR is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Initial Inspections and Repair if Necessary

(h) Do the inspections specified in Table 1 of this AD and repair any discrepancy, in accordance with Section D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS,'' of Revision March 2006 of Document D6–13747–CMR. The repair must be done before further flight. Accomplishing the actions required by this paragraph in accordance with a later revision of Document D6–13747–CMR is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO.

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

Note 3: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

TABLE 1.—INITIAL INSPECTIONS

AWL No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–AWL–01	A detailed inspection of external wires over the center fuel tank for damaged clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank.	Before the accumulation of 36,000 total flight cycles, or within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	Within 72 months after the effective date of this AD.
28–AWL–03	A special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indicating system to verify functional integrity.	Before the accumulation of 36,000 total flight cycles, or within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	Within 24 months after the effective date of this AD.
28–AWL–13	A special detailed inspection of the fault current bond of the fueling shutoff valve actuator of the center wing tank to verify electrical bond.	Before the accumulation of 36,000 total flight cycles, or within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	Within 60 months after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

APPENDIX 1.—IMPLEMENTING FUEL TANK SYSTEM AIRWORTHINESS LIMITATIONS ON MODEL 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, AND 747SP SERIES AIRPLANES

AWL No.	ALI/CDCCL	ATA section or CMM document	Task title
28–AWL–01	ALI	AMM 28–11–00/601	External Wires Over the Center Tank Inspection.
28–AWL–02	CDCCL	SWPM 20–10–11	Wiring Assembly and Installation Configuration.
28–AWL–03	ALI	AMM 05–55–54/601.	
28–AWL–04	CDCCL	SWPM 20–10–15	Assembly of Shield Ground Wires.
28–AWL–05	CDCCL	AMM 28–22–07/401	Install the Bulkhead Fitting for the Engine Fuel Feed Tube.
28–AWL–06	CDCCL	AMM 29–11–22/401	Install the Heat Exchanger.
28–AWL–07	CDCCL	CMM 28–22–07, Revision 1; CMM 28–31–03, Revision 3; CMM 28–22–06, Revision 6; CMM 28–31–05, Revision 1; CMM 28–20–02, Revision 4 or Revision 9; or subsequent revisions.	
28–AWL–08	CDCCL	AMM 28–22–03/401	Install Boost Pump Housing.
		AMM 28–31–01/401	Jettison Pump Motor/Impeller Unit Installation.
28–AWL–09	ALI	AMM 28–31–00/501	Operational Test—Fault Current Detector.
28–AWL–10	CDCCL.		
28–AWL–11	CDCCL	SWPM 20–10–11	Wiring Assembly and Installation Configuration.
28–AWL–12	CDCCL	AMM 28–21–02/401	Install the Refuel Valve Control Unit.
		AMM 28–21–13/401	Install Center Wing Tank Refuel Valve Unit.
28–AWL–13	ALI	AMM 28–21–13/601	Center Wing Tank Refuel Valve—Fault Current Bond Inspection.
28–AWL–14	CDCCL	AMM 28–11–02/401	Install the Reserve and Main Tank Access Door.
		AMM 28–11–03/401	Install the Surge Tank Access Door.

APPENDIX 1.—IMPLEMENTING FUEL TANK SYSTEM AIRWORTHINESS LIMITATIONS ON MODEL 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, AND 747SP SERIES AIRPLANES—Continued

AWL No.	ALI/CDCCL	ATA section or CMM document	Task title
28–AWL–15	CDCCL	CMM 28–40–10, Revision 13; CMM 28–40–12, Revision 9; CMM 28–40–16, Revision 1; CMM 28–40–14, Revision 8; CMM 28–40–15, Revision 0; or subsequent revisions.	
28–AWL–16	CDCCL	SWPM 20–14–12	Repair of Fuel Quantity Indicator System (FQIS) Wire Harness.
		AMM 28–41–09/401	Replace the Fuel Tank Wire Bundle.
28–AWL–17	CDCCL	CMM 28–31–22, Revision 4; or subsequent revisions.	
28–AWL–18	CDCCL	AMM 28–22–00/101	Engine Fuel Feed System—Trouble Shooting.
28–AWL–19	CDCCL.		

Issued in Renton, Washington, on June 22, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–12815 Filed 7–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28386; Directorate Identifier 2006–NM–162–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–400, –400D, and –400F series airplanes. This proposed AD would require revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD would also require the initial inspection of certain repetitive AWL inspections to phase in those inspections, and repair if necessary. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by August 17, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

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

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

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Ave, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28386; Directorate Identifier 2006–NM–162–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport

Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed the following subsections of Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9, Section 9, Revision 23, dated March 2006 (hereafter referred to as ''Revision March 2006 of the MPD''):

- Subsection B, ''AIRWORTHINESS LIMITATIONS (AWLs)—SYSTEMS''
- Subsection C, ''PAGE FORMAT: AIRWORTHINESS LIMITATIONS''
- Subsection D, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS''

Those subsections of Revision March 2006 of the MPD describe new AWLs for fuel tank systems. The new AWLs include:

- AWL inspections, which are periodic inspections of certain features for latent failures that could contribute to an ignition source; and
- Critical design configuration control limitations (CDCCLs), which are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require revising the FAA-approved maintenance program by incorporating the information in Subsections B, C, and D of Revision March 2006 of the MPD. This proposed AD would also require the initial inspection of certain repetitive AWL inspections to phase in those inspections, and repair if necessary.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for efficient and coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD, instead of the 18-month compliance time recommended by Boeing.

Rework Required When Implementing AWLs Into an Existing Fleet

The maintenance program revision for the fuel tank systems specified in paragraph (g) of this proposed AD, which involves incorporating the information specified in Revision March 2006 of the MPD, would affect how operators maintain their airplanes. After doing that maintenance program revision, operators would need to do any maintenance on the fuel tank system as specified in the CDCCLs. Maintenance done before the maintenance program revision specified in paragraph (g) would not need to be redone in order to comply with paragraph (g). For example, the AWL that requires fuel pumps to be repaired and overhauled per an FAA-approved component maintenance manual (CMM) applies to fuel pumps repaired after the maintenance programs are revised; spare or on-wing fuel pumps do not need to be reworked. For AWLs that require repetitive inspections, the initial inspection interval (threshold) starts from the date the maintenance program revision specified in paragraph (g) is done, except as provided by paragraph (h) of this proposed AD. This proposed AD would require only the maintenance program revision specified in paragraph (g), and initial inspections specified in paragraph (h). No other fleet-wide inspections need to be done.

Changes to Fuel Tank System AWLs

Paragraph (g) of this proposed AD would require revising the FAA-approved maintenance program by incorporating certain information specified in Revision March 2006 of the MPD. Paragraph (g) allows accomplishing the maintenance program revision in accordance with later revisions of the MPD as an acceptable method of compliance if they are approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Paragraph (h) allows accomplishing the initial inspections and repair in accordance with later revisions of the MPD as an acceptable method of compliance if they are approved by the Manager, Seattle ACO. In addition, Subsection B of Revision March 2006 of the MPD specifies that any deviations from the published AWL instructions, including AWL intervals, in that MPD must be approved by the Manager, Seattle ACO. Therefore, after the maintenance program revision, any further revision to an AWL or AWL interval should be done as an AWL change, not as an alternative method of compliance (AMOC). For U.S.-registered airplanes, operators must make requests through an appropriate FAA Principal Maintenance Inspector (PMI) or Principal Avionics Inspector (PAI) for approval by the Manager, Seattle ACO. A non-U.S. operator should coordinate

changes with its governing regulatory agency.

Exceptional Short-Term Extensions

Subsection B of Revision March 2006 of the MPD has provisions for an exceptional short-term extension of 30 days. An exceptional short-term extension is an increase in an AWL interval that may be needed to cover an uncontrollable or unexpected situation. For U.S.-registered airplanes, the FAA PMI or PAI must concur with any exceptional short-term extension before it is used, unless the operator has identified another appropriate procedure with the local regulatory authority. The FAA PMI or PAI may grant the exceptional short-term extensions described in Subsection B without consultation with the Manager, Seattle ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency. As explained in Revision March 2006 of the MPD, exceptional short-term extensions must not be used for fleet AWL extensions. An exceptional short-term extension should not be confused with an operator's short-term escalation authorization approved in accordance with the Operations Specifications or the operator's reliability program.

Ensuring Compliance With Fuel Tank System AWLs

Boeing has revised applicable maintenance manuals and task cards to address AWLs and to include notes about CDCCLs. Operators that do not use Boeing's revision service should revise their maintenance manuals and task cards to highlight actions tied to CDCCLs to ensure that maintenance personnel are complying with the CDCCLs. Appendix 1 of this proposed AD contains a list of Air Transport Association (ATA) sections for the revised maintenance manuals. Operators might wish to use the appendix as an aid to implement the AWLs.

Recording Compliance With Fuel Tank System AWLs

The applicable operating rules of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 129) require operators to maintain records with the identification of the current inspection status of an airplane. Some of the AWLs contained in Subsection D of Revision March 2006 of the MPD are inspections for which the applicable sections of the operating rules apply. Other AWLs are CDCCLs, which are tied to conditional maintenance actions. An entry into an operator's existing maintenance record system for corrective action is sufficient for recording compliance with CDCCLs, as long as the applicable maintenance manual and task cards identify actions that are CDCCLs.

Changes to CMMs Cited in Fuel Tank System AWLs

Some of the AWLs in Subsection D of Revision March 2006 of the MPD refer to specific revision levels of the CMMs as additional sources of service information for doing the AWLs. Boeing is referring to the CMMs by revision level in the applicable AWL for certain components rather than including information directly in the MPD because of the volume of that information. As a result, the Manager, Seattle ACO, must approve the CMMs. Any later revision of those CMMs will be handled like a change to the AWL itself. Any use of parts (including the use of parts manufacturer approval (PMA) approved parts), methods, techniques, and practices not contained in the CMMs need to be approved by the Manager, Seattle ACO, or governing regulatory authority. For example, certain pump repair/overhaul manuals must be approved by the Manager, Seattle ACO.

Changes to AMMs Referenced in Fuel Tank System AWLs

In other AWLs in Subsection D of Revision March 2006 of the MPD, the AWLs contain all the necessary data. The applicable section of the maintenance manual is usually included in the AWLs. Boeing intended this information to assist operators in maintaining the maintenance manuals. A maintenance manual change to these tasks may be made without approval by the Manager, Seattle ACO, through an appropriate FAA PMI or PAI, by the governing regulatory authority, or by using the operator's standard process for revising maintenance manuals. An acceptable change would have to maintain the information specified in the AWL such as the pass/fail criteria or special test equipment.

Costs of Compliance

There are about 596 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	8	None	$640	57	$36,480
Inspections	8	None	640	57	36,480

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28386; Directorate Identifier 2006–NM–162–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400, –400D, and –400F series airplanes, certificated in any category; with an original standard airworthiness certificate or original export certificate of airworthiness issued before April 12, 2006.

Note 1: Airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued on or after April 12, 2006, must be already in compliance with the airworthiness limitations specified in this AD because those limitations were applicable as part of the airworthiness certification of those airplanes.

Note 2: This AD requires revisions to certain operator maintenance documents to include new inspections and maintenance actions. Compliance with these limitations is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 43.16 and 91.403(c), the operator must request approval for revision to the airworthiness limitations (AWLs) in the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9, according to paragraph (g) or (i) of this AD, as applicable.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Service Information Reference

(f) The term ''Revision March 2006 of the MPD'' as used in this AD, means Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9, Section 9, Revision 23, dated March 2006.

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program by incorporating the information in the subsections specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD; except that the initial inspections specified in Table 1 of this AD must be done at the compliance times specified in Table 1. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Subsection B, ''AIRWORTHINESS LIMITATIONS (AWLs)—SYSTEMS,'' of Revision March 2006 of the MPD.

(2) Subsection C, ''PAGE FORMAT: AIRWORTHINESS LIMITATIONS,'' of Revision March 2006 of the MPD.

(3) Subsection D, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' of Revision March 2006 of the MPD.

Initial Inspections and Repair if Necessary

(h) Do the inspections specified in Table 1 of this AD and repair any discrepancy, in accordance with Subsection D, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' of Revision March 2006 of the MPD. The repair must be done before further flight. Accomplishing the actions required by this paragraph in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO.

Note 3: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Note 4: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

TABLE 1.—INITIAL INSPECTIONS

AWL No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–AWL–01	A detailed inspection of external wires over the center fuel tank for damaged or loose clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank.	Before the accumulation of 36,000 total flight cycles, or within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	Within 72 months after the effective date of this AD.
28–AWL–03	A special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indicating system to verify functional integrity.	Before the accumulation of 36,000 total flight cycles, or within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	Within 24 months after the effective date of this AD.

TABLE 1.—INITIAL INSPECTIONS—Continued

AWL No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–AWL–10	A special detailed inspection of the fault current bond of the fueling shutoff valve actuator of the center wing tank to verify electrical bond.	Before the accumulation of 36,000 total flight cycles, or within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	Within 60 months after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

APPENDIX 1.—IMPLEMENTING FUEL TANK SYSTEM AIRWORTHINESS LIMITATIONS ON MODEL 747–400, –400D, AND –400F SERIES AIRPLANES

AWL No.	ALI/CDCCL	ATA section or CMM document	Task title	Task No.
28–AWL–01	ALI	AMM 28–11–00/601	External Wires Over the Center Fuel Tank—Inspection.	28–11–00–210–801.
28–AWL–02	CDCCL	SWPM 20–10–11	Wiring Assembly and Installation Configuration.	
28–AWL–03	ALI	AMM 05–55–54/601	FQIS Wiring and Bonding—Inspection.	05–55–54–200–801.
28–AWL–04	CDCCL	SWPM 20–10–15	Assembly of Shield Ground Wires.	
28–AWL–05	CDCCL	AMM 29–11–22/401	Heat Exchanger Installation	29–11–22–404–014.
28–AWL–06	CDCCL	CMM 28–22–07, Revision 1; CMM 28–31–03, Revision 3; CMM 28–26–12, Revision 0; CMM 28–26–14, Revision 0; CMM 28–20–02, Revision 9; or subsequent revisions.		
28–AWL–07	CDCCL.			
28–AWL–08	CDCCL	SWPM 20–10–11	Wiring Assembly and Installation Configuration..	
28–AWL–09	CDCCL	AMM 28–21–02/401	Refuel Valve Control Unit—Installation.	28–21–02–401–011.
		AMM 28–21–13/401	Refuel Valve Control Unit—Installation.	28–21–13–404–087.
28–AWL–10	ALI	AMM 28–21–13/601	Center Wing Tank Refuel Valve—Fault Current Bond Inspection.	28–21–13–765–801.
28–AWL–11	CDCCL	CMM 28–41–62, Revision 4 or subsequent revisions.		
28–AWL–12	CDCCL	CMM 28–21–02, Revision 2 or subsequent revisions.		
28–AWL–13	CDCCL	CMM 28–41–63, Revision 4 or subsequent revisions.		
28–AWL–14	CDCCL	CMM 28–40–55, Revision 6; CMM 28–40–56, Revision 4; CMM 28–40–59, Revision 5; or subsequent revisions.		
28–AWL–15	CDCCL	SWPM 20–14–12	Repair of Fuel Quantity Indicator System (FQIS) Wire Harness.	
		AMM 28–41–09/401	FQIS Wire Bundle in the Main or Reserve Tank—Installation.	28–41–09–404–019.
			FQIS Wire Bundle in the Center Wing Tank Installation.	28–41–09–404–157.
			FQIS Wire Bundle in the Horizontal Stabilizer Tank Installation.	28–41–09–404–176.

APPENDIX 1.—IMPLEMENTING FUEL TANK SYSTEM AIRWORTHINESS LIMITATIONS ON MODEL 747–400, –400D, AND –400F SERIES AIRPLANES—Continued

AWL No.	ALI/CDCCL	ATA section or CMM document	Task title	Task No.
28–AWL–16	CDCCL	AMM 28–11–02/401	Reserve and Main Tank Access Door Installation.	28–11–02–404–011.
		AMM 28–11–03/401	Access Door for the Wing Surge Tank Installation.	28–11–03–404–007.
28–AWL–17	ALI	AMM 28–31–14/501	Fault Current Detector Operational Test.	28–31–14–715–001.
		AMM 28–17–14/501	Fault Current Detector—Operational Test.	28–17–14–715–001.
28–AWL–18	CDCCL	CMM 28–31–22, Revision 4 or subsequent revisions.		
28–AWL–19	CDCCL	FIM 28–22–00/201	CMCS Message LEFT HORIZONTAL STABILIZER PUMP SYSTEM FAIL—Fault Isolation.	28–21 Task 806.
			CMCS Message RIGHT HORIZONTAL STABILIZER PUMP SYSTEM FAIL—Fault Isolation.	28–21 Task 807.
			CMCS Message MAIN TANK 1 FWD BOOST PUMP SYSTEM FAIL—Fault Isolation.	28–22 Task 860.
			CMCS Message MAIN TANK 1 AFT BOOST PUMP SYSTEM FAIL—Fault Isolation.	28–22 Task 861.
			CMCS Message MAIN TANK 2 FWD BOOST PUMP SYSTEM FAIL—Fault Isolation.	28–22 Task 862.
			CMCS Message MAIN TANK 2 AFT BOOST PUMP SYSTEM FAIL—Fault Isolation.	28–22 Task 863.
			CMCS Message MAIN TANK 3 FWD BOOST PUMP SYSTEM FAIL—Fault Isolation.	28–22 Task 864.
			CMCS Message MAIN TANK 3 AFT BOOST PUMP SYSTEM FAIL—Fault Isolation.	28–22 Task 865.
			CMCS Message MAIN TANK 4 FWD BOOST PUMP SYSTEM FAIL—Fault Isolation.	28–22 Task 866.
			CMCS Message MAIN TANK 4 AFT BOOST PUMP SYSTEM FAIL—Fault Isolation.	28–22 Task 867.
			CMCS Message LEFT CENTER TANK OVERRIDE/JETTISON PUMP SYSTEM FAIL—Fault Isolation.	28–31 Task 826.
			CMCS Message RIGHT CENTER TANK OVERRIDE/JETTISON PUMP SYSTEM FAIL—Fault Isolation.	28–31 Task 827.
			CMCS Message MAIN TK 2 AFT OVERRIDE/JETTISON PUMP SYSTEM FAIL—Fault Isolation.	28–31 Task 828.
			CMCS Message MAIN TK 2 FWD OVERRIDE/JETTISON PUMP SYSTEM FAIL—Fault Isolation.	28–31 Task 829.
			CMCS Message MAIN TK 3 AFT OVERRIDE/JETTISON PUMP SYSTEM FAIL—Fault Isolation.	28–31 Task 830.

APPENDIX 1.—IMPLEMENTING FUEL TANK SYSTEM AIRWORTHINESS LIMITATIONS ON MODEL 747–400, –400D, AND –400F SERIES AIRPLANES—Continued

AWL No.	ALI/CDCCL	ATA section or CMM document	Task title	Task No.
			CMCS Message MAIN TK 3 FWD OVERRIDE/JETTISON PUMP SYSTEM FAIL—Fault Isolation.	28–31 Task 831.
28–AWL–20	CDCCL	AMM 28–22–07/401	Front Spar Bulkhead Fitting—Installation.	28–22–07–400–805–001.
				28–22–07–400–806–002.
				28–22–07–400–807–003.
				28–22–07–400–808–004.
28–AWL–21	ALI	AMM 28–22–00/501.		
		AMM 28–17–00/501.		
28–AWL–22	CDCCL	AMM 28–22–03/401	Main Tank Boost Pump Motor/Impeller Unit Installation.	28–22–03–404–019–001.
				28–22–03–404–026–002.
28–AWL–23	CDCCL	AMM 28–41–24/401.		
47–AWL–01	CDCCL	AMM 47–21–06/401	Flame Arrestor Installation	47–21–06–400–801.
47–AWL–02	CDCCL.			
47–AWL–03	ALI	AMM 47–00–01/501	Functional Test of the Nitrogen Generation System.	47–00–01–720–801.
47–AWL–04	ALI	AMM 47–43–02/501	Thermal Switch Functional Test.	47–43–02–700–801.
			Thermal Switch Operational Test.	47–43–02–700–802.
47–AWL–05	ALI	AMM 47.		
47–AWL–06	ALI	AMM 47.		

Issued in Renton, Washington, on June 22, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–12816 Filed 7–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28388; Directorate Identifier 2006–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, –300F, and –400ER Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767–200, –300, –300F, and –400ER series airplanes. This proposed AD would require revising the FAA-approved maintenance program to incorporate new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD would also require the initial inspection of certain repetitive AWL inspections to phase in those inspections, and repair if necessary. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by August 17, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

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

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

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Ave SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28388; Directorate Identifier 2006–NM–163–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal

information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective action. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Subsection D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS,'' of Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Section 9, Revision March 2006 (hereafter referred to as ''Revision March 2006 of the MPD''). Subsection D of Revision March 2006 of the MPD describes new airworthiness limitations (AWLs) for fuel tank systems. The new AWLs include:

- AWL inspections, which are periodic inspections of certain features for latent failures that could contribute to an ignition source; and
- Critical design configuration control limitations (CDCCLs), which are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require revising the FAA-approved maintenance program to incorporate the information in Subsection D of Revision March 2006 of the MPD. This proposed AD would also require the initial inspection of certain repetitive AWL inspections to phase in those inspections, and repair if necessary.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for efficient and coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD, instead of the 18-month compliance time recommended by Boeing.

Rework Required When Implementing AWLs Into an Existing Fleet

The maintenance program revision for the fuel tank systems specified in paragraph (g) of this proposed AD, which involves incorporating the information specified in Revision March 2006 of the MPD, would affect how operators maintain their airplanes. After doing that maintenance program revision, operators would need to do any maintenance on the fuel tank system as specified in the CDCCLs. Maintenance done before the maintenance program revision specified in paragraph (g) would not need to be redone in order to comply with paragraph (g). For example, the AWL that requires fuel pumps to be repaired and overhauled per an FAA-approved component maintenance manual (CMM) applies to fuel pumps repaired after the maintenance programs are revised; spare or on-wing fuel pumps do not need to be reworked. For AWLs that require repetitive inspections, the initial inspection interval (threshold) starts from the date the maintenance program revision specified in paragraph (g) is done, except as provided by paragraph (h) of this proposed AD. This proposed AD would require only the maintenance program revision specified in paragraph (g), and initial inspections specified in

paragraph (h). No other fleet-wide inspections need to be done.

Changes to Fuel Tank System AWLs

Paragraph (g) of this proposed AD would require revising the FAA-approved maintenance program by incorporating certain information specified in Revision March 2006 of the MPD. Paragraph (g) allows accomplishing the maintenance program revision in accordance with later revisions of the MPD as an acceptable method of compliance if they are approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Paragraph (h) allows accomplishing the initial inspections and repair in accordance with later revisions of the MPD as an acceptable method of compliance if they are approved by the Manager, Seattle ACO. In addition, Subsection D of Revision March 2006 of the MPD specifies that any deviations from the published AWL instructions, including AWL intervals, in that MPD must be approved by the Manager, Seattle ACO. Therefore, after the maintenance program revision, any further revision to an AWL or AWL interval should be done as an AWL change, not as an alternative method of compliance (AMOC). For U.S.-registered airplanes, operators must make requests through an appropriate FAA Principal Maintenance Inspector (PMI) or Principal Avionics Inspector (PAI) for approval by the Manager, Seattle ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency.

Exceptional Short-Term Extensions

Subsection D of Revision March 2006 of the MPD has provisions for an exceptional short-term extension of 30 days. An exceptional short-term extension is an increase in an AWL interval that may be needed to cover an uncontrollable or unexpected situation. For U.S.-registered airplanes, the FAA PMI or PAI must concur with any exceptional short-term extension before it is used, unless the operator has identified another appropriate procedure with the local regulatory authority. The FAA PMI or PAI may grant the exceptional short-term extensions described in Subsection D without consultation with the Manager, Seattle ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency. As explained in Revision March 2006 of the MPD, exceptional short-term extensions must not be used for fleet AWL extensions. An exceptional short-term extension should not be confused with an operator's short-term escalation authorization approved in accordance with the Operations Specifications or the operator's reliability program.

Ensuring Compliance With Fuel Tank System AWLs

Boeing has revised applicable maintenance manuals and task cards to address AWLs and to include notes about CDCCLs. Operators that do not use Boeing's revision service should revise their maintenance manuals and task cards to highlight actions tied to CDCCLs to ensure that maintenance personnel are complying with the CDCCLs. Appendix 1 of this proposed AD contains a list of Air Transport Association (ATA) sections for the revised maintenance manuals. Operators might wish to use the appendix as an aid to implement the AWLs.

Recording Compliance With Fuel Tank System AWLs

The applicable operating rules of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 129) require operators to maintain records with the identification of the current inspection status of an airplane. Some of the AWLs contained in Subsection D of Revision March 2006 of the MPD are inspections for which the applicable sections of the operating rules apply. Other AWLs are CDCCLs, which are tied to conditional maintenance actions. An entry into an operator's existing maintenance record system for corrective action is sufficient for recording compliance with CDCCLs, as long as the applicable maintenance manual and task cards identify actions that are CDCCLs.

Changes to CMMs Cited in Fuel Tank System AWLs

Some of the AWLs in Subsection D of Revision March 2006 of the MPD refer to specific revision levels of the CMMs as additional sources of service information for doing the AWLs. Boeing is referring to the CMMs by revision level in the applicable AWL for certain components rather than including information directly in the MPD because of the volume of that information. As a result, the Manager, Seattle ACO, must approve the CMMs. Any later revision of those CMMs will be handled like a change to the AWL itself. Any use of parts (including the use of parts manufacturer approval (PMA) approved parts), methods, techniques, and practices not contained in the CMMs need to be approved by the Manager, Seattle ACO, or governing regulatory authority. For example, certain pump repair/overhaul manuals must be approved by the Manager, Seattle ACO.

Changes to AMMs Referenced in Fuel Tank System AWLs

In other AWLs in Subsection D of Revision March 2006 of the MPD, the AWLs contain all the necessary data. The applicable section of the maintenance manual is usually included in the AWLs. Boeing intended this information to assist operators in maintaining the maintenance manuals. A maintenance manual change to these tasks may be made without approval by the Manager, Seattle ACO, through an appropriate FAA PMI or PAI, by the governing regulatory authority, or by using the operator's standard process for revising maintenance manuals. An acceptable change would have to maintain the information specified in the AWL such as the pass/fail criteria or special test equipment.

Costs of Compliance

There are about 824 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	8	None	$640	332	$212,480
Inspections	8	None	640	332	212,480

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28388; Directorate Identifier 2006–NM–163–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 17, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; with an original standard airworthiness certificate or original export certificate of airworthiness issued before April 22, 2006.

Note 1: Airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued on or after April 22, 2006, must already be in compliance with the airworthiness limitations specified in this AD because those limitations were applicable as part of the airworthiness certification of those airplanes.

Note 2: This AD requires revisions to certain operator maintenance documents to include new inspections and maintenance actions. Compliance with these limitations is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 43.16 and 91.403(c), the operator must request approval for revision to the airworthiness limitations (AWLs) in the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, according to paragraph (g) or (i) of this AD, as applicable.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Service Information Reference

(f) The term ''Revision March 2006 of the MPD'' as used in this AD, means Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Section 9, Revision March 2006.

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program by incorporating the information in Subsection D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS,'' of Revision March 2006 of the MPD; except that the initial inspections specified in Table 1 of this AD must be done at the compliance times specified in Table 1. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Initial Inspections and Repair if Necessary

(h) Do the inspections specified in Table 1 of this AD and repair any discrepancy, in accordance with Subsection D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS,'' of Revision March 2006 of the MPD. The repair must be done before further flight. Accomplishing the actions required by this paragraph in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO.

Note 3: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Note 4: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

TABLE 1.—INITIAL INSPECTIONS

AWL No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–AWL–01	A detailed inspection of external wires over the center fuel tank for damaged clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank.	Before the accumulation of 36,000 total flight cycles, or within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	Within 72 months after the effective date of this AD.
8–AWL–05	A special detailed inspection of the bulkhead fitting bond for the hydraulic line tank penetration.	Before the accumulation of 25,000 total flight cycles, or within 72 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	Within 60 months after the effective date of this AD.
8–AWL–18	A special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indicating system to verify functional integrity.	Before the accumulation of 36,000 total flight cycles, or within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	Within 24 months after the effective date of this AD.
8–AWL–26	A special detailed inspection of the lightning shield to ground termination on the out-of-tank surge tank fuel level sensor to verify functional integrity.	Before the accumulation of 36,000 total flight cycles, or within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.	Within 24 months after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

APPENDIX 1.—IMPLEMENTING FUEL TANK SYSTEM AIRWORTHINESS LIMITATIONS ON MODEL 767–200, –300, –300F, AND –400ER SERIES AIRPLANES

AWL No.	ALI/CDCCL	ATA section or CMM document	Task title	Task No.
28–AWL–01	ALI	AMM 28–11–00/601	External Wires Over the Center Tank Inspection.	28–11–00–206–258.
28–AWL–02	CDCCL	SWPM 20–10–11	Wiring Assembly and Installation Configuration.	
28–AWL–03	CDCCL	AMM 28–22–07/401	Install the Fuel Lines and Fittings.	Varies with configuration.
28–AWL–04	CDCCL	AMM 29–11–27/401	Install the Heat Exchanger	29–11–27–424–015.
28–AWL–05	ALI	AMM 29–11–27/601	Bonding Resistance Check of the Heat Exchanger Lines.	29–11–27–026–001.
28–AWL–06	CDCCL	CMM 28–22–01, Revision 12; CMM 28–22–12, Revision 16; CMM 28–22–21, Revision 7; or subsequent revisions.		
28–AWL–07	CDCCL	AMM 28–22–03/401	Install the Housing of the Fuel Boost Pump.	28–22–03–404–027.
		AMM 28–22–05/401	Install the Housing of the Override (or Override/jettison) Pump.	Varies with configuration.
28–AWL–08	CDCCL.			
28–AWL–09	CDCCL	SWPM 20–10–11	Wiring Assembly and Installation Configuration.	
28–AWL–10	CDCCL	AMM 28–21–02/401	Install the Fueling Shutoff Valve.	28–21–02–404–021.
		AMM 28–21–12/401	Install the Control Unit of the Fueling Shutoff Valve.	28–21–12–404–021.
28–AWL–11	CDCCL	CMM 28–41–68, Revision 4 or subsequent revisions.		

APPENDIX 1.—IMPLEMENTING FUEL TANK SYSTEM AIRWORTHINESS LIMITATIONS ON MODEL 767–200, –300, –300F, AND –400ER SERIES AIRPLANES—Continued

AWL No.	ALI/CDCCL	ATA section or CMM document	Task title	Task No.
28–AWL–12	CDCCL	CMM 28–40–56, Revision 4; CMM 28–40–59, Revision 4; CMM 28–40–62, Revision 3; CMM 28–41–68, Revision 4; CMM 28–41–01, Revision 5; CMM 28–41–07, Revision 4; CMM 28–41–09, Revision 6; CMM 28–41–30, Revision 1; CMM 28–41–33, Revision 2; CMM 28–41–34, Revision 1; CMM 28–41–35, Revision 1; CMM 28–41–36, Revision 7; CMM 28–41–39, Revision 7; CMM 28–41–41, Revision 5; CMM 28–41–42, Revision 0; or subsequent revisions.		
28–AWL–13	CDCCL	SWPM 20–14–12	Repair of Fuel Quantity Indicator System (FQIS) Wire Harness.	
		AMM 28–41–09/401	Install the Tank Wiring Harness.	Varies with configuration.
28–AWL–14	CDCCL	AMM 28–11–01/401	Install the Main Tank Access Door.	28–11–01–404–005.
		AMM 28–11–02/401	Install the Auxiliary Tank Access Door.	28–11–02–404–013.
		AMM 28–11–03/401	Install the Surge Tank Access Door.	28–11–03–404–011.
28–AWL–15	CDCCL	CMM 28–21–01, Revision 1 or subsequent revisions.		
28–AWL–16	CDCCL	SWPM 20–14–12	Repair of Fuel Quantity Indicator System (FQIS) Wire Harness.	
		AMM 28–21–11/401	Surge Tank Sensor Harness Installation.	28–21–11–424–032.
28–AWL–17	CDCCL	FIM 28–22–00/101.		
28–AWL–18	ALI	AMM 20–55–54/601	FQIS Wiring and Bonding Inspection/Check.	20–55–54–206–002.
28–AWL–19	CDCCL	SWPM 20–10–15	Assembly of Shield Ground Wires.	
28–AWL–20	ALI	AMM 28–22–00/501	Override Pump Auto Shutoff Functional Test.	28–22–00–725–529.
28–AWL–21				
28–AWL–22	CDCCL	AMM 28–41–24/401	Densitometer Hot Short Protector Installation.	28–41–24–404–017.
28–AWL–23	CDCCL	AMM 28–22–01/401	Install the Adapter Shaft of the Engine Fuel Shutoff Valve.	28–22–01–404–030.
		AMM 28–22–02/401	Install the Adapter Shaft of the Engine Crossfeed Valve.	28–22–02–404–023.
		AMM 28–22–11/401	Install the Actuator of the Engine Fuel Shutoff Valve.	28–22–11–404–008.
		AMM 28–22–12/401	Install the Actuator of the Engine Fuel Crossfeed Valve.	28–22–12–404–010.
		AMM 28–26–01/401	Install the Adapter Shaft of the Defueling Valve.	28–26–01–404–059.
		AMM 28–26–02/401	Install the Defueling Valve Actuator.	28–26–11–404–020.
28–AWL–24	CDCCL	CMM 28–20–21.		
28–AWL–25	CDCCL	SWPM 20–10–15	Assembly of Shield Ground Wires.	
28–AWL–26	ALI	AMM 20–55–54/601.		

Issued in Renton, Washington, on June 22, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–12817 Filed 7–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28235; Airspace Docket No. 07–ANM–9]

Proposed Establishment of Class E Airspace; Hulett, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Hulett, WY. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedure (IAP) at Hulett Municipal Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at Hulett Municipal Airport, Hulett, WY.

DATES: Comments must be received on or before August 17, 2007.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room @12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2007–28235; Airspace Docket No. 07–ANM–9, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western Service Area Office, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6714.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2007–28235 and Airspace Docket No. 07–ANM–9) and be submitted in triplicate to Docket Operations (see ''**ADDRESSES**'' section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2007–28235 and Airspace Docket No. 07–ANM–9''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the **Federal Register**'s web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the ''**ADDRESSES**'' section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Hulett, WY. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) IAP at Hulett Municipal Airport. This action would enhance the safety and management of aircraft operations at Hulett Municipal Airport, Hulett, WY.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9P, Airspace Designations and Reporting

Points, dated September 1, 2006, and effective September 15, 2006 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY, E5 Hulett, WY [New]

Hulett Municipal Airport, WY
(Lat. 44°39′46″ N., long. 104°34′04″ W.)

That airspace extending upward from 700 feet above the surface within an 8.0-mile radius of Hulett Municipal Airport; that airspace extending upward from 1,200 feet above the surface beginning at lat. 44°50′00″ N., long. 105°00′00″ W.; thence to lat. 44°50′00″ N., long. 104°00′00″ W.; thence south along long. 104°00′00″ W., to V–536; thence west along V–536 to Newcastle VOR; thence west on V–536 to lat. 44°09′00″ N., long. 105°00′00″ W.; thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on June 13, 2007.

Clark Desing,

Manager, System Support Group, Western Service Area.

[FR Doc. E7–12793 Filed 7–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 2006P–0071]

General and Plastic Surgery Devices; Reclassification of the Tissue Adhesive for Topical Approximation of Skin Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the device, tissue adhesive for the topical approximation of skin, from class III (premarket approval) into class II (special controls). Tissue adhesives for non-topical uses would remain in class III and continue to require premarket approval applications (PMAs). FDA is proposing this reclassification in accordance with the Federal Food, Drug, and Cosmetic Act (the act). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a draft guidance document that would serve as the special control if FDA reclassifies this device.

DATES: Submit written comments by September 4, 2007. See section IX of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. 2006P–0071, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the Electronic Submissions portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: George J. Mattamal, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3619.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The act, as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

The 1976 amendments broadened the definition of ''device'' in section 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified all transitional devices, i.e., those devices previously regulated as new drugs, into class III. SMDA amended section 520(l) of the act (21 U.S.C. 360j(l)) to direct FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices still remaining in class III to determine whether the devices should be reclassified into class II (special controls) or class I (general controls). The legislative history of the SMDA reflects congressional concern that many transitional devices were being overregulated in class III (H. Rept. 808, 101st Cong., 2d sess. 26–27 (1990); S. Rept. 513, 101st Cong., 2d sess. 27 (1990)).

Accordingly, in the **Federal Register** of November 14, 1991 (56 FR 57960), FDA issued an order under section 520(l)(5)(A) of the act, requiring manufacturers of transitional devices, which included tissue adhesives for use in general surgery (47 FR 2810, January 19, 1982), to submit to FDA a summary of and a citation to any information known or otherwise available to them respecting the devices, including adverse safety or effectiveness information, that had not been submitted under section 519 of the act (21 U.S.C. 360i).

Manufacturers were to submit the summaries and citations to FDA by January 13, 1992. However, because of misunderstandings and uncertainties regarding the information required by the order, and regarding whether the order applied to certain manufacturers' devices, many transitional class III device manufacturers failed to comply

with the reporting requirement by January 13, 1992. Consequently, in the **Federal Register** of March 10, 1992 (57 FR 8462), FDA extended the reporting period to March 31, 1992.

Section 520(l)(5)(B) of the act provides that, after the issuance of an order requiring manufacturers to submit any information known or otherwise available respecting the devices, but before December 1, 1992, FDA was to publish regulations either leaving transitional class III devices in class III or reclassifying them into class I or II.

Subsequently, as permitted by section 520(l)(5)(C) of the act, in the **Federal Register** of November 30, 1992 (57 FR 56586), the agency published a notice extending the period for issuing such regulations until December 1, 1993. Due to limited resources, FDA was unable to publish the regulations before the December 1, 1993, deadline.

II. Regulatory Background of the Device

Transitional devices, those devices formerly regulated as drugs, were classified into class III by the statute and premarket approval was immediately required (section 520(l) of the act). The **Federal Register** of December 16, 1977 (42 FR 63472), listed transitional devices and stated the following: ''The lists contained in this notice may not be an exhaustive inventory of products subject to section 520(l) of the act.'' This notice did not specifically list ''Tissue Adhesives.'' The investigational new drug (IND) and new drug applications (NDAs) for products classified as transitional devices were shortly thereafter transferred to FDA's Center for Devices and Radiological Health (formerly the Bureau of Medical Devices). Applications for tissue adhesives were included in this list of products transferred. (FDA did list ''injectable silicone'' as a transitional device in the **Federal Register** of December 16, 1977. In the January 19, 1982, **Federal Register** notice (47 FR 2810) ''tissue adhesive for use in general surgery,'' was included as a transitional device under ''injectable silicone.'' This was a typographical error as ''tissue adhesives'' are not a subcategory of ''injectable silicone.'') Since enactment of the 1976 amendments, FDA has approved several premarket approval (PMA) applications and PMA supplements authorizing the commercial distribution of tissue adhesives in the United States.

III. Description of the Device

FDA has referred to this device, under review for reclassification, in previous notices as ''tissue adhesive for use in general surgery;'' however, FDA is proposing in this notice to revise the name and identification to more accurately identify the device. Under the proposal, the device proposed for reclassification into class II, would be: Tissue adhesives for the topical approximation of skin. Tissue adhesives for the topical approximation of skin devices, which may contain cyanoacrylate as the active ingredient, are intended for topical closure of surgical incisions, including laparoscopic incisions, and simple traumatic lacerations that have easily approximated skin edges. Tissue adhesives for the topical approximation of skin may be used in conjunction with, but not in place of, deep dermal stitches.

FDA is also proposing the following identification for the devices that will remain in class III: A tissue adhesive for non-topical use, including adhesives intended for use in the embolization of brain arteriovenous malformation or ophthalmic surgery, is a device used for adhesion of internal tissues and vessels.

IV. Recommendation of the Panel

On February 9, 2006, Regulatory & Clinical Research Institute, Inc. (RCRI), Minneapolis MN, submitted a petition (Docket No. 2006P–0071) to FDA to reclassify tissue adhesive for soft tissue approximation from ''Class III to Class II (special controls)'' (Ref. 1). On May 15, 2006, the petitioner amended its petition to include several references from the scientific literature cited in the original petition (Ref. 2). On July 18, 2006, the petitioner again amended its petition to clarify that the use it was proposing for reclassification was only the topical approximation of skin (Ref. 3).

In response to the petition, FDA consulted with the FDA's General and Plastic Surgery Devices Panel (the Panel), regarding reclassification of this device. The Panel discussed the device at an August 25, 2006, public meeting and unanimously recommended that the tissue adhesive for the topical approximation of skin be reclassified from class III into class II. The Panel also recommended that a class II guidance document, which the Panel thought should include several voluntary consensus standards, be the special control for the device. The Panel based the recommendations on the information provided by FDA; the presentations to the panel by the petitioner, other manufacturers, and FDA; the Panel's deliberations at the meeting; and the Panel's personal experience with the use of devices for the topical approximation of skin. The Panel did not consider the reclassification of any other use of tissue adhesives.

V. Risks to Health

After considering the information in the petition, the information presented at the Panel meeting, the Panel's recommendation, and Medical Device Reports, FDA has evaluated the risks to health associated with use of the tissue adhesive for the topical approximation of skin and determined that the following risks to health are associated with its use.

A. Unintentional Bonding or Product Leaks Into Eyes

Without adequate protection of the patient's eye, the adhesive may inadvertently leak onto the eyelids when tissue adhesive is used on the skin near the patient's eye, for example on the brow or forehead. If this occurs, this can lead to sealing the eyelids shut and can require surgical intervention to remove the adhesive and any bound skin.

B. Wound Dehiscence

Wound dehiscence, the subsequent separation of the edges of the wound, i.e., incision or laceration, during recovery is a risk of all surgical procedures and treatments of traumatic wounds. Complications can arise as a result of wound dehiscence, which include re-sealing the wound and surgical revision of the wound with adhesive or sutures. These complications have the potential to delay the patient's recovery.

C. Adverse Tissue Reaction and Chemical Burns

Tissue adhesive may be associated with adverse tissue reactions, including allergy, inflammation, foreign body reactions, erythema (redness), granuloma, and the exacerbation of asthma. In addition, fumes given off by the adhesive before or during polymerization can cause chemical burns.

D. Infection

Infection of the skin or soft tissue is a risk to health associated with all surgical procedures and wound treatment. If the tissue adhesive is not properly sterilized, it may contribute to an increased risk of infection.

E. Applicator Malfunction

Inadequate packaging of the device or user error when opening the packaging can result in damage to the applicator and subsequent malfunction. If an applicator malfunctions, surgery may be extended, resulting in additional time

under anesthesia, or treatment may be delayed. In addition, if the adhesive is packaged in a glass container, lacerations to the user or the patient may result if the glass breaks.

F. Delayed Polymerization

Polymerization of the adhesive may be delayed, resulting in compromise of the wound, additional time under anesthesia, or delayed treatment.

VI. Summary of the Reasons for the Reclassification

FDA believes that the tissue adhesive for the topical approximation of skin device should be reclassified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device. FDA believes there is sufficient information to establish special controls to provide such assurance. In addition to the potential risks to health associated with use of the tissue adhesive for the topical skin approximation device described in section V of this document, there is reasonable knowledge of the benefits of the device. Specifically, the tissue adhesive for the topical approximation of skin may prevent extended bleeding in the repair of surgical incisions and traumatic lacerations, promote healing of approximated wound edges, and reduce pain and recovery time.

VII. Special Controls

In addition to general controls, FDA believes that the draft guidance document entitled ''Class II Special Controls Guidance Document: Tissue Adhesive for the Topical Approximation of Skin'' (the class II special controls guidance document) is a special control adequate to address the risks to health associated with the use of the device described in section V of this document. FDA believes that the class II special controls guidance document, which incorporates voluntary consensus standards and describes labeling recommendations, in addition to general controls, provides reasonable assurance of the safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the draft class II special controls guidance document that the agency would use as the special control for this device.

The draft class II special controls guidance document sets forth the information FDA believes should be included in premarket notification submissions (510(k)s) for the tissue adhesive for the topical approximation of skin. FDA has identified the risks to health associated with the use of the device in the first column of table 1 of this document and the recommended mitigation measures identified in the class II special controls guidance document in the second column of table 1. FDA believes that addressing these risks to health in a 510(k) in the manner identified in the class II special controls guidance document, or in an acceptable alternative manner, is necessary to provide reasonable assurance of the safety and effectiveness of the device.

TABLE 1.

Identified risk	Recommended mitigation measures
Unintentional Bonding or Product Leaks into Eyes	Bench Testing Labeling
Wound Dehiscence	Bench Testing Shelf-Life Testing Animal Testing Labeling
Adverse Tissue Reaction and Chemical Burns	Biocompatibility Animal Testing
Infection	Bench Testing Sterility
Applicator Malfunction	Bench Testing
Delayed Polymerization	Bench Testing Animal Testing

VIII. FDA's Findings

As discussed previously in this document, FDA believes the tissue adhesive for the topical approximation of skin should be reclassified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device and because there is sufficient information to establish special controls to provide such assurance. FDA, therefore, is proposing to reclassify the device into class II and establish the draft class II special controls guidance document as a special control for the device. Tissue adhesives for non-topical use will remain in class III and continue to require PMAs.

Section 510(m) of the act (21 U.S.C. 360) provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the act, if the agency determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this device, FDA believes that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, does not intend to exempt the device from the premarket notification requirements.

IX. Effective Date

FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

X. Environmental Impact

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

XI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–602), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device when it is used for the topical approximation of skin, from class III to class II, will relieve manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Because reclassification will reduce regulatory costs with respect to this device, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold

after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

XII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

XIII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no new collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

This proposed rule designates a guidance document as a special control. FDA also tentatively concludes that the draft special control guidance document does not contain new information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of that draft guidance document entitled ''Class II Special Controls Guidance Document: Tissue Adhesive for the Topical Approximation of Skin,'' which contains an analysis of the paperwork burden for the draft guidance.

XIV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Regulatory & Clinical Research Institute, Inc. (RCRI), reclassification petition, Docket No. 2006P–0071, Minneapolis MN, February 9, 2006.

2. Regulatory & Clinical Research Institute, Inc., reclassification petition, Docket No. 2006P–0071, Minneapolis MN, May 15, 2006.

3. Regulatory & Clinical Research Institute, Inc., reclassification petition, Docket No. 2006P–0071, Minneapolis MN, July 18, 2006.

4. General and Plastic Surgery Devices Panel, Transcript, pp. 199 to 207, August 25, 2006.

List of Subjects in 21 CFR Part 878

Medical devices.

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

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

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

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

2. Section 878.4010 is added to subpart E to read as follows:

§ 878.4010 Tissue adhesive.

(a) *Tissue adhesives for the topical approximation of skin*—(1) *Identification*. Tissue adhesives for the topical approximation of skin are intended for topical closure of surgical incisions, including laparoscopic incisions, and simple traumatic lacerations that have easily approximated skin edges. Tissue adhesives for the topical approximation of skin may be used in conjunction with, but not in place of, deep dermal stitches.

(2) *Classification*. Class II (special controls). The special control for this device isEFDA's ''Class II Special Controls Guidance Document: ''Tissue Adhesive for the Topical Approximation of Skin.'' See § 878.1(e) for the availability of this guidance document.

(b) *Tissue adhesives for non-topical use*—(1) *Identification*. A tissue adhesive for non-topical use, including adhesives intended for use in the embolization of brain arteriovenous malformation or for use in ophthalmic surgery, is a device used for adhesion of internal tissues and vessels.

(2) *Classification*. Class III (premarket approval). As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 878.3.

Dated: June 22, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–12797 Filed 7–2–07; 8:45 am]

BILLING CODE 4160–01–S

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1193 and 1194

Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a Telecommunications and Electronic and Information Technology Advisory Committee (Committee) to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. This notice announces the dates, time, and location of the next committee meeting.

DATES: The meeting is scheduled for July 16–18, 2007 (beginning at 9 a.m. and ending at 5 p.m. each day).

ADDRESSES: The meeting will be held at the National Science Foundation. Report to the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, to pick up security passes and then report to 4121 Wilson Boulevard, Stafford Place II, Room 555, Arlington, VA 22230 for the meeting.

FOR FURTHER INFORMATION CONTACT: Timothy Creagan, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0016 (Voice); 202–272–0082 (TTY). Electronic mail address: *creagan@access-board.gov.*

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established the Telecommunications and Electronic and Information Technology Advisory Committee (Committee) to assist it in

revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. The next committee meeting will take place on July 16–18, 2007. The meeting will focus on reports and discussion of recommendations from the following subcommittees:

- Software, Web, and Content
- General Interface Requirements and Functional Performance Criteria
- Computer Hardware
- Subpart A
- Documentation and Technical Support
- Telecommunications
- Audio/Visual
- Self Contained, Closed Products
- Editorial Working Group

The meeting will also discuss the status of the committee's work to date and when a final report may be ready for presentation to the Access Board. The full agenda for the July 16–18, 2007 meeting is available at *http://www.access-board.gov/sec508/refresh/agenda.htm.* Notices of future meetings will be published in the **Federal Register**.

Information about the committee, including future meeting dates is available at *http://www.access-board.gov/sec508/update-index.htm* or at a special Web site created for the committee's work (*http://teitac.org*). The site includes a calendar for subcommittee meetings, e-mail distribution lists, and a ''Wiki'' (*http://teitac.org/wiki/TEITAC_Wiki*) which provides interactive online work space.

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them and the committee during public comment periods scheduled on each day of the meeting. Members of groups or individuals who are not members of the committee are invited to participate on subcommittees; participation of this kind is very valuable to the advisory committee process.

The meeting site is accessible to individuals with disabilities. Sign language interpreters, an assistive listening system, and real-time captioning will be provided. For the comfort of other participants, persons attending committee meetings are requested to refrain from using perfume, cologne, and other fragrances. Due to security measures at the National Science Foundation, all attendees must notify the Access Board's receptionist at 202–272–0007 or *receptionist@access-board.gov* by July 11, 2007 of their intent to attend the meeting. This notification is required for expeditious entry into the facility and will enable the Access Board to provide additional information as needed.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E7–12811 Filed 7–2–07; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0451; FRL–8333–5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of VOC Emissions from Crude Oil Lightering Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This SIP revision pertains to the control of volatile organic compound (VOC) emissions from crude oil lightering operations. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0451 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: cripps.christopher@epa.gov.*

C. *Mail*: EPA–R03–OAR–2007–0451, Christopher Cripps, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery*: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0451. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 2, 2007, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP for Regulation No. 1124, Section 46—Control of VOC Emissions from Crude Oil Lightering Operations. Lightering is the transfer at anchorage for some of the

contents of a larger oil tanker to a smaller service vessel in order to allow the larger ship to navigate in shallower waters along the Delaware Bay. The VOC emissions released during crude oil lightering are a major source of VOC released in Delaware.

II. Summary of SIP Revision

Delaware's Regulation No. 1124, Section 46, applies to the owner or operator of a lightering service that carries out crude oil lightering operations in the waters of Delaware which includes the Counties of New Castle, Kent and Sussex. This regulation includes standards when carrying out a lightering operation by vapor balancing. Vapor balancing is the collection and transfer of vapors displaced by the incoming crude oil from the cargo tank of a service vessel into a cargo tank of the ship to be lightered. A compliance schedule is also included in the regulation that includes compliance standards; maximum allowable uncontrolled lightering volume; calculation of the total of uncontrolled lightering for any given lightering operation; VOC emission reductions achieved by the lightering services to below the maximum allowable uncontrolled lightering volume; annual audits of lightering service records to identify the frequency and duration of VOC ventings from the ships to be lightered; and ozone action day limitations. In addition, a compliance plan will be developed and implemented that describes how initial and ongoing compliance will be demonstrated. Another requirement of the regulation is that owner or operator of an existing lightering service is to keep records specified in the regulation for at least five years in a readily accessible location, which is the service vessel. The regulation also includes reporting requirements.

Implementation of the provisions of this regulation will result in the reduction of VOCs released during crude oil lightering operations. The regulation requires the increased use of vapor balancing equipment over a reasonable time period that the industry has indicated to allow the changes to be made to the vessels or acquire newer vessels. The first regulatory deadline will be an 80 percent limit to uncontrolled lightering out of all crude oil lightering volumes by May 1, 2008. This level will reduce to 61 percent by May 1, 2010, and again be reduced to 43 percent by May 1, 2012.

III. Proposed Action

EPA is proposing to approve the Delaware SIP revision for Regulation No. 1124, Section 46-Control of VOC Emissions from Crude Oil Lightering Operations submitted on May 2, 2007. This regulation will reduce VOC emissions released during crude oil lightering operations in the State of Delaware. These reductions will aide in attaining and maintaining the Federal health-based air quality standard for the 8-hour ozone. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between 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), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule, pertaining to Delaware's control of VOC emissions from crude oil lightering operations, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 22, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 07–3227 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–VA–0011; FRL–8333–8]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Control of Particulate Matter From Pulp and Paper Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to a State Implementation Plan (SIP) submitted by the Commonwealth of Virginia Department of Environmental Quality. The revisions pertain to amendments to an existing regulation to control particulate matter from pulp and paper mills. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before August 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–VA–0011 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: cripps.christopher@epa.gov*

C. Mail: EPA–R03–OAR–2005–VA–0011, Christopher Cripps, Acting Chief, Air Quality and Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2005–VA–0011. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: LaKeshia N. Robertson, (215) 814–2113, or by e-mail at *robertson.lakeshia@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 21, 2005, the Commonwealth of Virginia submitted revisions to its State Implementation Plan (SIP) plan for Pulp and Paper mills. The revisions pertain to the control of particulate matter (9 VAC 5, Chapter 40, Article 13, Rule 4–13).

I. Background

The revisions consist of amendments to existing regulations that implement emission standards for particulate matter from pulp and paper mills (9 VAC 5, Chapter 40, Article 13, Rule 4–13.) The changes will control particulate matter emissions.

II. Summary of SIP Revision

The following provisions consist of changes to the Commonwealth of Virginia's regulation for the control and abatement of air pollution (9 VAC 5, Chapter 40, Article 13, Rule 4–13). The modifications below are the subject of this rulemaking.

Revision 1: 9 VAC 5–40–1660. Applicability and designation of affected facilities. Section A is revised to read as follows: The affected facilities in pulp and paper mills to which the provisions of this article apply are: Each recovery furnace each smelt dissolving tank, each lime kiln, each slaker tank, and each kraft wood pulping operation. For the purpose of this article, a kraft wood pulping operation is comprised only of any combination of the following units: Recovery furnaces, lime kilns, digester systems, multiple-effect evaporator systems, condensate stripper systems and smelt dissolving tanks.

Revision 2: 9 VAC 5–40–1670. Definitions. Section C: The definition of agreement is deleted and the following terms are added: (1) Neutral sulfite semichemical pulping operation means any operation in which pulp is produced from wood by cooking (digesting) wood chips in a solution of sodium sulfite and sodium bicarbonate, followed by mechanical defibrating (grinding); (2) new design recovery furnace means a straight kraft recovery furnace that has both membrane wall or welded wall construction and emission control designed air systems. A new design furnace shall have stated in its contract a TRS performance guarantee or that it was designed with air pollution control as an objective; (3) pulp and paper mill means any kraft pulp mill or any paper mill using a semichemical pulping process; and (4) semichemical pulping process means any pulp manufacturing process in which the active chemicals of the liquor used in cooking (digesting) wood chips to their component parts in a pressurized vessel (digester) are primarily a liquor of sodium hydroxide and sodium carbonate. The major difference between all semichemical techniques and those of kraft and acid sulfite processes is that only portion of the lignin is removed during the cooking (digesting), after which the pulp is further reduced by mechanical disintegration. In addition, these terms were amended: Cross recovery furnace; straight kraft recovery furnace; and total reduced sulfur.

Revision 3: 9 VAC 5–40–1690. Standard for total reduced sulfur. Section A is revised to read as follows: No owner or other person shall cause or permit to be discharged into the atmosphere from any kraft wood pulping operation unit specified below any total reduced sulfur emissions in

excess of the following limits. Section B is deleted and replaced by Section C. In addition, Section D is deleted.

Revision 4: 9 VAC 5–40–1750. Compliance. In Section A, the letter A is deleted and the provision remains the same. Sections B through D are deleted and no longer relevant to the regulation.

Revision 5: 9 VAC5–40–1770. Monitoring. Section B clarifies that the owner of a kraft pulp mill shall comply with monitoring provisions by October 1, 1990. Section C (1) has been revised to include the language ''Part'' to reference information used in the regulation.

Revision 6: 9 VAC5–40–1810. Permits. The paragraph which states the permit requirements shall read as follows: A permit may be required prior to beginning any of the activities specified below if the provisions of 9 VAC 5 Chapter 50 (9 VAC 5–50–10 *et seq.*) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply. Also, under the numeric rationale for permits, an additional activity, which is number ''6'' is added to read as follows: Operation of a facility.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law,Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is approving the Commonwealth of Virginia's SIP submitted on June 21, 2005 to control particulate matter emissions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it

approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule, pertaining to Virginia's control of particulate matter from pulp and paper mills, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 22, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–12838 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and Part 97

[Docket No. EPA–R02–OAR–2007–0233; FRL–8334–9]

Approval and Promulgation of Implementation Plans; New Jersey: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing action on a revision to New Jersey's State Implementation Plan (SIP) submitted on February 6, 2007. EPA is proposing to fully approve its incorporation into the SIP provided New Jersey's final rule is consistent with the modifications discussed herein.

This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR) and the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide (SO_2), and annual and ozone season oxides of nitrogen (NO_X) emissions. EPA is not proposing to make any changes to the CAIR FIPs, but is proposing to the extent EPA approves New Jersey's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

On April 28, 2006, EPA promulgated CAIR FIPs for States covered by CAIR as a backstop to implement the requirements of CAIR until States have obtained fully approved SIPs to replace the FIPs. The FIPs require certain electric generating units (EGUs) to participate in the Federal CAIR cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. The CAIR FIPs also provide that States may submit ''abbreviated'' SIP revisions to replace or supplement specific elements of the FIPs, leaving the remainder of the overall FIPs in place, rather than submitting full SIP revisions that replace the FIPs.

The New Jersey SIP revision that EPA is proposing to approve is an abbreviated SIP revision that will replace two provisions of the CAIR FIP that allow the State to: (1) Use a methodology chosen by the State for allocation of annual and ozone season NO_X allowances and; (2) use a methodology chosen by the State for allocation of NO_X annual allowances from the NO_X annual Compliance Supplemental Pool (CSP). The revision retires, rather than allocates allowances from the NO_X annual CSP.

The SIP revision that EPA is proposing to approve will also satisfy New Jersey's 110(a)(2)(D)(i) obligations to submit a SIP revision that contains adequate provisions to prohibit air emissions from adversely affecting another State's air quality through interstate transport.

The intent of this proposed revision is to approve a State specific CAIR program which will result in emission reductions necessary to prevent the interstate transport of air pollutants. The revision also shows that the interstate transport of pollutants from the State has been adequately addressed in the applicable implementation plan.

DATES: Comments must be received on or before August 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2007–0233, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: Werner.Raymond@epa.gov.*
3. *Fax:* (212) 637–3901.
4. *Mail:* Docket ID No. EPA–R02–OAR–2007–0233, Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
5. *Hand Delivery or Courier:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business is Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2007–0233. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should 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 electronic docket are listed in the *www.regulations.gov* index. 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 in *www.regulations.gov* or in hard copy at the Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposal, please contact Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. The telephone number is (212) 637–3702. Mr. Fradkin can also be reached via electronic mail at *fradkin.kenneth@epa.gov.*

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I. What Action Is EPA Proposing To Take?

CAIR SIP and 110(a)(2)(D)(i) Approval

EPA is proposing to approve a revision to New Jersey's SIP, submitted on February 6, 2007, which was published in the New Jersey Register on February 5, 2007. The revision modifies the application of certain provisions of the CAIR FIP which requires emission reductions of SO_2, NO_X annual, and NO_X ozone season emissions. (As discussed later, this less comprehensive CAIR SIP is termed an abbreviated SIP.) This revision includes a new proposed regulation, N.J.A.C. 7:27–30, Clean Air Interstate Rule (CAIR) NO_X Trading Program. As part of the revision, New Jersey has also proposed at N.J.A.C. 7:27–31.23 the date when New Jersey's CAIR NO_X Trading Program will replace New Jersey's NO_X Budget Trading Program (Subchapter 31).

This action is being proposed under a procedure called parallel processing. Under parallel processing, EPA proposes action on a State submission before it has been formally adopted and submitted to EPA, and will take final action on its proposal if the final submission is substantially unchanged from the submission on which the proposal is based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposal as a basis for EPA's proposed action.

This proposed approval is contingent upon New Jersey making the necessary changes to New Jersey's proposed CAIR rule in order to address EPA's concerns discussed in section V, Part D (NO_X Allowance Allocations). If EPA determines New Jersey's final submission is consistent with the necessary changes outlined in this proposed action, EPA may proceed to publish its full approval of New Jersey's CAIR SIP in the **Federal Register**. The final rule that New Jersey submits to EPA must be consistent with the changes discussed in this action for EPA to fully approve its incorporation into the SIP.

If New Jersey is unable to make the required changes upon adoption, and must repropose their rule, EPA will finalize a partial approval in lieu of a full approval. Under the partial approval alternative, EPA would approve those portions of the rule consistent with EPA requirements into the SIP and disapprove those not consistent. EPA believes the approvable portions of the rule strengthen New Jersey's SIP by allowing the State to be the implementing authority, and make allocations consistent with New Jersey's air quality goals. EPA recognizes that the Clean Air Act assigns first responsibility to the States, and it is EPA's preference to defer, wherever possible, to States the decisions about control mechanisms to prevent significant contribution, including States' decisions about allocation of NO_X allowances. If EPA finalizes a partial approval, EPA would concurrently disapprove those portions of the rule for not meeting those applicable requirements.

New Jersey is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain Electric Generating Units (EGUs) to participate in the EPA-administered Federal CAIR SO_2, NO_X annual, and NO_X ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO_X allowances for the NO_X annual, and NO_X ozone season trading programs. The CAIR FIPs provide that this methodology, if approved as EPA is proposing, will be used to allocate NO_X allowances to sources in New Jersey, instead of the Federal allocation methodology otherwise provided in the FIPs. The SIP revision also retires rather than allocates allowances from the NO_X annual Compliance Supplement Pool (CSP). Consistent with the flexibility provided in the FIPs, these provisions, if approved, will also be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIPs for New Jersey. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves New Jersey's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval. New Jersey's proposed rule does not modify the CAIR FIP regarding SO_2.

Because New Jersey's CAIR Program will replace the State's NO_X Budget Program (subchapter 31) beginning with the 2009 control period, it is necessary for New Jersey to establish at N.J.A.C. 7:27–31.23 a transition date for the NO_X Budget Trading Program to prevent an overlap of ozone season cap and trade programs for NO_X. The NO_X Budget Trading Program's non-electric generating units and small electric generating units (EGUs) that are not covered under New Jersey's CAIR NO_X Trading Program will be subject to New Jersey's Reasonable Available Control Technology (RACT) or state of the art

rules. EPA will propose a separate rulemaking on New Jersey's RACT at a later date.

In addition, EPA is also proposing to approve a revision to New Jersey's SIP to address the requirements of section 110(a)(2)(D)(i) of the Clean Air Act. This section of the Act requires each State to submit a SIP that prohibits emissions that could adversely affect another State. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to downwind nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

The Clean Air Interstate Rule (CAIR) was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.*, budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_X for the ozone season (May 1st to September 30th). Under CAIR, States may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These May 25, 2005 findings started a 2-year clock for EPA to promulgate a Federal Implementation Plan (FIP) to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated. On August 17, 2006 EPA issued guidance for SIP submissions states should make to address the requirements of section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ NAAQS.

On April 28, 2006 EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone-season model trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by a CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (*e.g.*, the methodology for allocating NO_X allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two more CAIR-related final rules that added the State of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements. The five issues addressed SO_2 allocation methodology; fuel adjustment factors used in establishing State NO_X budgets; inputs to the fine particle ($PM_{2.5}$) modeling used to determine whether Minnesota should be included in the CAIR region for $PM_{2.5}$; EPA's determination that Florida should be included in the CAIR region for ozone; and the potential impact of a judicial opinion, *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005), on EPA's previous determination that CAIR is highly cost-effective and timing of compliance dates.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs: or, (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 and NO_X budgets.

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used

instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (*e.g.*, the NO_X allowance allocation methodology).

A State submitting an abbreviated SIP revision, may submit limited SIP revisions to tailor the CAIR FIP cap-and-trade programs to the State submitting the revision. Specifically, an abbreviated SIP revision may establish certain applicability and allowance allocation provisions that will be used instead of or in conjunction with the corresponding provisions in the CAIR FIP rules in that State. Specifically, the abbreviated SIP revisions may:

1. Include all NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO_X ozone season trading program;
2. Provide for allocation of NO_X annual or ozone season allowances by the State, rather than the Administrator, and use a methodology chosen by the State;
3. Provide for allocation of NO_X annual allowances from the CSP by the State, rather than by the Administrator, and use the State's choice of allowed, alternative methodologies; or
4. Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP cap-and-trade programs under the opt-in provisions in the CAIR FIP rules.

With approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the State by that approved SIP revision.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO_X allocations. This will help ensure that the elements of the trading programs, where flexibility is allowed, are implemented according to the State's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, the February 6, 2007 submittal from New Jersey has been submitted as an abbreviated SIP revision.

V. What Is the Result of EPA's Evaluation of New Jersey's CAIR SIP Submittal?

A. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu, for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_X annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated under the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO_2 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO_2 emissions in the CAIR trading program.

The CAIR FIP established the EGU budgets for New Jersey as 12,670 tons for the years 2009–2014 (Phase I) and 10,558 tons for the years 2015 and beyond (Phase II) for NO_X annual emissions; 6,654 tons for the years 2009–2014 (Phase I) and 5,545 tons for the years 2015 and beyond (Phase II) for NO_X ozone season emissions; and 32,392 tons for the years 2010–2014 (Phase I) and 22,674 tons for the years 2015 and beyond (Phase II) for SO_2 emissions. New Jersey's SIP revision, proposed for approval in today's action, does not affect these budgets, which are the total amount of allowances available for allocation for each year under the EPA-administered cap-and-trade program under the CAIR FIP. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone-season FIPs both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and ozone-season FIPs are similar, there are some differences. For example, the NO_X annual FIP (but not the NO_X ozone season FIP) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season FIP reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program for EGUs after the 2008 ozone season and is coordinated with the NO_X SIP Call program. States also have the option of continuing to meet their NO_X SIP Call non-EGU reduction obligations by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program. In addition the NO_X ozone season FIP provides incentives for early emissions reductions by allowing banked, pre–2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone-season trading program.

The provisions of the CAIR SO_2 FIP are also similar to the provisions of the NO_X annual and ozone season FIPs. However, the SO_2 FIP is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 FIP uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal rather than State implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

New Jersey is subject to the CAIR FIPs for ozone and $PM_{2.5}$ and the CAIR FIP trading programs for SO_2, NO_X annual, and NO_X ozone season applies to sources in New Jersey. Consistent with the flexibility it gives to States, the CAIR FIPs provide that States may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. New Jersey has elected to propose these rules for its EGU sources as part of the abbreviated SIP which was submitted on February 6, 2007.

C. Applicability Provisions for Non-EGU NO_X SIP Call Sources

In general, the CAIR FIP trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-

fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

States have the option of bringing in, for the CAIR NO_X ozone season program only, those units in the State's NO_X SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to use provisions for applicability that are substantively identical to the provisions in 40 CFR 96.304 and add the applicability provisions in the State's NO_X SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_X ozone season trading program all units required to be in the State's NO_X SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_X ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (*i.e.* units serving a generator with a nameplate capacity of 25 MWe or less), that the State currently requires to be in the NO_X SIP Call trading program. Consistent with the flexibility given to States in the CAIR FIP, New Jersey has not chosen to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all non-EGUs in the State's NO_X SIP Call trading program. New Jersey's non-EGUs and small electric generating units (EGUs) will be subject to Reasonable Available Control Technology (RACT) or state of the art rules.

D. NO_X Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone season allowances are allocated to units that have operated at least for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIP provides States the flexibility to establish a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

Consistent with the flexibility given to States in the CAIR FIP, New Jersey has chosen to replace the provisions of the CAIR NO_X annual and ozone season FIP concerning allowance allocations with its own methodology.

New Jersey will distribute NO_X annual and ozone season allowances to CAIR units based upon historical electrical and thermal output. Allowances, which will be distributed (not auctioned), will be based on three years of data. For control periods 2009–2011, NO_X annual and ozone season allowances will be calculated based on data from years 2003, 2004, and 2005. New Jersey will submit 2009–2011 NO_X allocations to EPA by April 30, 2007. For control periods in years 2012 and thereafter, the calculation of the allocation shall be based on data from the three most recent years prior to the year the allocation is due to the EPA (*i.e.* 2012 calculations which is due October 31, 2008 will be calculated based on data from years 2005 through 2007). The allocations for the control periods beginning in 2012 are due to EPA by October 31, 2008 and October 31 of each year thereafter for the fourth year after the year of the notification deadline.

New Jersey has established set-asides for new source/growth (''New Source/Growth Reserve''), and energy efficiency and renewable energy programs or techniques (''Incentive Reserve''). New Jersey is allocating ten percent of the State's CAIR NO_X annual and CAIR NO_X ozone season budgets to the New Source/Growth Reserve, and five percent of the State's CAIR NO_X annual and CAIR NO_X ozone season budgets to the Incentive Reserve each year.

The priority of the New Source/Growth Reserve is to hold aside allowances for distribution to new CAIR units. Any remaining allowances would be available for distribution to low NO_X emission rate units that emit more tons of NO_X than the number of allowances allocated for the control period.

The purpose of the incentive reserve is to hold aside allowances so that they are available for distribution after the control period to persons who claim incentive allowances, based on their energy savings or the generation of electricity through the implementation of environmentally beneficial techniques.

If the New Source/Growth Reserve or Incentive Reserve is under-allocated, allowances will be distributed to units in equal proportion to the number of allowances available in the reserve. New Jersey will allow allowances from both reserves to be used interchangeably if one reserve is over-allocated while the other is under-allocated. Any allowances remaining in the reserves will remain in the Incentive Reserve or the New Source/Growth Reserve to be available for allocation in the following year.

Unallocated allowances from the existing New Source/Growth and Incentive Reserves from New Jersey's NO_X Budget Trading Program (Subchapter 31) for the 2008 control period will be carried over for use in the 2009 CAIR NO_X ozone season.

New Jersey is allocating to the New Source/Growth Reserve 1,267 CAIR NO_X annual allowances and 665 CAIR NO_X ozone season allowances of the State budget each year for vintage years 2009 through 2014. For years 2015 and thereafter, New Jersey will allocate 1,056 CAIR NO_X annual allowances and 555 CAIR NO_X ozone season allowances of the State budget each year into the reserve.

New Jersey is allocating to the Incentive Reserve 634 CAIR NO_X annual allowances and 333 CAIR NO_X ozone season allowances of the State budget each year into this reserve for vintage years 2009 through 2014. For years 2015 and thereafter, New Jersey will allocate 528 CAIR NO_X annual allowances and 277 CAIR NO_X ozone season allowances of the State budget each year into the reserve.

Several provisions of New Jersey's NO_X allocation proposal are inconsistent with the NO_X allocation timing requirements of the abbreviated SIP revision requirements and the CAIR FIP trading programs. Full approval of New Jersey's proposed regulation by EPA is contingent upon New Jersey modifying the proposed rule in order to clarify that EPA's NO_X allocation timing requirements will be met under New Jersey's program as discussed in this section. Sections 51.123(p)(1)(ii)(B) and (ee)(2)(ii)(C) of CAIR require that the State determines and notifies the Administrator of each existing unit's allowance allocation at least 3 years in advance of the CAIR FIP NO_X annual and ozone season programs. Sections 51.123(p)(1)(ii)(C) and (ee)(2)(ii)(D) require that the State determines, and notifies the Administrator of each new

unit's allowances by October 31 (for the CAIR NO_X annual trading program) or July 31 (for the CAIR NO_X ozone season trading program) of the year for which the allowances are being allocated.

New Jersey's proposed regulation does not meet NO_X allocation timing requirements for existing or new units that must surrender and transfer allowances to EPA for retirement for the year in which the unit shuts down and any year thereafter. As currently written in the proposed rule, the owner or operator of an existing unit that is required to surrender allowances will no longer be able to buy or sell allowances, or undertake other allowance market activities, that were provided three years in advance and already recorded into their compliance account. Additionally, the owner or operator of a new unit could not buy or sell allowances, or undertake other allowance market activities, in reliance on its allocations provided in advance in October or July.

It is not clear from New Jersey's proposal what the timing would be for surrendering the allowances, and whether the State intended for recorded allowances to be surrendered. New Jersey should clarify the provisions of the appropriate section regarding permanently shut down units to be retired, section 7:27–30.3(g), by either removing this section from the rule, or by clarifying that the State can discontinue making future allocations to units that permanently shut down.

New Jersey's proposed regulation does not meet NO_X allocation timing requirements with regard to the provision in New Jersey's proposed rule which provides that the Department may determine that allocations for existing (or new) units for current or past years had erroneously allocated too many or too few allowances based on inaccurate data or projections. As currently written in the proposed rule, it is unclear how long after determination and recordation of an allocation the Department may determine that the allocation was incorrect. The inclusion of the word ''projection'' also suggests New Jersey will be correcting allocations that were based on projections. New Jersey should correct this problem by either removing the allocation correction provision, 7:27–30.3(h), from the rule, or modify this section in order to address NO_X allocation timing requirements. If NJ chooses to retain the provision, New Jersey may limit this provision to errors of calculation, errors in the allowable emission rates used, and/or errors in data on actual operations and that does not correct allocations once the allocations are recorded by the Administrator.

New Jersey's proposed rule also provides that if the sum of new unit allocations (determined by October 31 or July 31 of the year for which allocations are made) and the existing unit growth allocations (determined by the end of the year for which allocations are made) exceeds the total amount of the New Source/Growth Reserve for the year, all the allocations from the reserve will be reduced on a pro-rata basis so that the total amount allocated to these new and existing units does not exceed the reserve. New Jersey should clarify that the allocation-proration provisions will be applied to new unit allocations before the October 31 deadline or July 31 deadline for submission of new unit allocations to EPA and applied to the existing unit growth allocations before the March 1 deadline for submission of those allocations to EPA.

E. Allocation of NO_X Allowances From the Compliance Supplement Pool

The CSP provides an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the State's share of the projected emission reductions under CAIR. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR NO_X annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those States.

EPA has allocated to New Jersey allowances equal to 660 tons of NO_X annual emissions for possible distribution.

Consistent with the flexibility given to States in the FIP, New Jersey has chosen to modify the provisions of the CAIR NO_X annual FIP concerning the allocation of allowances from the CSP. New Jersey has chosen to retire the CSP allowances budgeted for New Jersey by not allocating them to CAIR units. New Jersey has maintained in their rule that the CSP allowances, if allocated, would delay attainment in New Jersey of the NAAQS for ozone and $PM_{2.5}$. New Jersey anticipates that New Jersey CAIR units will be able to meet their emission limits without risk to the reliability of the energy supply without resorting to the CSP.

F. Individual Opt-In Units

The opt-in provisions allow for certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (*i.e.*, opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the CAIR FIP trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a State only if the State's abbreviated SIP revision adopts the opt-in provisions. The State may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The State also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the State without the ability for units to opt into the program.

Consistent with the flexibility given to States in the FIPs, New Jersey has chosen not to allow non-EGUs meeting the FIP-specified requirements to participate in the CAIR NO_X annual trading program, the CAIR NO_X ozone season trading program, and the SO_2 trading program. Therefore, non-EGUs in New Jersey cannot opt into either the CAIR trading program under EPA's

CAIR FIP or New Jersey's abbreviated SIP.

G. Satisfying Section 110(a)(2)(D)(i) of the Clean Air Act

Section 110(a)(2)(D)(i) of the CAA requires each State to submit a SIP that prohibits emissions that could adversely affect another State. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to downwind nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

EPA issued guidance on August 15, 2006, relating to SIP submissions to meet the requirements of section 110(a)(2)(D)(i). As discussed below, New Jersey's SIP revision with respect to the statutory requirements is consistent with the guidance.

New Jersey addresses the first two of these four elements by complying with the requirements of CAIR. New Jersey satisfies these requirements either by relying on the existing CAIR FIPs, or through approval of this SIP revision.

The third element New Jersey addresses was prevention of significant deterioration (PSD). In accordance with the guidance issued on August 15, 2006, States may continue to rely on their existing Nonattainment New Source Review (NNSR) and PSD permitting programs to prevent significant deterioration of air quality within their own boundaries and in adjacent States. For 8-hour ozone, the State has met the obligation by confirming that the existing ozone Nonattainment New Source Review (NNSR) permitting program remains in effect and applies to the 8-hour ozone NAAQS standard for the State's major stationary sources. New Jersey has noted that the State's current NNSR program retains the lower applicability levels and higher off-set ratios previously required under the States 1-hour ozone classification and therefore is more stringent than required under the 8-hour ozone classification. The State has indicated that it's on track to meet its June 15, 2007 obligations to submit a final attainment demonstration for the 8-hour ozone NAAQS by that date. For $PM_{2.5}$, the State has confirmed that the State's NNSR and PSD programs are being implemented in accordance with EPA's interim guidance calling for the use of PM10 as a surrogate for $PM_{2.5}$. New Jersey commits to revising its NNSR program and adopting a PSD program after EPA finalizes its $PM_{2.5}$ implementation rule.

It should be noted that the entire State of New Jersey is nonattainment for 8-hour ozone necessitating only a NNSR program (not PSD) for ozone. For $PM_{2.5}$ the State has both attainment and non-attainment areas necessitating both NNSR and PSD programs.

Consistent with EPA's August 15, 2006 guidance, at this time, it is impossible for New Jersey to accurately determine whether there is interference with measures in another State's SIP designed to protect visibility, which is the fourth element that was addressed. New Jersey has indicated that it will address the visibility protection requirements once the regional haze SIP is completed and submitted to EPA in December of 2007.

VI. Conclusion

New Jersey is covered by the CAIR FIPs, which require participation in the EPA-administered CAIR FIP cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. Under this abbreviated SIP revision and consistent with the flexibility given to States in the FIPs, New Jersey has proposed to adopt under N.J.A.C. 7:27–30, Clean Air Interstate Rule (CAIR) NO_X Trading Program, provisions for allocating allowances under the CAIR FIP NO_X annual and ozone season trading programs. In addition, New Jersey has also proposed at N.J.A.C. 7:27–31.23 the date when New Jersey's CAIR NO_X Trading Program will replace New Jersey's NO_X Budget Trading Program (Subchapter 31). In addition, New Jersey has proposed to adopt in the abbreviated SIP revision provisions that retire CSP allowances.

EPA is proposing to approve New Jersey's abbreviated CAIR SIP revision. This proposed approval is contingent upon New Jersey making the necessary changes to New Jersey's proposed CAIR rule in order to address EPA's concerns discussed in section V, Part D (NO_X Allowance Allocations) concerning shutdown units, correction of allocations to new and existing units, and prorating for the New Source/Growth Reserve. If EPA determines New Jersey's final submission is consistent with the necessary changes outlined in this proposed action, EPA may proceed to publish its full approval of New Jersey's CAIR SIP in the **Federal Register**, and approve its incorporation into the SIP. To the extent EPA approves New Jersey's SIP revision, EPA would not make any changes to the CAIR FIP, but would amend the appropriate appendices of 40 CFR part 97 in the CAIR FIP trading rules simply to note approval.

Although EPA expects New Jersey to make the necessary changes to their proposed rule upon final adoption, EPA will finalize a partial approval/disapproval should New Jersey be unable to do so. Although the rule does not currently meet all of the applicable requirements in 40 CFR 51.123(p) and (ee) with regard to NO_X annual and NO_X ozone season emissions, EPA believes that the approvable portions of the rule strengthen New Jersey's SIP by allowing the State to be the implementing authority, and making allocations consistent with New Jersey's air quality goals. Partial approval/disapproval will result in EPA approval of New Jersey's initial NO_X allocations for existing units for the 2009–2011 control periods. EPA would not make any changes to the CAIR FIP, but would amend the appropriate appendices of 40 CFR part 97 in the CAIR FIP trading rules to note partial approval. If New Jersey is unable to make the necessary changes, EPA proposes partial approval/disapproval of New Jersey's proposed rule as follows: Subchapter 30 approval of all sections except ''7:27–30.3 Allocation of CAIR NO_X annual allowances and CAIR NO_X ozone season allowances''. EPA is approving portions of 7:27–30.3 which address the allocation of NO_X allowances to existing units and to the incentive reserve, rounding allowances to the nearest whole number, and consideration of other data by the department if the data is unusable. (7:27–30.3(a), (b), (c)2, (c)3, (c)4ii(1), (c)4ii(3), (e), and (f)). EPA is disapproving provisions for the allocation to the new source/growth reserve, post control period allocations, provisions that require any unit (existing or new) that permanently shuts down to surrender and transfer allowances to EPA for retirement, and correction of allowances allocated erroneously or were allocated based on data or projections that are determined to be inaccurate. (7:27–30.3(c)1, (c)4i, (c)4ii(2), (c)4iii, (d), (g), and (h).

EPA is proposing approval of ''7:27–31.23 Replacement of the NO_X Budget Program'', and ''7:27A–3.10 Civil administrative penalties for violation of the rules adopted pursuant to the Act''.

EPA is also proposing that this revision adequately addresses the required elements of 110(a)(2)(D)(i) with the exception of the protect visibility requirement. This requirement will be re-evaluated after the regional haze SIP is completed and submitted to EPA in December 2007.

VII. 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 proposes to approve State law as meeting Federal requirements and would impose no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule would 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 action proposes to approve pre-existing requirements under State law and would 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 proposal also does not have tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it would 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 proposes to approve a State rule implementing a Federal standard and to amend the appropriate appendices in the CAIR FIP trading rules to note that approval. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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 would approve a State rule implementing a Federal Standard.

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: June 25, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E7–12874 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2005–VA–0012; FRL–8333–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Control of Total Reduced Sulfur From Pulp and Paper Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to a Section 111(d) regulation submitted by the Commonwealth of Virginia Department of Environmental Quality. The revisions pertain to amendments to an existing regulation to control total reduced sulfur (TRS) from pulp and paper mills. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before August 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–VA–0012 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *cripps.christopher@epa.gov.*

C. Mail: EPA–R03–OAR–2005–VA–0012, Christopher Cripps, Acting Chief, Air Quality and Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2005–VA–0012. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: LaKeshia N. Robertson, (215) 814–2113, or by e-mail at *robertson.lakeshia@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 20, 2005, the Commonwealth of Virginia submitted revisions to its plan for Pulp and Paper mills. The revisions pertain to the control total reduced sulfur (TRS) (9 VAC 5, Chapter 40, Article 13, Rule 4–13).

I. Background

The revisions consist of amendments to existing regulations that implement emission standards for particulate matter from pulp and paper mills (9 VAC 5, Chapter 40, Article 13, Rule 4–13.) The changes will control total reduced sulfur from stationary sources.

II. Summary of SIP Revision

The following provisions consist of changes to the Commonwealth of Virginia's regulation for the control and abatement of air pollution (9 VAC 5, Chapter 40, Article 13, Rule 4–13). The modifications below are the subject of this rulemaking.

Revision 1: 9 VAC 5–40–1660. Applicability and designation of affected facilities. Section A is revised to read as follows: The affected facilities in pulp and paper mills to which the provisions of this article apply are: Each recovery furnace, each smelt dissolving tank, each lime kiln, each slaker tank, and each kraft wood pulping operation. For the purpose of this article, a kraft wood pulping operation is comprised only of any combination of the following units: Recovery furnaces, lime kilns, digester systems, multiple-effect evaporator systems, condensate stripper systems and smelt dissolving tanks.

Revision 2: 9 VAC 5–40–1670. Definitions. Section C: The definition of agreement is deleted and the following terms are added: (1) Neutral sulfite semichemical pulping operation means any operation in which pulp is produced from wood by cooking (digesting) wood chips in a solution of sodium sulfite and sodium bicarbonate, followed by mechanical defibrating (grinding); (2) new design recovery furnace means a straight kraft recovery furnace that has both membrane wall or welded wall construction and emission control designed air systems. A new design furnace shall have stated in its contract a TRS performance guarantee or that it was designed with air pollution control as an objective; (3) pulp and paper mill means any kraft pulp mill or any paper mill using a semichemical pulping process; and (4) semichemical pulping process means any pulp manufacturing process in which the active chemicals of the liquor used in cooking (digesting) wood chips to their component parts in a pressurized vessel (digester) are primarily a liquor of sodium hydroxide and sodium carbonate. The major difference between all semichemical techniques and those of kraft and acid sulfite processes is that only portion of the lignin is removed during the cooking (digesting), after which the pulp is further reduced by mechanical disintegration. In addition, these terms were amended: Cross recovery furnace; straight kraft recovery furnace; and total reduced sulfur.

Revision 3: 9 VAC 5–40–1690. Standard for total reduced sulfur. Section A is revised to read as follows: No owner or other person shall cause or permit to be discharged into the atmosphere from any kraft wood pulping operation unit specified below any total reduced sulfur emissions in excess of the following limits. Section B is deleted and replaced by Section C. In addition, Section D is deleted.

Revision 4: 9 VAC 5–40–1750. Compliance. In Section A, the letter A is deleted and the provision remains the same. Sections B through D are deleted and no longer relevant to the regulation.

Revision 5: 9 VAC5–40–1770. Monitoring. Section B clarifies that the owner of a kraft pulp mill shall comply with monitoring provisions by October 1, 1990. Section C(1) has been revised to include the language ''Part'' to reference information used in the regulation.

Revision 6: 9 VAC5–40–1810. Permits. The paragraph which states the permit requirements shall read as follows: A permit may be required prior to beginning any of the activities specified below if the provisions of 9 VAC 5 Chapter 50 (9 VAC 5–50–10 et seq.) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply. Also, under the numeric rationale for permits, an additional activity, which is number ''6'' is added to read as follows: Operation of a facility.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law,Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore,

documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the Commonwealth of Virginia's 111(d) Plan submitted on June 20, 2005 to control total reduced sulfur (TRS) from stationary sources. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the (Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

This proposed rule, pertaining to Virginia's control of total reduced sulfur from pulp and paper mills, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

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

Dated: June 22, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–12854 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0510; FRL–8334–3]

RIN 2060–AO46

Amendments to National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting and Secondary Copper Smelting Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the national emission standards for primary copper smelting area sources and secondary copper smelting area sources published on January 23, 2007. The amendments to the national emission standards for primary copper smelting area sources clarify when

plants must exhaust gases to a control device and what control devices may be used for this requirement; numbering errors are also corrected. The amendments to the national emission standards for secondary copper smelting area sources clarify the date which defines a new copper smelter and correct a cross-referencing error.

DATES: Written comments must be received by August 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0510 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* National Emission Standards for Hazardous Air Pollutants for Four Area Source Categories Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2825; fax number: (919) 541–3207; e-mail address: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this document is organized as follows:

I. Why is EPA issuing the proposed rule?
II. Does this action apply to me?
III. Where can I get a copy of this document?
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Why is EPA issuing the proposed rule?

In the ''Rules and Regulations'' section of this **Federal Register**, we are issuing these corrections as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule. On January 23, 2007 (72 FR 2944; 72 FR 2952), we issued the national emission standards for hazardous air pollutants (NESHAP) for primary copper smelting area sources (40 CFR part 63, subpart EEEEEE) and the NESHAP for secondary copper smelting area sources (40 CFR part 63, subpart FFFFFF). This document proposes to make certain technical and editorial corrections to both rules. We have published a direct final rule correcting the area source NESHAP in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on the proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For information about commenting on the rule, see the **ADDRESSES** section of this document.

II. Does this action apply to me?

Categories and entities potentially regulated by the proposed rule include:

Category	NAICS code [1]	Examples of regulated entities
Industry	331411	Primary copper smelting area source facilities that produce copper from copper sulfide ore concentrates using pyrometallurgical techniques.
	331423	Secondary copper smelting area source facilities that process copper scrap in a blast furnace and converter or use another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11146 of subpart EEEEEE (NESHAP for Primary Copper Smelting Area Sources) or 40 CFR 63.11153 of subpart FFFFFF (NESHAP for Secondary Copper Smelting Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

III. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the

provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA is proposing this action to make certain technical and editorial corrections in the NESHAP for primary and secondary copper smelting area sources. These proposed corrections do not include any information collection requirement.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201 (less than 1,000 employees for primary copper smelting and less than 750 employees for secondary copper smelting); (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of the proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that small businesses in these area source categories will not incur any adverse impacts because EPA is taking this action to make certain technical and editorial corrections in the NESHAP for primary and secondary copper smelting area sources, and these corrections would not create any new requirements or burdens. No costs are associated with the proposed corrections to the two NESHAP. We continue to be interested in the potential impacts of the proposed corrections on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. EPA is taking this action to make certain technical and editorial corrections to the NESHAP for primary and secondary copper smelting area sources. No costs are associated with these proposed corrections. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small governments. The technical and editorial corrections proposed in this action contain no requirements that apply to such governments, impose no obligations upon them, and would not result in any expenditures by them or any disproportionate impacts on them. Therefore, the proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The proposed rule does not have federalism implications. The proposed rule makes certain technical and editorial corrections to the NESHAP for primary and secondary smelting area sources. These proposed corrections do not impose requirements on State or local governments. They have no 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. Thus, Executive Order 13132 does not apply to the proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the

proposed rule from State and local officials.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed rule makes certain technical and editorial corrections to the NESHAP for primary and secondary copper smelting area sources. These proposed corrections do not impose requirements on tribal governments. They also have no direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to the proposed rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because the NESHAP for the primary and secondary copper smelting area sources are based on technology performance and not on health or safety risks.

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

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

I. National Technology Transfer Advancement Act

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

The proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

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

Executive Order 12848 (58 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The technical and editorial corrections in the proposed rule do not change the level of control required by the NESHAP.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 27, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–12848 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 72, No. 127
Tuesday, July 3, 2007

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

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Monday, July 9, and August 13, 2007 in Alturas, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting January 8th begins at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, CA 96104. Agenda topics will include existing and future projects that meet the intent of Public Law 106–393. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Contact Stan Sylva, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Grants Coordinator Dina McElwain at (530) 233–8723.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. E7–12814 Filed 7–2–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet at the Snoqualmie Ranger District Office in North Bend, WA to review and select Title II projects for FY 2008.

DATES: Tuesday, August 7, 2007 from 9 a.m. until 4 p.m.

ADDRESSES: Snoqualmie Ranger District, North Bend Office, 42404 SE., North Bend Way, North Bend, WA 98045.

FOR FURTHER INFORMATION CONTACT: Jim Franzel, Designated Federal Official, or Sandy Podbreggar, Assistant, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, Snoqualmie Ranger District, 42404 SE., North Bend Way, WA 98045–0545 (phone 425–888–1421, Extension 230).

SUPPLEMENTARY INFORMATION: All South Mt. Baker-Snoqualmie RAC meetings are open to the public. Interested citizens are encouraged to attend. The South Mt. Baker-Snoqualmie RAC reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars, under Public Law 106–393, H.R. 2389, The Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

Dated: June 26, 2007.

Y. Robert Iwamoto,

Forest Supervisor.

[FR Doc. E7–12823 Filed 7–2–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Snohomish County Resource Advisory Committee (RAC) will meet at the Snohomish County Administration Building in Everett, Washington to review and recommend Title II projects for FY 2008.

DATES: Thursday, August 2, 2007 from 9 a.m. until 4 p.m.

ADDRESSES: Snohomish County Administration Building, Willis Tucker Conference Room (third floor), 3000 Rockefeller Ave., Everett, WA 98201.

FOR FURTHER INFORMATION CONTACT: Barbara Busse, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 74920 NE. Stevens Pass Highway, P.O. Box 305, Skykomish, WA 98288 (phone: 360–677–2414).

SUPPLEMENTARY INFORMATION: All Snohomish County RAC meetings are open to the public. Interested citizens are encouraged to attend. The Snohomish County RAC reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars, under Public Law 106–393, H.R. 2389, The Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

Dated: June 26, 2007.

Y. Robert Iwamoto,

Forest Supervisor.

[FR Doc. E7–12824 Filed 7–2–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet at the Mt. Baker Ranger District Office in Sedro Woolley, Washington. The first meeting will include electing this year's chairperson, followed by reviewing proposed Title II projects. The second meeting will be to complete the review, and prioritize proposal to recommend for FY 2008.

DATES: August 13, 2007 and August 23, 2007 from 9 a.m. until 4 p.m.

ADDRESSES: Mt. Baker Ranger District Office, 810 State Route 20, Sedro Woolley, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, Mt. Baker Ranger District, 810 State Route 20, Sedro Woolley, WA 98284–1263 (phone: 360–856–5700 extension 201).

SUPPLEMENTARY INFORMATION: All North Mt. Baker-Snoqualmie RAC meetings are open to the public. Interested citizens are encouraged to attend. The North Mt. Baker-Snoqualmie RAC reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars, under Public Law 106–393, H.R. 2389. The Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

Dated: June 26, 2007.

Y. Robert Iwamoto,

Forest Supervisor.

[FR Doc. E7–12826 Filed 7–2–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4284, subpart J.

DATES: Comments on this notice must be received by September 4, 2007 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Deputy Administrator, Cooperative Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3250, Washington, DC 20250, Telephone: 202–720–7558.

SUPPLEMENTARY INFORMATION:

Title: Value-Added Producer Grants.

OMB Number: 0570–0039.

Expiration Date of Approval: November 30, 2007.

Type of Request: Extension of a currently approved information collection.

Abstract: The purpose of this information collection is to obtain information necessary to evaluate grant applications to determine the eligibility of the applicant and the project for the program and to qualitatively assess the project to determine which projects should be funded.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 43 hours per grant application.

Respondents: Independent producers, agriculture producer groups, farmer- or rancher-cooperatives, and majority-controlled producer-based business ventures.

Estimated Number of Respondents: 535.

Estimated Number of Responses per Respondent: 2.

Estimated Number of Responses: 1,320.

Estimated Total Annual Burden on Respondents: 57,145 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of the Rural Business-Cooperative Service's estimate of the burden of the proposed collection of information including 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 27, 2007.

Ben Anderson,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E7–12813 Filed 7–2–07; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review:

Not later than the last day of July 2007, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

Antidumping Duty Proceedings	Period
CHILE: IQF Red Raspberries.	
A–337–806	7/1/06 - 6/30/07
FINLAND: Purified Carboxymethylcellulose.	
A–405–803	7/1/06 - 6/30/07
GERMANY: Stainless Steel Sheet and Strip in Coils.	
A–428–825	7/1/06 - 6/30/07
INDIA: Polyethylene Terephthalate (Pet) Film.	
A–533–824	7/1/06 - 6/30/07
IRAN: In–Shell Pistachio Nuts.	

Antidumping Duty Proceedings	Period
A–507–502	7/1/06 - 6/30/07
ITALY: Certain Pasta.	
A–475–818	7/1/06 - 6/30/07
ITALY: Stainless Steel Sheet and Strip in Coils.	
A–475–824	7/1/06 - 6/30/07
JAPAN: Clad Steel Plate.	
A–588–838	7/1/06 - 6/30/07
JAPAN: Polyvinyl Alcohol.	
A–588–861	7/1/06 - 6/30/07
JAPAN: Stainless Steel Sheet and Strip in Coils.	
A–588–845	7/1/06 - 6/30/07
MEXICO: Purified Carboxymethylcellulose.	
A–201–834	7/1/06 - 6/30/07
MEXICO: Stainless Steel Sheet and Strip in Coils.	
A–201–822	7/1/06 - 6/30/07
REPUBLIC OF KOREA: Stainless Steel Sheet and Strip in Coils.	
A–580–834	7/1/06 - 6/30/07
RUSSIA: Ferrovanadium and Nitrided Vanadium.	
A–821–807	7/1/06 - 6/30/07
RUSSIA: Solid Urea.	
A–821–801	7/1/06 - 6/30/07
SWEDEN: Purified Carboxymethylcellulose.	
A–401–808	7/1/06 - 6/30/07
TAIWAN: Polyethylene Terephthalate (Pet) Film.	
A–583–837	7/1/06 - 6/30/07
TAIWAN: Stainless Steel Sheet and Strip in Coils.	
A–583–831	7/1/06 - 6/30/07
THAILAND: Carbon Steel Butt–Weld Pipe Fittings.	
A–549–807	7/1/06 - 6/30/07
THAILAND: Canned Pineapple.	
A–549–813	7/1/06 - 6/30/07
THE NETHERLANDS: Purified Carboxymethylcellulose.	
A–421–811	7/1/06 - 6/30/07
THE PEOPLE'S REPUBLIC OF CHINA: Carbon Steel Butt–Weld Pipe Fittings.	
A–570–814	7/1/06 - 6/30/07
THE PEOPLE'S REPUBLIC OF CHINA: Persulfates.	
A–570–847	7/1/06 - 6/30/07
THE PEOPLE'S REPUBLIC OF CHINA: Saccharin.	
A–570–878	7/1/06 - 6/30/07
TURKEY: Certain Pasta.	
A–489–805	7/1/06 - 6/30/07
UKRAINE: Solid Urea.	
A–823–801	7/1/06 - 6/30/07
Countervailing Duty Proceedings.	
INDIA: Polyethylene Terephthalate (Pet) Film.	
C–533–825	1/1/06 - 12/31/06
ITALY: Certain Pasta.	
C–475–819	1/1/06 - 12/31/06
TURKEY: Certain Pasta.	
C–489–806	1/1/06 - 12/31/06
Suspension Agreements.	
RUSSIA: Hot–Rolled Flat–Rolled Carbon–Quality Steel Products.	
A–821–809	1/1/06 - 12/31/06

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

As explained in Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at http://ia.ita.doc.gov.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W.,

Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of July 2007. If the Department does not receive, by the last day of July 2007, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 26, 2007.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 07–3248 Filed 6–28–07; 3:40 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is currently conducting the semi–annual 2005–2006 new shipper review of the antidumping duty order on honey from the People's Republic of China (''PRC''). We preliminarily determine to apply adverse facts available (''AFA'') with respect to Shanghai Bloom International Trading Co., Ltd. (''Shanghai Bloom''), which failed to cooperate to the best of its ability, provided unverifiable information, and impeded the proceeding. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer–specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: July 3, 2007)

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Anya Naschak, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–6375, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2006, the Department received a timely request from Shanghai Bloom, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on honey from the People's Republic of China (''PRC''). On July 20, 2006, the Department extended the deadline to initiate Shanghai Bloom's new shipper review, in order to clarify certain information contained in Shanghai Bloom's request for a new shipper review. On August 30, 2006, after receiving supplemental information from Shanghai Bloom, the Department found that the request for review with respect to Shanghai Bloom met all of the regulatory requirements set forth in 19 CFR 351.214(b) and initiated a antidumping duty new shipper review covering the period December 1, 2005, through June 30, 2006. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 71 FR 52764 (September 7, 2006)

(''Initiation Notice'').

On September 11, 2006, the Department issued an antidumping duty questionnaire to Shanghai Bloom. *See* Letter to Shanghai Bloom from Carrie Blozy, Program Manager, AD/CVD Operations, Office 9 (September 11, 2006). On October 2, 2006, Shanghai Bloom responded to section A of the Department's questionnaire. On October 18, 2006, Shanghai Bloom submitted its response to sections C and D, and importer–specific questions of the Department's questionnaire. On October 26, 2006, the Department issued a supplemental questionnaire to Shanghai Bloom, and received Shanghai Bloom's response on November 24, 2006. On January 3, 2007, the Department issued a second supplemental questionnaire to Shanghai Bloom. Shanghai Bloom submitted its response and its importer's response to the Department's second supplemental questionnaire on January 31, 2007.

On January 9, 2007, the Department extended the deadline for the preliminary results of the new shipper review until June 26, 2007. *See Notice of Extension of the Preliminary Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China*, 72 FR 947 (January 9, 2007).

On March 20, 2007, the Department rejected Shanghai Bloom's January 31, 2007, response on the grounds that proprietary information was not sufficiently summarized in the public version. On March 22, 2007, per the Department's instruction, Shanghai Bloom resubmitted its response as well as its importer's response to the Department's second supplemental questionnaire. On March 29, 2007, Shanghai Bloom submitted revised FOP spreadsheets and reconciliation charts that related to its March 22, 2007, filing. On March 30, 2007, the Department issued Shanghai Bloom a third supplemental questionnaire. The Department received Shanghai Bloom's response and its importer's response to the third supplemental questionnaire on April 13, 2007. On April 19, 2007, Shanghai Bloom re–filed its importer's response to the Department's March 30, 2007, importer–specific questions contained in its third supplemental questionnaire. From May 15, 2007, through May 18, 2007, the Department conducted verifications of the sales and factors of production information submitted by Shanghai Bloom and its unaffiliated producer, Linxiang Jindeya Bee–Keeping Co., Ltd. (''Linxiang Jindeya'').

Surrogate Country and Factors

On March 13, 2007, the Department provided parties with an opportunity to submit publicly available information (''PAI'') on surrogate countries and values for consideration in these preliminary results. *See* Letter to All Interested Parties, from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, regarding *New*

Shipper Review of Honey from the People's Republic of China, dated March 13, 2007.

On March 28, 2007, Shanghai Bloom submitted surrogate value data (*see* Letter from Shanghai Bloom to the U.S. Department of Commerce regarding *Honey from the People's Republic of China New Shipper Review* (March 28, 2007). On May 14, 2007, the petitioners[1] submitted surrogate value data (see Letter to the U.S. Department of Commerce, from petitioners, regarding *9th New Shipper Review of Honey from the People's Republic of China*, dated May 14, 2007.

Verification

As provided in section 782(i)(3) of the Act and 19 CFR 351.307(b)(iv), the Department verified the questionnaire responses of Shanghai Bloom from May 15, 2007, to May 18, 2007, (which included a verification of Shanghai Bloom's unaffiliated producer, Linxiang Jindeya). For these companies, we used standard verification procedures, including on–site inspection of the manufacturer's and exporter's facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company. For a further discussion, see Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Anya Naschak, Senior International Trade Compliance Analyst, and Michael Holton, Senior International Trade Compliance Analyst, regarding Verification of the Questionnaire Responses of Shanghai Bloom International Trading Co. Ltd., in the Antidumping New Shipper Review of Honey from the People's Republic of China (''Shanghai Bloom Verification Report''); *see also* Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Anya Naschak, Senior International Trade Compliance Analyst, and Michael Holton, Senior International Trade Compliance Analyst, regarding Verification of the Questionnaire Responses of Shanghai Bloom that relate to Linxiang Jindeya Bee–Keeping Co., Ltd., in the Antidumping New Shipper Review of Honey from the People's Republic of China (''Linxiang Jindeya Verification Report'').

Scope of Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Separate Rates

In proceedings involving non–market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, Shanghai Bloom submitted information in support of its claim for a company–specific rate.

Accordingly, we have considered whether Shanghai Bloom is independent from government control, and therefore eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (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, 20589 (May 6, 1991) (Sparklers), as amplified by Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585, 22586–7 (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* government control over export activities.

Shanghai Bloom provided complete separate–rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate–rates analysis to determine whether it is independent from government control.

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. Our analysis shows that the evidence on the record supports a preliminary finding of *de jure* absence of government control for Shanghai Bloom. Shanghai Bloom has placed on the record a number of documents to demonstrate absence of *de jure* control, including the ''Company Law of the People's Republic of China'' (December 29, 1993), and the ''Foreign Trade Law of the People's Republic of China'' (May 12, 1994). *See* Exhibit A–2 of Shanghai Bloom's October 2, 2005, submission (Shanghai Bloom Section A). Shanghai Bloom also submitted a copy of its business license in Exhibit A–3 of its section A response, and a revised business license at verification. See Shanghai Bloom Verification Report at Exhibit SB2. The Shanghai Industry and Commerce Administration Bureau issued these licenses. Shanghai Bloom explained that its business license defines the scope of the company's business activities and ensures the company has sufficient capital to continue its business operations. Shanghai Bloom affirmed that license defines the scope of its business operations and that there are no other limitations imposed by the business license.

Shanghai Bloom stated that it is governed by the Company Law and the Foreign Trade Law, which it claimed

[1] Petitioners are the American Honey Producers Association and the Sioux Honey Association.

governs the establishment of limited liability companies and provides that such a company shall operate independently and be responsible for its own profits and losses and allowing them full autonomy from the central authority in governing their business operations. We have reviewed Article 11 of Chapter II of the Foreign Trade Law, which states, ''foreign trade dealers shall enjoy full autonomy in their business operation and be responsible for their own profits and losses in accordance with the law.'' As in prior cases, we have analyzed such PRC laws and found that they establish an absence of *de jure* control. *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of New Shipper Review*, 63 FR 3085, 3086 (January 21, 1998) and Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 30695, 30696 (June 7, 2001), as affirmed in *Final Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 45006 (August 27, 2001). Therefore, we preliminarily determine that there is an absence of *de jure* control over the export activities of Shanghai Bloom.

Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a government authority; (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 its 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 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *Id.* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control, which would preclude the Department from assigning separate rates.

Shanghai Bloom has asserted the following: (1) it is a privately owned company; (2) there is no government participation in its setting of export prices; (3) its general manager has the authority to bind sales contracts; (4) the company's executive director appoints the company's management and it does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) its executive director decides how profits will be used.

In support of its claim to independent price negotiations, Shanghai Bloom stated that such negotiations were conducted through emails and telephone calls, and that it had placed on the record copies of all emails between itself and its U.S. customer during the POR.[2] Shanghai Bloom also stated that its only email account was the account listed on the above–referenced sales negotiations. *Id.*

At the verification of Shanghai Bloom, the Department found that the emails placed on the record by Shanghai Bloom were not stored in Shanghai Bloom's email account, and were instead stored in text files on Shanghai Bloom's computer hard drive. *See* Shanghai Bloom Verification Report at 9. In addition, the Department found at verification that Shanghai Bloom used an additional email address for official company business; the Department requested access to this email account. However, company officials stated that all information in the account had been deleted prior to granting the Department access to the account. *See* Shanghai Bloom Verification Report at 8. However, the Department successfully verified that Shanghai Bloom is a privately owned company (*see* Shanghai Bloom Verification Report at 3–4 and Exhibit SB2), that Shanghai Bloom independently selected management (*id.* at 10), and that Shanghai Bloom had authority to determine the use of sales revenue (*id.*). Moreover, the Department found no indications of restrictions on the use of export revenue (*id.*). Furthermore, Shanghai Bloom supplied sales negotiation documentation including a purchase order and sales contract with an independent third party, demonstrating its independent setting of export prices. *See* Shanghai Bloom Verification Report at 18.

Irrespective of the issues with respect to the email accounts, which are addressed separately below under ''Use of Adverse Facts Otherwise Available,'' because evidence on the record preliminarily indicates an absence of government control, both in law and in fact, over Shanghai Bloom's export activities, we preliminarily determine that it has met the criteria for the application of a separate rate. However, we will continue to carefully examine these issues for the Final Results.

Use of Adverse Facts Otherwise Available

For the reasons outlined below, we have applied total adverse facts available to Shanghai Bloom. 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 sections 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 section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that when the Department finds that a respondent has not complied with a request for information, the Department shall inform the respondent of the deficiency and allow them an opportunity to remedy or explain the deficiency. If the Department finds that the subsequent response of the respondent is deficient or is not filed within the applicable time limits, the Department may, subject to subsection (e) disregard all or part of the original and subsequent responses. Moreover, section 782(e) states that the Department shall not decline to consider information by a respondent if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

The Department conducted verification of Shanghai Bloom's sales and factors of production information placed on the record of this new shipper review. Shanghai Bloom impeded the Department's verification of its information by destroying or deleting information needed to verify completeness and price negotiations and by providing unverifiable factors of production (''FOP'') data. *See* Shanghai

[2] See e.g., Shanghai Bloom's Section A at Exhibit A-5, Shanghai Bloom's Response to the Departments Second Supplemental Questionnaire at 3, (March 22, 2007), and Shanghai Bloom's Response to the Department's Third Supplemental Questionnaire at 1, (April 13, 2007).

Bloom Verification Report; *see also* Linxiang Jindeya Verification Report. Because Shanghai Bloom deleted information needed to verify completeness and price negotiations, section 782(d) and (e) of the Act are not applicable. See Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, Import Administration, regarding *Honey from the People's Republic of China: Preliminary Application of Adverse Facts Available to Shanghai Bloom International Trading Co., Ltd.* (June 26, 2007).

By hindering the Department's ability to conduct verification through destroying and/or deleting pertinent information and by providing information at verification that directly conflicted with information previously submitted on the record by Shanghai Bloom, Shanghai Bloom has not cooperated to the best of its ability.

According to section 776(b) of the Act, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, Vol. 1 at 870 (1994).

As explained above, Shanghai Bloom provided unverifiable information on the record, deleted information requested by the Department, and failed to provide evidence of price negotiations. Therefore, Shanghai Bloom did not cooperate to the best of its ability. Because Shanghai Bloom did not cooperate to the best of its ability in the proceeding, the Department finds it necessary, pursuant to sections 776(a)(2)(A),(B) and (C) and 776(b) of the Act, to use adverse facts available (''AFA'') as the basis for these preliminary results of review for Shanghai Bloom .

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In reviews, the Department normally selects, as AFA, the highest rate on the record of any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003). The Court of International Trade (''CIT'') and the Federal Circuit have consistently upheld the Department's practice in this regard. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Circ. 1990) (''*Rhone Poulenc*''); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870; *see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and its normal practice, the Department has assigned the rate of 212.39 percent, the highest rate on the record of any segment of the proceeding, to Shanghai Bloom as AFA. *See, e.g., Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review* 71 FR 34893 (June 16, 2006) (''*Third AR Final Results*''). As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA states that ''corroborate'' means to determine that the information used has probative value. The Department has determined that to have probative value information must be reliable and relevant. *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). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003); and, *Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005).

To be considered corroborated, information must be found to be both reliable and relevant. Unlike other types of information, such as input costs or

selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The information upon which the AFA rate we are applying for the current review was calculated during the third administrative review. *See Third AR Final Results*. Furthermore, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996). Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). The AFA rate we are applying for the current review was corroborated in the third administrative review of honey from the PRC. See Third AR Final Results. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as adverse facts available, we determine that this rate has relevance.

As the *Third AR Final Results* margin is both reliable and relevant, we find that it has probative value. As a result, the Department determines that the Third AR Final Results margin is corroborated for the purposes of this administrative review and may reasonably be applied to Shanghai Bloom. Because these are preliminary results of review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final margin for Shanghai Bloom. *See Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000).

Preliminary Results of Review

We preliminarily determine that the following margin exists during the period December 1, 2005, through June 30, 2006:

HONEY FROM THE PRC	
Shanghai Bloom	212.39

We will disclose our analysis to parties to these proceedings within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice.

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 within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above de minimis. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 212.39 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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 entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: June 26, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–12891 Filed 7–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB04

Endangered Species; File No. 1599

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Inwater Research Group, Inc. (Michael J. Bresette-Responsible Party), 4160 NE Hyline Dr, Jensen Beach, FL 34957 has been issued a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for purposes of scientific research.

ADDRESSES: The permit 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

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On March 21, 2007, notice was published in the **Federal Register** (72 FR 13250) that a request for a scientific research permit to take sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The purpose of the proposed research is to continue long term monitoring of sea turtles foraging in the Key West National Wildlife Refuge and surrounding waters. The applicant will net or hand capture up to 90 green, 135 loggerhead, 15 hawksbill, and 5 Kemp's ridley sea turtles per year. The turtles will be measured, weighed, flipper and Passive Integrated Transponder tagged, blood and tissue sampled, marked with paint, and released. A subset of green turtles would be lavaged and satellite tagged. The permit is valid for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 27, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–12871 Filed 7–2–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB15

Draft Programmatic Environmental Impact Statement; Seismic Surveys in the Beaufort and Chukchi Seas, Alaska

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

ACTION: Notice of extension of comment period.

SUMMARY: On April 6, 2007, notice was published in the Federal Register that NMFS and the Minerals Management Service had released for public comment a Draft Programmatic Environmental Impact Statement (Draft PEIS) for Seismic Surveys in the Beaufort and Chukchi Seas, Alaska. Based on a written request, the comment period on this document has been extended.

DATES: Written comments must be postmarked by July 30, 2007.

ADDRESSES: Written comments on the Draft PEIS should be addressed to Mr. P. Michael Payne, Chief of the Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is *PR1.ALASKAEIS@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

A copy of the Draft PEIS may be obtained by writing to this address or by telephoning the contact listed here and is also available at:*http://www.mms.gov/alaska/*.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301)713-2289, ext 128.

SUPPLEMENTARY INFORMATION: Additional information on the content of the Draft PEIS can be found in the notice of availability (72 FR 17117, April 6, 2007). Notice of a previous extension of the comment period can be found at 72 FR 26788 (May 11, 2007).

Dated: June 27, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–12880 Filed 6–28–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB06

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permit Related to Horseshoe Crabs

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

ACTION: Notice; request for comments.

SUMMARY: NMFS announces that the Director, Office of Sustainable Fisheries, is considering issuing an Exempted Fishing Permit to Limuli Laboratories of Cape May Court House, NJ, to conduct the seventh year of an exempted fishing operation otherwise restricted by regulations prohibiting the harvest of horseshoe crabs in the Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve) located 3 nautical miles (nm) seaward from the mouth of the Delaware Bay. If granted, the EFP would allow the harvest of up to 10,000 horseshoe crabs for biomedical purposes and require, as a condition of the EFP, the collection of data related to the status of horseshoe crabs within the Reserve. This notice also invites comments on the issuance of the EFP to Limuli Laboratories.

DATES: Written comments on this action must be received on or before July 18, 2007.

ADDRESSES: Written comments should be sent to Alan Risenhoover, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope ''Comments on Horseshoe Crab EFP Proposal.'' Comments may also be sent via fax to (301) 713–0596. Comments on this notice may also be submitted by e-mail to: *Horseshoe-Crab.EFP@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: Horseshoe Crab EFP Proposal.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, Fishery Management Biologist, (301) 713–2334 x173.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 50 CFR 697.22, allow a Regional Administrator or the Director of the Office of Sustainable Fisheries to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up and/or hazardous removal purposes, the targeting or incidental harvest of managed species that would otherwise be prohibited. Accordingly, an EFP to authorize such activity may be issued, provided: there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of the fishery management plan are not compromised, and issuance of the EFP is beneficial to the management of the species.

The Reserve was established on March 7, 2001, to protect the Atlantic coast stock of horseshoe crabs and to support the effectiveness of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crabs. The final rule (66 FR 8906; February 5, 2001) prohibited fishing for and possession of horseshoe crabs in the Reserve on a vessel with a trawl or dredge gear aboard while in the Reserve. While the rule did not allow for any biomedical harvest or the collection of fishery dependent data, NMFS stated in the comments and responses section that it would consider issuing EFPs for the biomedical harvest of horseshoe crabs in the Reserve.

The biomedical industry collects horseshoe crabs, removes approximately 30 percent of their blood, and returns them alive to the water. Approximately 10 percent do not survive the bleeding process. The blood contains a reagent called *Limulus* Amebocyte Lysate (LAL) that is used to test injectable drugs and medical devices for bacteria and bacterial by-products. Presently, there is no alternative to the LAL derived from horseshoe crabs.

NMFS manages horseshoe crabs in the exclusive economic zone in close cooperation with the Commission and the U.S. Fish and Wildlife Service. The Commission's Horseshoe Crab Management Board met on April 21, 2000, and again on December 16, 2003, and recommended to NMFS that biomedical companies with a history of collecting horseshoe crabs in the Reserve be given an exemption to continue their historic levels of collection not to exceed a combined harvest total of 10,000 crabs annually. In 2000, the Commission's Horseshoe Crab Plan Review Team reported that biomedical harvest of up to 10,000 horseshoe crabs should be allowed to continue in the Reserve given that the resulting mortality should be only about 1,000 horseshoe crabs (10 percent mortality during bleeding process). Also in 2000, the Commission's Horseshoe Crab Stock Assessment Committee Chairman recommended that, in order to protect the Delaware Bay horseshoe crab population from over-harvest or excessive collection mortality, no more than a maximum of 20,000 horseshoe crabs should be collected for biomedical purposes from the Reserve. In addition to the direct mortality of horseshoe crabs that are bled, it can be expected that more than 20,000 horseshoe crabs will be trawled up and examined for LAL processing. This is because horseshoe crab trawl catches usually include varied sizes and sexes of horseshoe crabs and large female horseshoe crabs are the ones usually selected for LAL processing. The remaining horseshoe crabs are released at sea with some unknown amount of mortality. Although unknown, this mortality is expected to be negligible.

Collection of horseshoe crabs for biomedical purposes from the Reserve is necessary because of the low numbers of horseshoe crabs found in other areas along the New Jersey Coast from July through early November and because of the critical role horseshoe crab blood plays in health care. In conjunction with the biomedical harvest, NMFS is considering requiring that scientific data be collected from the horseshoe crabs taken in the Reserve as a condition of receiving an EFP. Since the Reserve was first established, the only fishery data from the Reserve were under EFPs issued to Limuli Laboratories for the past five years, and under Scientific Research Activity Letter of Acknowledgment issued Virginia Polytechnic Institute and State University's Department of Fisheries and Wildlife Science on September 4, 2001 (or collections from September 1–October 31, 200l), on September 24, 2002 (for collections from September 24–November 15, 2002), on August 14, 2003 (for collections from September 1–October 31, 2003), on September 15, 2004 (for collections from September 15–October 31, 2004), on September 9, 2005 (for collections from September 9–October 30, 2005), and on May 3, 2006 (for collections from June 1–November 30, 2006). Further data are needed to improve the understanding of the horseshoe crab population in the Delaware Bay area and to better manage the horseshoe crab resource under the cooperative state/Federal management program. The data collected through the EFP will be provided to NMFS, the Commission, and to the State of New Jersey.

Results From 2006 EFP

Limuli Laboratories applied for an EFP to collect horseshoe crabs for biomedical and data collection purposes from the Reserve in 2006. The EFP application specified that: (1) the same methods would be used in 2006 that were used in years 2001–2005, (2) 15 percent of the bled horseshoe crabs would be tagged, and (3) there had not been any sighting or capture of marine mammals or endangered species in the trawling nets of fishing vessels engaged in the collection of horseshoe crabs since 1993. In 2005, a Supplemental Environmental Assessment was completed and found that there was no significant impacts in conducting the EFP.

An EFP was issued to Limuli Laboratories on August 4, 2006, which allowed them to collect horseshoe crabs in the Reserve until November 30, 2006. A total of 2,720 horseshoe crabs were collected in the Reserve in late September and October of 2006. Of these, 2,460 animals were used for the manufacture of LAL. Female horseshoe crab activity levels were active and very active; no males were used for the manufacture of LAL. The remaining 260 animals were rejected; 190 crabs (6.99 percent) were injured horseshoe crabs (a slight decrease from 7.8 percent last year), and 57 crabs (2.1 percent) were unresponsive and presumed dead due to collecting, transporting and handing (a decrease from 6.81 percent last year). In addition, 13 horseshoe crabs (0.48 percent) were rejected due to small size and not utilized in the manufacturing process. Horseshoe crabs were collected during 11 days in late September and October of 2006 (2 days in September and 9 days in October), and were transported to the laboratory for the bleeding operation and inspected for sex, size, injuries and responsiveness. Three to four tows were conducted during each fishing trip with the tows lasting no more than 30 minutes to avoid impacting loggerhead turtles. Horseshoe crabs were unloaded at Two Mile Dock, Wildwood Crest, New Jersey and at County Dock, Ocean City, Maryland and transported to the laboratory by truck. Since large horseshoe crabs, which are generally females, are used for LAL processing, all of the crabs transported to the laboratory

were females. Of those 2,460 processed for LAL, 200 female crabs were measured (inter-ocular distances and prosoma widths), weighed, aged, and tagged to establish baseline morphometrics and ages, prior to being released. An additional 225 female bled animals were tagged for a total of 425 animals or 17.3 percent. The average measurements for the female horseshoe crabs were 167.69 mm for the inter-ocular distance (161.64 mm in 2005); 268.74 mm for the prosoma width (260.4 mm in 2005); and 2.51 kg for the weight (2.08 kg in 2005). The most common encrusting organism observed this year was the slipper shell. Sand tube worms were also noted on many of the animals. Only one crab had a barnacle and bryozoans were not found on any of the shells. It should be noted that many organisms may be removed during the washing/cleaning process prior to blood collection.

Horseshoe crabs were aged in 2006 using Dr. Carl N. Schuster Jr.'s criteria of aging by appearance: female horseshoe crabs - virgin (1.5 percent), young (7.0 percent), young-medium (11.5 percent), medium (75 percent); medium-old (4.5 percent); and old (0.5 percent). Last year's percentages showed the majority of crabs were virgins (65 percent), while this year the majority were medium age (75 percent). This may have occurred because the horseshoe crab specimens were trawled off the coast of Sea Isle City, New Jersey and later in the season than in 2005. The specimens studied last year were trawled in deeper waters off Ocean City, Maryland in August and early September.

In 2006, a total of 425 horseshoe crabs from the Reserve were tagged and released at the water's edge on Highs Beach, New Jersey. The beach was checked frequently, following release, to ensure the crabs had returned to the water. Sixteen live recoveries occurred; two animals from 2003 releases, two from 2004 and 12 from the 2005 releases. Thirteen of the recaptures were observed along the shores of Delaware Bay. Three horseshoe crabs migrated to the Atlantic Ocean. One was observed on the beach in Avalon, New Jersey, another within the Great Bay Inlet, New Jersey and the third crab was found in deep water off the coast of Ocean City, Maryland.

Data collected under the EFP were supplied to NMFS, the Commission, and the State of New Jersey.

Proposed 2006 EFP

Limuli Laboratories proposes to conduct an exempted fishery operation using the same means, methods, and seasons utilized during the EFPs in 2001–2006, as described below under terms and conditions. Limuli proposes to continue to tag 15 percent of the bled horseshoe crabs as they did in 2006.

The proposed EFP would exempt three commercial vessels from regulations at 50 CFR 697.7(e), which prohibit fishing for horseshoe crabs in the Reserve under § 697.23(f)(1) and prohibit possession of horseshoe crabs on a vessel with a trawl or dredge gear aboard in the same Reserve.

Limuli Laboratories, in cooperation with the State of New Jersey's Division of Fish and Wildlife, submitted an application for an EFP on June 16, 2007. NMFS has made a preliminary determination that the subject EFP contains all the required information and warrants further consideration. NMFS has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Federal horseshoe crab regulations and the Commission's Horseshoe Crab ISFMP.

Regulations at 50 CFR 600.745(b)(3)(v) authorize NMFS to attach terms and conditions to the EFP consistent with: the purpose of the exempted fishery, the objectives of horseshoe crab regulations and fisheries management plan, and other applicable law. NMFS is considering adding the following terms and conditions to the EFP:

1. Limiting the number of horseshoe crabs collected in the Reserve to no more than 500 crabs per day and to a total of no more than 10,000 crabs per year;

2. Requiring collections to take place over a total of approximately 20 days during the months of July, August, September, October, and November. Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve from July through November;

3. Requiring that a 5 1/2 inch (14.0 cm) flounder net be used by the vessel to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to the consistency in the way horseshoe crabs are harvested for data collection;

4. Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;

5. Restricting the hours of fishing to daylight hours only, approximately from 7:30 a.m. to 5 p.m. to aid law enforcement. NMFS also is considering a requirement that the State of New Jersey Law Enforcement be notified daily as to when and where the collection will take place;

6. Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May Area and transported to local laboratories, bled for LAL, and released alive the following morning into the Lower Delaware Bay; and

7. Requiring that any turtle take be reported to NMFS, NERO Assistant Regional Administrator of Protected Resources Division (phone, (978) 281–9328) within 24 hours of returning from the trip in which the incidental take occurred.

Also as part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS is considering a requirement that the EFP holder provide data on sex ratio and daily numbers, and tag 15 percent of the horseshoe crabs harvested. Also, the EFP holder may be required to examine at least 200 horseshoe crabs for: morphometric data, by sex (e.g., interocular (I/O) distance and weight), and level of activity, as measured by a response or by distance traveled after release on a beach.

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

Dated: June 27, 2007.

Alan D. Risenhoover,

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

[FR Doc. E7–12879 Filed 7–2–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB08

Marine Mammals; File Nos. 808–1735 and 1058–1733

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that Andrew Read, Ph.D., Duke University Marine Laboratory, 135 Pivers Island Road, Beaufort, North Carolina 28516 and Mark Baumgartner, Ph.D., MS #33, Woods Hole Oceanographic Institute, Woods Hole, Massachusetts, 02543 have been issued permits to conduct research on humpback whales (*Megaptera novaeangliae*), blue whales (*Balaenoptera musculus*), fin whales (*Balaenoptera physalus*), sei whales (*Balaenoptera borealis*), and Antarctic minke whales (*Balaenoptera bonaerensis*).

ADDRESSES: The permit 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;Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; andNortheast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Jaclyn Daly, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 7, 2004, notice was published in the **Federal Register** (69 FR 18357) that requests for scientific research permits to take the species identified above had been submitted by the above-named individuals. The requested permits have been issued 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 (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 808–1735, issued to Dr. Andrew Read, allows for the take of humpback, blue, fin, sei, and Antarctic minke whales in the Southern Ocean to examine their foraging behavior relative to krill patches. The permit authorizes the close approach of up to 295 humpback whales and 65 of each species of blue, fin, sei, and Antarctic minke whales annually during vessel surveys for photo-identification, behavioral observation, tracking, and incidental harassment. Of these animals, up to 45 humpbacks and 15 of each species of blue, fin, sei, and Antarctic minke whales may be suction-cup tagged annually during surveys. The permit is issued for five years.

Permit No. 1058–1733, issued to Dr. Baumgartner, allows for the take of baleen whalesto examine aspects of foraging and diving behaviors in the Southern Ocean as well as to determine the overlap of diving behaviors with the vertical structure of fixed fishing gear in the North Atlantic Ocean. In the Southern Ocean, researchers may closely approach up to 324 of each species of humpback, blue, fin, sei, and Antarctic minke whales annually during vessel surveys for photo-identification, behavioral observation, tracking, and incidental harassment. Of these animals, up to 108 of each species may be suction-cup tagged annually during surveys. In the North Atlantic, researchers may closely approach up to 324 of each species of humpback, fin, and sei whales annually during vessel surveys for photo-identification, behavioral observation, tracking, and incidental harassment. Of these animals, up to 108 of each species may be suction-cup tagged annually during surveys. The permit is issued for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of the permits, as required by the ESA, was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 27, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–12873 Filed 7–2–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050107L]

Incidental Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Seismic Survey in the Northeastern Indian Ocean

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Scripps Institute of Oceanography (SIO) for the take of marine mammals, by Level B harassment only, incidental to conducting a low-energy marine seismic survey in the northeastern Indian Ocean during summer 2007.

DATES: Effective from June 20, 2007, through August 31, 2007.

ADDRESSES: A copy of the IHA and the application are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (*FOR FURTHER INFORMATION CONTACT*) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of

marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either approve or deny the authorization.

Summary of Request

On January 5, 2007, NMFS received an application from SIO for the taking, by Level B harassment only, of 32 species of marine mammals incidental to conducting, with research funding from the National Science Foundation (NSF), a low-energy marine seismic survey in the northeastern Indian Ocean from May-August 2007. The purpose of the research program was outlined in the NMFS'notice of the proposed IHA (72 FR 17849, April 10, 2007).

Description of the Activity

The seismic surveys will involve one vessel, the R/V *Roger Revelle* (*Roger Revelle*), which was originally scheduled to depart from Fremantle, Australia, between May 22 and June 19, 2007. A change of schedule resulted in the *Roger Revelle* leaving Australia in March, instead, however, the seismic survey will still occur in the window indicated in the notice for the proposed IHA (72 FR 17849, April 10, 2007). No other changes have been made either in the applicants activity or the proposed IHA since the notice of the proposed IHA was published. The *Roger Revelle* will conduct the cruise in the Indian Ocean, beginning in late June, and arrive at Colombo, Sri Lanka, between July 16 and August 13, 2007. The overall area within which the seismic surveys will occur is located between approximately 5° N. and 25° S., along approximately 90° E. (Figure 1 in the application), in the Indian Ocean. The surveys will be conducted entirely in International Waters.

The *Roger Revelle* will deploy a pair of low-energy Generator-Injector (GI) airguns as an energy source (each with a discharge volume of 45 in3), plus a 800 m-long (2625–ft long), 48–channel, towed hydrophone. The program will consist of approximately 2700 km (1678 mi) of surveys, including turns. Water depths within the seismic survey areas are 1600–5100 m (1750–5577 yd). The GI guns will be operated on a small grid for approximately 49 hours at each of 5 sites. In addition to the operations of the GI guns, a 3.5–kHz sub-bottom profiler , a Kongsberg-Simrad EM–120 multi-beam sonar, and a gravimeter will be used continuously throughout the cruise, and passive geophysical sensors will be deployed to conduct magnetic surveys at all times except during dredging.

A more detailed description of the authorized action, including vessel specifications and acoustic source specifications, was included in the notice of the proposed IHA (72 FR 17849, April 10, 2007).

Safety Radii

Received sound levels have been modeled by Lamont-Doherty Earth Observatory (L-DEO) for a number of airgun configurations, including two 45–in^3 Nucleus G-guns, in relation to distance and direction from the airguns. The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI guns where sound levels of 190, 180, and 160 dB re 1 μPa (rms) are predicted to be received in deep (>1000–m (3280–ft)) water are 10, 40, and 400 m (33, 131, and 1312 ft), respectively. Because the model results are for G guns, which have more energy than GI guns of the same size, those distances are overestimates of the distances for the 45–in*3* GI guns.

A general discussion of acoustic thresholds and safety radii, as well as further discussion of the modeling conducted by L-DEO, was included in the notice of the proposed IHA (72 FR 17849, April 10, 2007).

Comments and Responses

A notice of receipt of the SIO application and proposed IHA was published in the **Federal Register** on April 10, 2007 (72 FR 17849). During the comment period, NMFS received comments from the Marine Mammal Commission (MMC) and one individual. One individual expressed the opinion that the authorization should be denied because this type of profiteering activity is murderous and destructive and results in permanent hearing loss of marine mammals. No supporting information was provided for these assertions and NMFS believes that the contrary analyses presented in the EA and our **Federal Register** Notice remain correct. MMC's comments are as follows:

Comment 1: The MMC states that because the applicant is requesting authority to take marine mammals by harassment only, NMFS should require that operations be suspended immediately if a dead or seriously injured marine mammals is found in the vicinity of the operations and the death or injury could have occurred incidental to conducting the seismic survey. The MMC further recommends that any such suspension should remain in place until NMFS has (1) reviewed the situation and determined that further mortalities or serious injuries are unlikely to occur, or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Response: NMFS concurs with MMC's recommendations and has included a requirement to this effect in the IHA.

Comment 2: The MMC also questioned the likely ability of the proposed monitoring program to detect an injured or dead beaked whale or other small cetacean.

Response: Because of the cryptic nature of beaked whale behavior and the movement of the *Roger Revelle* during the seismic survey, it is unlikely that a distressed beaked whale or small cetacean would be sighted from a ship running transects through an area. However, NMFS believes that it is highly unlikely that a marine mammals will be exposed to levels of sound likely to result in Level A Harassment or mortality given the very small radii (40 m for 180 dB) around the *Roger Revelle*'s small airguns and the likely effectiveness of the mitigation measures.

Description of Marine Mammals in the Activity Area

Thirty-two species of cetacean, including 25 odontocete (dolphins and small and large toothed whales) species and seven mysticete (baleen whales) species, are thought to occur in the seismic survey areas along the Ninety East Ridge in the northeastern Indian Ocean (Table 1). Several are listed under the U.S. Endangered Species Act (ESA) as Endangered: the sperm whale, humpback whale, blue whale, fin whale, and sei whale.

Additional information regarding the status and distribution of the marine mammals in the area and how the densities were calculated was included in the notice of the proposed IHA (72 FR 17849, April 10, 2007) and may be found in SIO's application.

Species	Habitat	Occurrence	Auth Take
Mysticetes			
Humpback whale (Megaptera novaeangliae)*	Mainly nearshore waters and banks	Common	0
Minke whale (Balaenoptera acutorostrata)	Pelagic and coastal	Uncommon	5
Antarctic minke whale (Balaenoptera bonaerensis	Coastal and oceanic	Uncommon	5
Bryde's whale (Balaenoptera edeni)	Pelagic and coastal	Very common	5
Sei whale (Balaenoptera borealis) *	Primarily offshore, pelagic	Uncommon	0
Fin whale (Balaenoptera physalus)*	Continental slope, mostly pelagic	Common	0
Blue whale (Balaenoptera musculus)*	Pelagic and coastal	Very common	1
Odontocetes			
Sperm whale (Physeter macrocephalus)*	Usually pelagic and deep seas	Common	1
Pygmy sperm whale (Kogia breviceps)	Deep waters off the shelf	Common	5
Dwarf sperm whale (Kogia sima)	Deep waters off the shelf	Common	5
Cuvier's beaked whale (Ziphius cavirostris)	Pelagic	Common	5
Shepherd's beaked whale (Tasmacetus shepherdi)	Pelagic	Rare	5
Longman's beaked whale (Indopacetus pacificus)	Pelagic	Common?	1
Southern bottlenose whale (Hyperoodon planifrons)	Pelagic	Uncommon	5
True's beaked whale (Mesoplodon mirus)	Pelagic	Rare	5
Gray's beaked whale (Mesoplodon grayi)	Pelagic	Uncommonv	5
Ginkgo-toothed whale (Mesoplodon ginkgodens)	Pelagic	Common	5
Blainville's beaked whale (Mesoplodon densirostris)	Pelagic	Very common	5
Rough-toothed dolphin (Steno bredanensis)	Deep water	Uncommon	69
Bottlenose dolphin (Tursiops truncatus)	Coastal and oceanic, shelf break	Common	129
Pantropical spotted dolphin (Stenella attenuata)	Coastal and pelagic	Uncommon	65
Spinner dolphin (Stenella longirostris)	Coastal and pelagic	Abundant	215
Striped dolphin (Stenella coeruleoalba)	Off continental shelf	Common	86
Fraser's dolphin (Lagenodelphis hosei)	Waters >1000 m	Rare	22
Common dolphin (Delphinus delphis)	Shelf and pelagic, seamounts	Very common	151
Risso's dolphin (Grampus griseus)	Waters >1000 m, seamounts	Very common	151
Melon-headed whale (Peponocephala electra)	Oceanic	Very common	50
Pygmy killer whale (Feresa attenuata)	Deep, pantropical waters	Common	25
False killer whale (Pseudorca crassidens)	Pelagic	Common	15
Killer whale (Orcinus orca)	Widely distributed	Common	5
Long-finned pilot whale (Globicephala melas)	Mostly pelagic	Rare	30
Short-finned pilot whale (Globicephala macrorhynchus)	Mostly pelagic, high-relief topog-raphy	Very common	15

Table 1. Species expected to be encountered (and potentially harassed) during SIO's Indian Ocean cruise. The far right column indicates the number of takes authorized by the IHA.

*Species are listed as endangered under the Endangered Species Act

Potential Effects on Marine Mammals

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment (Richardson *et al.*, 1995), or other non-auditory physiological effects such as stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. To avoid injury, NMFS has determined that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). The predicted 180- and 190–dB distances for the GI guns operated by SIO are 40 m (131 ft) and 10 m (33 ft). Given the small size of the GI guns (two 45–in^3 GI guns) planned for the present project and the required mitigation and monitoring measures, effects are anticipated to be considerably less than would be the case with a large array of airguns. It is very unlikely that there would be any cases of temporary or, especially, permanent hearing impairment or other serious non-auditory physiological effects. Also, behavioral disturbance is expected to be limited to relatively short distances.

The notice of the proposed IHA (72 FR 17849, April 10, 2007) included a discussion of the effects of sounds from airguns on mysticetes, odontocetes, and pinnipeds, including tolerance, masking, behavioral disturbance, hearing impairment and other non-auditory physical effects. Additional details on the behavioral reactions (or the lack thereof) by all types of marine mammals to seismic vessels can be found in Appendix A (e) of SIO's application.

The notice of the proposed IHA also included a discussion of the potential effects of the bathymetric sonar and the sub-bottom profiler. Because of the shape of the beams of these sources and their power, NMFS believes it unlikely that marine mammals will be exposed to either the bathymetric sonar or the sub-bottom profiler at levels at or above those likely to cause harassment. Further, NMFS believes that the brief exposure of cetaceans or pinnipeds to small numbers of signals from the multi-beam bathymetric sonar system are not likely to result in the harassment of marine mammals.

Estimated Take by Incidental Harassment

The notice of the proposed IHA (72 FR 17849, April 10, 2007) included an in-depth discussion of the methods used to calculate the densities of marine mammals in the area of the seismic survey and the take estimates. Additional information was included in SIO's application. A summary of the total take authorized is included here.

All anticipated takes authorized by this IHA are Level B Harassment, involving temporary changes in behavior. The far right column in Table 1, ''Auth Take'', shows the numbers for which take is authorized. Take calculations were based on on maximum exposure estimates (based on maximum density estimates), vs. best estimates, and are based on the 160–dB isopleth of a larger set of airguns. Given these considerations, the predicted numbers of marine mammals that might be exposed to sounds 160 dB may be somewhat overestimated.

The stock structures of the marine mammals present in the Indian Ocean have not been identified by NMFS; therefore, NMFS must make the necessary findings based on the species as a whole. The species anticipated to be affected during the authorized activities are wide-ranging species. Though worldwide abundance (or abundance outside of that estimated for the U.S. stocks) has not been estimated, localized surveys in the west tropical Indian Ocean and elsewhere have been conducted. Since the take estimates authorized in this IHA fall largely within 6 percent (all but common dolphin (21 percent) and rough-toothed dolphin (14 percent)) of the numbers estimated to be present during a localized survey of the west tropical Indian Ocean, and the species range far beyond the Indian Ocean (i.e., the abundance of the species is notably larger), NMFS believes that the estimated take numbers for these are small relative both to the worldwide abundance of these species and to numbers taken in other activities that have been authorized for incidental take of these species.

Potential Effects on Habitat

A detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates, was included in the notice of the proposed IHA (72 FR 17849, April 10, 2007).

Based on the discussion in the proposed IHA and the nature of the activities (small airguns and limited duration), the authorized operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks.

Monitoring

Either dedicated marine mammal observers (MMOs) or other vessel-based personnel will watch for marine mammals near the seismic source vessel during all daytime and nighttime airgun operations. GI airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety radii where there is a possibility of significant effects on hearing or other physical effects. At least one dedicated vessel-based MMO will watch for marine mammals near the seismic vessel during daylight periods when shooting is being conducted, and two MMOs will watch for marine mammals for at least 30 min prior to start-up of airgun operations. Observations of marine mammals will also be made and recorded during any daytime periods without airgun operations. At night, the forward-looking bridge watch of the ship's crew will look for marine mammals that the vessel is approaching, and execute avoidance maneuvers; the 180dB/190dB safety radii around the airguns will be continuously monitored by an aft-looking member of the scientific party, who will call for shutdown of the guns if mammals are observed within the safety radii. Nighttime observers will be aided by (aft-directed) ship's lights and night vision devices (NVDs).

Observers will be appointed by SIO with NMFS concurrence. Two observers will be on the vessel, and both will have gone through NOAA/NMFS training for marine mammal observations. Observers will be on duty in shifts usually of duration no longer than two hours. Use of two simultaneous observers prior to start up will increase the detectability of marine mammals present near the source vessel, and will allow simultaneous forward and rearward observations. Bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements, and before the start of the seismic survey will be given instruction in how to do so.

The *Roger Revelle* is a suitable platform for marine mammal observations, and has been used for that purpose during the routine CalCOFI (California Cooperative Oceanic Fisheries Investigations). Observing stations will be at the 02 level, with observers' eyes approximately 10.4 m (34 ft) above the waterline: one forward on the 02 deck commanding a forward-centered, approximately 240° view, and one atop the aft hangar, with an aft-centered view that includes the 60–m

radius area around the airguns. The eyes of the bridge watch will be at a height of approximately 15 m (49 ft); marine mammal observers will repair to the enclosed bridge and adjoining aft steering station during any inclement weather (unlikely at this place and season), and as necessary to use the 50 X ''big-eye'' binoculars that are mounted there.

Standard equipment for marine mammal observers will be 7 X 50 reticle binoculars and optical range finders. At night, night vision equipment will be available. The observers will be in wireless communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or airgun power-down or shut-down.

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially ''taken'' by harassment. It will also provide the information needed in order to shut down the GI airguns at times when mammals are present in or near the safety zone. When a mammal sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer when observers are off duty. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered, and by subsequent manual checking of the database. Those procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide:

- The basis for real-time mitigation (airgun shut down).
- Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.
- Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.
- Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.
- Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Mitigation

For the seismic surveys in the Northeastern Indian Ocean during June-August 2007, SIO will deploy two GI airguns as an energy source, with a total discharge volume of 90 in3. The energy from the airguns will be directed mostly downward. The small size of the airguns to be used during SIO's study will reduce the potential for effects relative to those that might occur with a large airgun arrays.

In addition to marine mammal monitoring, the following mitigation measures are required during the seismic program. Although power-down procedures are often standard operating practice for seismic surveys, it will not be used here because powering down from two guns to one gun would make only a small difference in the 180- or 190–dB radius probably not enough to allow continued one-gun operations if a mammal came within the safety radius for two guns. Mitigation measures that will be adopted are:

(1) Speed or course alteration;

(2) Ramp-up and shut-down procedures; and

(3) Night operations;

Speed or Course Alteration – If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the animal does not approach within the safety radius. If the animal appears likely to enter the safety radius, further mitigative actions will be taken, i.e. either further course alterations or shut down of the airguns.

Shut-down Procedures – If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the animal enter the safety radius, the airguns will be shut down before the animal is within the safety radius (10 m (33 ft) for pinnipeds (190–dB isopleth) or 40 m (131 ft) for cetaceans (180–dB isopleth)). Likewise, if a marine mammal is already within the safety radius when first detected, the airguns will be shut down immediately.

Airgun activity will not resume until the animal has cleared the safety radius. The animal will be considered to have cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked, and bottlenose whales).

Ramp-up Procedures – A ''ramp-up'' procedure will be followed when the airguns begin operating after a period without airgun operations. The two GI guns will be added in sequence 5 minutes apart. During ramp-up procedures, the safety radius for the two GI guns will be maintained.

Night Operations – At night, vessel lights and/or night vision devices (NVDs) could be useful in sighting some marine mammals at the surface within a short distance from the ship (within the safety radii for the two GI guns in deep water). Start up of the airguns will only occur in situations when the entire safety radius is visible with vessel lights and NVDs.

Reporting

A report will be submitted to NMFS within 90 days after the end of the cruise. The end of the northeastern Indian Ocean cruise is predicted to occur between July 16 and August 13, 2007. The report will describe the operations that were conducted and the marine mammals that were detected near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90–day report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

Endangered Species Act

Pursuant to section 7 of the ESA, the National Science Foundation (NSF) has consulted with NMFS on this seismic survey. NMFS has also consulted internally pursuant to Section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. In a Biological Opinion (BO), NMFS concluded that the 2007 SIO seismic survey in the norhteastern Indian Ocean and the issuance of the associated IHA are not likely to jeopardize the continued existence of threatened or endangered species or destroy or adversely modify any designated critical habitat. NMFS has issued an incidental take statement (ITS) for 1 blue whale and 1 sperm whale (as well as a number of individuals of olive-Ridley sea turtles, green sea turtles, leatherback turtles, and hawksbill sea turtles) that contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of this take. The terms and conditions of the BO have been incorporated into the SIO.

National Environmental Policy Act (NEPA)

NSF prepared an Environmental Assessment of a Planned Low-Energy Marine Seismic Survey by the Scripps Institution of Oceanography in the Northeast Indian Ocean, May July 2007. NMFS has adopted NSF's EA and issued a Finding of No Significant Impact for the issuance of the IHA.

Determinations

NMFS has determined that the impact of conducting the seismic survey in the northeast Indian Ocean may result, at worst, in a temporary modification in behavior (Level B Harassment) of small numbers of 29 species of cetaceans. Further, this activity is expected to result in a negligible impact on the affected species or stocks. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

This determination is supported by: (1) the likelihood that, given sufficient notice through relatively slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) the fact that marine mammals would have to be closer than 40 m from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; and (3) the likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel. As a result, no take by injury or death is anticipated and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the required mitigation measures.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, less than a few percent of any of the estimated population sizes, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

Authorization

As a result of these determinations, NMFS has issued an IHA to SIO for conducting a low-energy seismic survey in the Indian Ocean from June - August, 2007, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 20, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–12870 Filed 7–2–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

XRIN 0648–XB20

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Ad Hoc Review Panel for Red Drum.

DATES: The Ad Hoc Review Panel for Red Drum meeting will convene at 1 p.m. on Monday, July 23, 2007 and conclude no later than 3 p.m. on Tuesday, July 24, 2007.

ADDRESSES: The meeting will be held at the W New Orleans, 333 Poydras St., New Orleans, LA 70130; telephone: (504) 525–9444.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Fishery Executive Director, telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Panel will be convened to consider the Council's change to assess the availability of the information needed to conduct a SEDAR stock assessment for red drum and to propose data collection activities for that information that should be carried out in 2008. Representatives of the five gulf states will summarize fisheries dependent and independent data available from their state. The federal representatives will summarize the data available through their agency. The Panel will discuss other issues related to the stock assessment and SEDAR process.

Although other non-emergency issues not on the agenda may come before the Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Ad Hoc Review Panel for Red Drum will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: June 28, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–12867 Filed 7–2–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 4, 2007.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 27, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: The Effectiveness of Sheltered Instruction on English Language Learners in Georgia 4th and 5th Grade Classrooms (SIOP).

Frequency: Annually.

Affected Public: Individuals or household; State, Local, or Tribal government SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 640.

Burden Hours: 160.

Abstract: This data collection is for the purpose of assessing the effectiveness of the Sheltered Instruction Observation Protocol (SIOP) Model, a model of instruction for teaching English Language Learners (ELLs) that is widely used but whose effectiveness has to date not been evaluated rigorously. This one-year study utilizes an experimental design to examine the impact of SIOP instruction in 4th and 5th grade classrooms in 64 public schools in Georgia (32 treatment, 32 control schools). Research on educational issues of regional importance—such as the teaching of a growing population in the Southeast region, English Language Learners—is a key component of the REL–SE's contract with the U.S. Department of Education's Institute of Education Sciences. The study utilizes predominantly extant data (student assessment data collected by LEAs and school personnel data collected by the state department of education) but includes a brief Teacher Survey and classroom observations in the Spring of 2009, with a total of 640 respondents on the survey (and 640 teachers' classrooms observed).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3401. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–12842 Filed 7–2–07; 8:45 am]

BILLING CODE 4000–01–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 August 2, 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: June 27, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Safe and Drug Free Schools

Type of Review: Reinstatement.

Title: Alcohol, Other Drug, and Violence Prevention Survey of American College Campuses.

Frequency: On occasion.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,050.

Burden Hours: 875.

Abstract: This survey's purpose is to determine the state of alcohol and other drug abuse and violence prevention in higher education and assess current and emerging needs of institutions of higher education and their surrounding communities.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3322. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–12843 Filed 7–2–07; 8:45 am]

BILLING CODE 4000–01–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 August 2, 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: June 27, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: RSA Grantee Reporting Form.

Frequency: Annually.

Affected Public: Businesses or other for-profit; not-for-profit institutions; State, Local, or Tribal Gov't., SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 350.

Burden Hours: 400.

Abstract: The Rehabilitation Services Administration (RSA) uses the RSA Grantee Reporting Form to assess grantees' compliance with program requirements and to report to Congress performance and progress in meeting the purpose for training programs as mandated in Title III of the Rehabilitation Act of 1973, as amended: To ''ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs * * *'' The Grantee Reporting Form provides specific information in this regard, including the number of RSA scholars entering the public vocational rehabilitation workforce, in what rehabilitation field, and in what type of employment (e.g. State VR agency, nonprofit service provider or practice group).

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3317. 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 I*CDocketMgr@ed.gov* 202–245–6604. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–12844 Filed 7–2–07; 8:45 am]

BILLING CODE 4000–01–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 August 2, 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: June 27, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Performance Report: Personnel Development for the Individuals with Disabilities Education Act (IDEA).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 450.

Burden Hours: 3,510.

Abstract: This package is a revision and contains instructions and the form necessary for grantees and contractors supported under the Individuals with Disabilities Education Act (IDEA), Personnel Development to Improve Services and Results for Children with Disabilities, CFDA No. 84.325. Data obtained are used to evaluate and monitor the implementation of IDEA and for Congressional reporting. Analysis of these data will be used in the following ways: (a) To inform the activities and priorities specific to personnel preparation conducted by the U.S Department of Education; (b) to determine variation in personnel preparation and factors related to that variation; and (c) to evaluate the outcomes of the IDEA and the Office of Special Education Programs' (OSEP) performance measures under the Government Performance and Results Act (GPRA) and the Program Assessment Rating Tool (PART). OSEP revisions have: (a) Added six items to the data collection instrument to collect data required for reporting under the PART (these additional items will only be requested for students that have completed the preparation program and include data on their knowledge and skill attainment and on their highly qualified teacher status (or qualified for paraprofessionals, or fully certified for related service providers and early intervention service providers); (b) revised the race and ethnicity items to reflect current OMB policy; (c) changed collection to better account for all students that benefit from the grant, as requested by both grantees and OSEP. OSEP will now collect data on all students that participated in grant supported preparation, not just those students that received direct funding. This change will increase the number of students that grantees will enter data on. To address this change, all text limiting responses to those students ''receiving grant support'' have been removed; and (d) enhanced instructions for a few items to make the form more user-friendly and diminish response ambiguity.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3309. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–12845 Filed 7–2–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department of Education (Department) gives notice that on March 30, 2007, an arbitration panel rendered a decision in the matter of *Ronald Carter* v. *Georgia Department of Labor, Division of Rehabilitation Services (Case No. R-S/06–2).* This panel was convened by the Department under 20 U.S.C. 107d-1(a), after the Department received a complaint filed by the petitioner, Ronald Carter.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerned alleged violations of the Act, the implementing regulations in 34 CFR part 395, and State rules and regulations by the Georgia Department of Labor, Division of Rehabilitation Services, the State

licensing agency (SLA) regarding complainant's termination as manager at Facility #348 at the United States Postal Service's (USPS) Atlanta Bulk Mail Center.

Summary

Complainant has been a licensed blind vendor in the Georgia Business Enterprise Program (BEP) for 16 years. In 1999, complainant was assigned as the vending facility manager at the USPS Atlanta Bulk Mail Center, Facility #348. Facility #348 is a vending machine route.

In the termination letter dated September 24, 2004, the SLA informed the complainant that the USPS was dissatisfied with his performance for the following reasons: (1) Lack of inventory in the vending machines, (2) expired food items, (3) failure to maintain vending machines, (4) complainant's absence from the facility, (5) limited food selection, and (6) failure to resolve customer service complaints. The letter further indicated that the USPS threatened to terminate the permit agreement with the SLA unless there was improvement regarding the level of service customers received and the complainant was replaced.

Shortly thereafter, complainant requested an administrative review concerning his license termination. On November 29, 2004, the SLA issued a decision denying his petition. In December 2004, complainant filed for a state fair hearing on this matter, which was held on April 15, 2005. On June 29, 2005, the Administrative Law Judge (ALJ) issued a decision affirming the SLA's termination of complainant's operator license.

Subsequently, the SLA informed complainant it had adopted the ALJ's decision as final agency action. Complainant sought review by a Federal arbitration panel of that decision.

Arbitration Panel Decision

The issue heard by the panel was whether the actions taken by the Georgia Department of Labor, Division of Rehabilitation Services violated the Act, 20 U.S.C. 107 *et seq.*, the implementing regulations in 34 CFR part 395, and its own rules and regulations concerning the alleged improper termination of complainant's vending operating license to manage Facility #348 at the USPS Atlanta Bulk Mail Center.

After reviewing the entire case file and hearing testimony of witnesses, the majority of the panel ruled that the SLA acted properly and in full and fair compliance with the Act, implementing regulations, and State rules and regulations. Therefore, the panel denied complainant's grievance. One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Electronic Access to This Document

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 28, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–12893 Filed 7–2–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 26, 2007; 8 a.m. to 5 p.m.

ADDRESSES: Radisson Hotel Reagan National Airport, 2020 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–0536.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, July 26, 2007

- Perspectives from Department of Energy and National Science Foundation
- Presentation of the Neutrino Scientific Assessment Group Subcommittee Report
- Discussion of Rare Isotope Beam (RIB) Task Force Report
- Update from the Performance Measures Subcommittee
- Reports on the Long Range Plan Writing Progress
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, 301–903–0536 or *Brenda.May@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The NSAC will prepare meeting minutes within 45 days of the meeting. The minutes will be posted on the NSAC Web site at *http://www.sc.doe.gov/np/nsac/nsac.html.*

Issued at Washington, DC on June 27, 2007.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–12839 Filed 7–2–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5355–000]

Edwards, Jeffrey S.; Notice of Filing

June 26, 2007.

Take notice that on June 14, 2007, Jeffrey S. Edwards filed an application for authorization to hold interlocking directorate positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b), Part 45 of the Federal Energy Regulatory Commission's Rules

of Practice and Procedure, 18 CFR Part 45 (2005), and Order No. 664.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 5, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12802 Filed 7–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL07–75–000; EC07–99–000]

Great Plains Energy Incorporated Kansas City Power & Light Company Aquila, Inc., Black Hills Corporation; Notice for Petition of Declaratory Order

June 26, 2007.

Take notice that on June 20, 2007, Great Plains Energy Incorporated and Aquila, Inc. jointly filed a petition of declaratory order, pursuant to Rule 207 of the Commission's Rule and Regulations, 18 CFR 385.207, requesting that the Commission consider the confirmation requested in section V of its Section 203 application, filed with the Commission on May 25, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 20, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12804 Filed 7–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–398–000, CP07–399–000, CP07–400–000, CP07–401–000, CP07–402–000 and CP07–403–000]

Gulf Crossing Pipeline Company LLC; Gulf South Pipeline Company, LP; Enogex Inc.; Notice of Application

June 26, 2007.

Take notice that on June 19, 2007, Gulf Crossing Pipeline Company LLC (Gulf Crossing) and Gulf South Pipeline Company, LP (Gulf South), 9 East Greenway Plaza, Suite 2800, Houston, Texas 77046, filed in Docket Nos. CP07–398–000, CP07–399–000, CP07–400–000, CP07–401–000 and CP07–402–000, a joint application pursuant to section 7 of the Natural Gas Act (NGA) to authorize Gulf Crossing to site, construct, and operate certain facilities, and Gulf South to abandon capacity by lease and to site, construct, and operate certain facilities. In Docket No. CP07–398–000, Gulf Crossing seeks authorization to construct a 353.2 mile pipeline and associated compression facilities extending from Sherman, Texas to an interconnect with Gulf South at Gulf South's Tallulah Compressor Station in Madison Parish, Louisiana. In that filing, Gulf Crossing also seeks authorization to lease up to 165,000 Dth/d of upstream capacity on the intrastate pipeline system of Enogex and up to 1.4 billion cubic feet (Bcf) of natural gas per day from Gulf South from Tallulah to Transco's Station 85 located at the terminus of Gulf South's Southeast Expansion Project. In Docket Nos. CP07–399–000 and CP07–400–000, Gulf Crossing seeks blanket certificates under Part 157, Subpart F and under Part 284, Subpart G, respectively, of the Commission's regulations. Gulf South seeks authorization pursuant to section 7 of the NGA in Docket Nos. CP07–401–000 and CP07–402–000, respectively, to construct approximately 17.8 miles of pipeline loop between Gulf South's Tallulah Compressor Station and its Harrisville Compressor Station located in Simpson County, Mississippi, and as described above, to abandon by lease up to 1.4 Bcf/d of natural gas capacity to Gulf Crossing. In a related application filed on June 20, 2007 in Docket No. CP07–403–000, Enogex seeks a limited jurisdiction certificate to lease up to 165,000 Dth/d of natural gas on its intrastate system from Bennington, Oklahoma to the new pipeline facilities of Gulf Crossing, all as more fully set forth in the applications which are on file with the Commission and open to

public inspection. The instant filings may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to J. Kyle Stephens, Director of Certificates, 9 East Greenway Plaza, Suite 2800, Houston, Texas 77046 or by telephone at 713–544–7309 or telecopy to 713–479–1846 or by e-mail to *kyle.stephens@bwpmlp.com.*

On November 30, 2006, the Commission staff granted Gulf Crossing's request to utilize the Commission's Pre-Filing Process for its Gulf Crossing Project and assigned Docket No. PF07–1–000 to staff activities involved therein. Now, as of the filing of Gulf Crossing's application on June 19, 2007, the Commission's Pre-Filing Process for this project has ended. From this time forward, Gulf Crossing's proceeding will be conducted in Docket No. CP07–398–000, *et. al,* as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on July 17, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12803 Filed 7–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ07–4–000]

South Carolina Public Service Authority; Notice for Petition of Declaratory Order

June 26, 2007.

Take notice that on June 20, 2007, pursuant to section 35.28(e) of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.28(e) and (f) (2006), and Rule 207(a)(2) of the Rules of Practice and Procedure of the Commission, 18 CFR 385.207(a) (2006), South Carolina Public Service Authority (Santee Cooper) filed a petition for declaratory order determining that its open access transmission tariff (OATT) continues to qualify as a ''safe harbor'' tariff within the meaning of Order Nos. 888 and 890.

Santee Cooper, also requests a waiver of the filing fee applicable to petitions for declaratory orders, pursuant to section 381.108 of the Rules and Regulations, 18 CFR 381.108 (2006) and Order No. 888–A at 30,288–89.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 20, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12806 Filed 7–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF07–129–000]

Tiqun Energy, Inc.; Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

June 26, 2007.

Take notice that on June 23, 2007, Tiqun Energy, Inc. filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

The facility is a cogeneration facility with the primary energy source being natural gas. The power production equipment will consist of one GE LM6000PF Sprint gas turbine with a duct-fired heat recovery steam generator driving one steam turbine generator for a total net output capacity of 70 MWe. The facility will be located in Palmer, Alaska.

The Matanuska Electric Association, Inc. and the Chugach Electric Association, Inc. are the electric utilities with which the facility expects to interconnect, transmit or sell electric energy to, or purchase supplementary, standby, back-up and maintenance power.

A notice of self-certification [or self-recertification] does not institute a proceeding regarding qualifying facility status; a notice of self-certification [or self-recertification] provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12805 Filed 7–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–397–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

June 25, 2007.

Take notice that on June 13, 2007 and supplemented on June 18, 2007, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed in Docket No. CP07–397–000, a prior notice request pursuant to sections 157.205, 157.210, and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to replace, modify, and abandon natural gas pipeline facilities, located in Burleigh and Morton Counties, North Dakota, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Williston Basin states that due to the construction of a new bridge and the demolition of the Memorial Bridge, Williston Basin must relocate and abandon the section of pipeline attached to the Memorial Bridge. Specifically, Williston Basin requests authorization to construct approximately four miles of 16-inch diameter steel pipeline, install a new regulator station, reconfigure the operation of certain existing facilities, construct a mainline valve setting and a pig launcher-receiver, and abandon short segments of pipeline. Williston Basin estimates the cost of construction to be $3,100,000.

Any questions regarding the application should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, P. O. Box 5601, Bismarck, North Dakota 58506–5601, or call at (701) 530–1560.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12807 Filed 7–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–77–000]

R.E. Ginna Nuclear Power Plant, LLC v. Rochester Gas and Electric Corporation; Notice of Complaint

June 26, 2007.

Take notice that on June 25, 2007, R.E. Ginna Nuclear Power Plant, LLC (Ginna) filed a formal complaint against Rochester Gas and Electric Corporation (RGE), pursuant to section 206 and 306 of the Federal Power Act and Rule 206 of the Rules of Practice and Procedure of the Commission's Regulations, 18 CFR §§ 385.206 and 306 (2006). Ginna complains that RGE is violating its Interconnection Agreement, to which Ginna and RGE are parties.

Ginna certifies that copies of the complaint were served on the contacts for RGE as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date.

The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 16, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12801 Filed 7–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

June 26, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Number: EC07–66–001; ES07–26–002; EL07–45–001.

Applicants: Entergy Gulf States, Inc.; Entergy Gulf States Louisiana, L.L.C.; Entergy Texas, Inc.

Description: Entergy Services, Inc *et al.* submit a narrative that explains their proposed journal entries, in response to FERC's 6/1/07 request for additional information.

Filed Date: 06/21/2007.

Accession Number: 20070625–0294.

Comment Date: 5 p.m. Eastern Time on Monday, July 2, 2007.

Docket Number: EC07–109–000.

Applicants: Gexa Energy LLC; FPL Energy LLC.

Description: Gexa Energy LLC and *et al.* submit an application for authorization of transfer of jurisdictional assets, request for waivers and for expedited action under section 203 of the Federal Power Act.

Filed Date: 06/20/2007.

Accession Number: 20070622–0015.

Comment Date: 5 p.m. Eastern Time on Thursday, July 5, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Number: ER02–1632–003; ER06–386–001.

Applicants: Energy America, LLC; Direct Energy Services, LLC.

Description: Direct Energy Services, LLC and Energy America, LLC submit a notice of Non-Material Change in Status Regarding Market-Based Rate Authority.

Filed Date: 06/21/2007.

Accession Number: 20070621–5088.

Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Number: ER07–415–002.

Applicants: DTE Pontiac North LLC.

Description: DTE Pontiac North LLC submits a notice of no material change in status.

Filed Date: 06/19/2007.

Accession Number: 20070621–0122.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 10, 2007.

Docket Number: ER07–788–001.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Corporation, designated as agent for AEP Operating Companies submits an amendment to the Interconnection and Local Delivery Service Agreement 1426 with the Village of Republic.

Filed Date: 06/18/2007.

Accession Number: 20070620–0104.

Comment Date: 5 p.m. Eastern Time on Monday, July 09, 2007.

Docket Number: ER07–1040–000.

Applicants: Hopewell Cogeneration Ltd Partnership.

Description: Hopewell Cogeneration Limited Partnership submits an application seeking authorization to sell electric energy, capacity and ancillary services.

Filed Date: 06/15/2007.

Accession Number: 20070619–0132.

Comment Date: 5 p.m. Eastern Time on Friday, July 06, 2007.

Docket Number: ER07–1044–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits the First Revised Sheet 109 *et al.* to Substitute First Revised Rate Schedule, Amended and Restated AC Intertie Agreement with Bonneville Power Administration.

Filed Date: 06/15/2007.

Accession Number: 20070619–0133.

Comment Date: 5 p.m. Eastern Time on Friday, July 06, 2007.

Docket Number: ER07–1049–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits a Notice of Termination of Service Agreement 67 dated 8/1/97 with Black Bills Corporation for Network Integration Transmission Service.

Filed Date: 06/19/2007.

Accession Number: 20070620–0163.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 10, 2007.

Docket Number: ER07–1050–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to the PJM Open Access Transmission Tariff and the Reliability Assurance Agreement.

Filed Date: 06/19/2007.

Accession Number: 20070621–0121.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 10, 2007.

Docket Number: ER07–1051–000.

Applicants: Texzon Utilities, Ltd.

Description: Texzon Utilities Ltd submits a notice of succession reflecting their name change.

Filed Date: 06/20/2007.

Accession Number: 20070620–0164.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 11, 2007.

Docket Number: ER07–1052–000.

Applicants: PacifiCorp

Description: PacifiCorp submits an unexecuted Network Integration Transmission Service Agreement with Black Hills Corporation designated as Original Service Agreement 347 to FERC Electric Tariff, Sub Sixth Revised Volume 11.

Filed Date: 06/19/2007.

Accession Number: 20070620–0165.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 10, 2007.

Docket Number: ER07–1053–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to its Amended and Restated Operating Agreement and Open Access Transmission Tariff pursuant to section 205 of the FPA.

Filed Date: 06/19/2007.

Accession Number: 20070621–0123.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 10, 2007.

Docket Number: ER07–1054–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc, as agent for Alabama Power Company *et al.* submits a service agreement for long-term firm point-to-point transmission service under the Open Access Transmission Tariff of its FERC Electric Tariff, Fourth Revised Volume 5.

Filed Date: 06/20/2007.

Accession Number: 20070621–0068.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 11, 2007.

Docket Number: ER07–1055–000.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Co, on behalf of Connecticut Light and Power Company *et al.* submits a Notice of Termination to cancel the Nu Operating Companies' Service Agreement 2 to FERC Electric Tariff, Original Volume 8 etc.
Filed Date: 06/20/2007.
Accession Number: 20070621–0069.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 11, 2007.

Docket Number: ER07–1056–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits First Revised Sheet 6 *et al.* to the Cherry Valley, Crafton Hills and Green Spot Pumping Stations Interconnection Facilities Agreement with the State of California Dept of Water Resources.
Filed Date: 06/20/2007.
Accession Number: 20070621–0070.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 11, 2007.

Docket Number: ER07–1057–000.
Applicants: Perryville Energy Partners, LLC.
Description: Perryville Energy Partners, LLC submits its Second Revised Sheet 22 to its FERC Electric Tariff, Original Volume 2.
Filed Date: 06/20/2007.
Accession Number: 20070621–0071.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 11, 2007.

Docket Number: ER07–1058–000.
Applicants: Glacial Energy of Maryland Inc.
Description: Glacial Energy of Maryland Inc submits a petition for acceptance of initial tariff, waivers and blanket authority.
Filed Date: 06/21/2007.
Accession Number: 20070622–0013.
Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Number: ER07–1059–000.
Applicants: Connecticut Light & Power Company.
Description: The Connecticut Light and Power Co submits revised Interconnection and Operations Agreement with the Lake Road Trust, designated as First Revised Service Agreement 104.
Filed Date: 06/21/2007.
Accession Number: 20070622–0014.
Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Number: ER07–1060–000.
Applicants: California Independent System Operator Corporation
Description: California Independent System Operator Corp submits amendment (the SC Certification and Termination Amendment) to the ISO Tariff.
Filed Date: 06/20/2007.
Accession Number: 20070622–0009.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 11, 2007.

Docket Number: ER07–1061–000.
Applicants: AB Energy.
Description: AB Energy, Inc submits a notice of cancellation of its market based rate electric tariff, Rate Schedule FERC 1.
Filed Date: 06/21/2007.
Accession Number: 20070622–0011.
Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Number: ER07–1062–000.
Applicants: AB Energy NY, Pty. Ltd.
Description: AB Energy NY, Pty. Ltd submits a petition for acceptance of initial tariff, waivers and blanket authority.
Filed Date: 06/21/2007.
Accession Number: 20070622–0010.
Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Take notice that the Commission received the following electric securities filings:
Docket Number: ES07–40–000.
Applicants: Southwest Power Pool, Inc.
Description: Application of Southwest Power Pool, Inc under Section 204 of the Federal Power Act for an order authorizing the issuance of securities.
Filed Date: 06/20/2007.
Accession Number: 20070622–0016.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 11, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,
Secretary.
[FR Doc. E7–12808 Filed 7–2–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

June 27, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–126–000.
Applicants: Canal Electric Company; Boston Edison Company; Cambridge Electric Light Company; Commonwealth Electric Company.
Description: NSTAR Electric and Gas submits the accounting entries related to the merger of Cambridge Electric Light Co *et al.* into Boston Edison Co in accordance with FERC's 10/20/06 Order.
Filed Date: 06/22/2007.
Accession Number: 20070626–0042.
Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: EC07–111–000.
Applicants: Brookfield Asset Management Inc.; Brookfield Power Inc.; Brookfield Power U.S. Holding America Company.

Description: Brookfield Asset Management Inc *et al* submit a joint application for authorization a proposed transaction by which BP U.S. Holding will acquire the sole ownership interest in FH Opco LLC.

Filed Date: 06/22/2007.

Accession Number: 20070626–0068.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4159–008; ER07–157–001; ER06–398–002; ER06–399–002; ER04–268–005.

Applicants: Macquarie Cook Power, Inc.; Duquesne Power, LLC; Duquesne Keystone, LLC; Duquesne Conemaugh, LLC; Duquesne Light Company.

Description: Macquire Cook Power, Inc *et al.* submit their notice of change in status related to the 5/31/07 acquisition of Duquesne Light Holdings, Inc.

Filed Date: 06/25/2007.

Accession Number: 20070627–0101.

Comment Date: 5 p.m. Eastern Time on Monday, July 16, 2007.

Docket Numbers: ER03–563–062; EL04–102–017.

Applicants: Devon Power LLC.

Description: Devon Power LLC, *et al.*, Tenth Compliance Report of ISO New England Inc.

Filed Date: 06/25/2007.

Accession Number: 20070625–5031.

Comment Date: 5 p.m. Eastern Time on Monday, July 16, 2007.

Docket Numbers: ER03–1150–002.

Applicants: Texzon Utilities, Ltd. Co.

Description: Texzon Utilities Ltd submits an updated market power analysis.

Filed Date: 06/22/2007.

Accession Number: 20070626–0084.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: ER07–457–002; ER07–458–002.

Applicants: E.ON U.S., LLC.

Description: Kentucky Utilities Company submits a revised version of the executed Interconnection Agreement with Big Rivers Electric Corporation.

Filed Date: 06/22/2007.

Accession Number: 20070626–0056.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: ER07–529–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits revisions to its Open Access Transmission and Energy Markets Tariff pursuant to Section 205 of the FPA.

Filed Date: 06/25/2007.

Accession Number: 20070626–0051.

Comment Date: 5 p.m. Eastern Time on Monday, July 16, 2007.

Docket Numbers: ER07–546–002; ER07–547–001.

Applicants: ISO New England Inc.; New England Power Pool Participants Committee.

Description: ISO New England, Inc *et al.* submit their compliance filing pursuant to the Commission's 4/16/07 order.

Filed Date: 06/21/2007.

Accession Number: 20070626–0085.

Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Numbers: ER07–666–001.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits a Small Generator Interconnection Agreement with Hardin Hilltop Wind, LLC *et al.* pursuant to Section 205 of the Federal Power Act etc under ER07–666.

Filed Date: 06/25/2007.

Accession Number: 20070626–0054.

Comment Date: 5 p.m. Eastern Time on Monday, July 16, 2007.

Docket Numbers: ER07–737–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits a refund report in Compliance with the Commission's June 7, 2007 Letter Order.

Filed Date: 06/25/2007.

Accession Number: 20070625–5075.

Comment Date: 5 p.m. Eastern Time on Monday, July 16, 2007.

Docket Numbers: ER07–881–002.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Alliant Energy Corporate Services, Inc submits its second errata to its System Coordination and Operating Agreement.

Filed Date: 06/22/2007.

Accession Number: 20070626–0055.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: ER07–918–001.

Applicants: AP Holdings Southaven, LLC.

Description: AP Holdings Southaven, LLC resubmits Original Sheet 1 *et al.* to FERC Electric Tariff, First Revised Volume 1 to reflect the name change with correct pagination re the 5/18/07 filing of notification of succession.

Filed Date: 06/21/2007.

Accession Number: 20070626–0081.

Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Numbers: ER07–1063–000.

Applicants: AB Energy NE, Pty. Ltd.

Description: AB Energy NE, Pty, Ltd submits their FERC Electric Tariff, Original Volume No. 1.

Filed Date: 06/21/2007.

Accession Number: 20070626–0082.

Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Numbers: ER07–1064–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits Notice of Cancellation of Service Agreement 76 under FERC Electric Tariff, Sixth Revised Volume 5 with Federal Power Avenal, LLC.

Filed Date: 06/21/2007.

Accession Number: 20070626–0083.

Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Numbers: ER07–1066–000.

Applicants: New York State Electric & Gas Corporation.

Description: New York State Electric & Gas Corp submits Original Service Agreement 1147 with WM Renewable Energy, LLC under the New York Independent System Operator, Inc Open Access Transmission Tariff etc.

Filed Date: 06/21/2007.

Accession Number: 20070626–0079.

Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Numbers: ER07–1067–000.

Applicants: Ocean State Power I; Ocean State Power II.

Description: Ocean State Power I and Ocean State Power II submits. Revised Rate Schedules 1 and 5.

Filed Date: 06/21/2007.

Accession Number: 20070626–0080.

Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Numbers: ER07–1068–000.

Applicants: Ontelaunee Power Operating Company, LLC.

Description: Metropolitan Edison Company submits the instant filing in compliance with the Commission's order denying in Part complaint and establishing hearing and Settlement Judge Procedures.

Filed Date: 06/21/2007.

Accession Number: 20070626–0086.

Comment Date: 5 p.m. Eastern Time on Thursday, July 12, 2007.

Docket Numbers: ER07–1069–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp, on behalf of Public Service Co of Colorado *et al.* submits its revised pro-forma tariff sheets for AEP's pricing zone under Schedule 1, Addendum 1 to Schedule 1, Attachment H etc.

Filed Date: 06/22/2007.

Accession Number: 20070626–0071.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: ER07–1070–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits a new Rate Schedule 306, Agreement for Generator Balancing Service with New Hope Power Partnership pursuant to Section 205 of the Federal Power Act.

Filed Date: 06/22/2007.

Accession Number: 20070626–0061.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: ER07–1071–000.

Applicants: PJM Interconnection, LLC.

Description: Virginia Electric and Power Co dba Dominion Virginia Power submits a new Attachment H–16B to the Open Access Transmission Tariff.

Filed Date: 06/22/2007.

Accession Number: 20070626–0060.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: ER07–1072–000.

Applicants: PJM Interconnection, LLC; Virginia Electric and Power Company.

Description: Virginia Electric and Power Co dba Dominion Virginia. Power submits a new Attachment H–16B to the Open Access Transmission Tariff.

Filed Date: 06/22/2007.

Accession Number: 20070626–0060.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: ER07–1073–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Services, Inc on behalf of Entergy Arkansas, Inc *et al.* submit an amended Exhibit H to the Power Coordination, Interchange and Transmission Service Agreement with Arkansas Electric Cooperative Corp.

Filed Date: 06/22/2007.

Accession Number: 20070626–0059.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: ER07–1074–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc *et al.* submit an executed Small Generator Interconnection Agreement with Seneca Energy II, LLC.

Filed Date: 06/22/2007.

Accession Number: 20070626–0058.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: ER07–1075–000.

Applicants: New York State Electric & Gas Corporation.

Description: New York State Electric & Gas Corporation submits a notice of cancellation of a Service Agreement under which it provided interconnection service to Seneca Energy II LLC.

Filed Date: 06/22/2007.

Accession Number: 20070626–0057.

Comment Date: 5 p.m. Eastern Time on Friday, July 13, 2007.

Docket Numbers: ER07–1076–000.

Applicants: Upper Peninsula Power Company.

Description: Upper Peninsula Power Co. submits a letter of understanding with the City of Escanaba, Michigan memorializing the parties' understanding concerning the cost of energy relative to an Escanaba power purchase that will begin on 6/25/07.

Filed Date: 06/25/2007.

Accession Number: 20070627–0108.

Comment Date: 5 p.m. Eastern Time on Monday, July 16, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–61–000.

Applicants: Warm Springs Biomass Project, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 06/26/2007.

Accession Number: 20070625–5079.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 17, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Kimberly D. Bose,

Secretary.

[FR Doc. E7–12809 Filed 7–2–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $1,592,901, plus accrued interest, in motor gasoline overcharges obtained by the DOE pursuant to remedial orders issued to Powerine Oil Company, Case No. TEF–0006, and Storey Oil Company, Inc., Case No. TEF–0009. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, subpart V.

DATES: Applications must be filed in duplicate with OHA by December 28, 2007.

ADDRESSES: Applications should be sent to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1615. All applications should display a reference to Case Nos. TEF–0006 or TEF–0009.

FOR FURTHER INFORMATION CONTACT: Richard A. Cronin, Jr., Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585–1615, (202) 287–1589, *richard.cronin@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $1,592,901, plus accrued interest, obtained by the DOE pursuant to Remedial Orders issued to Powerine Oil Company (Powerine) and Storey Oil Company, Inc. (Storey). The Remedial Orders issued to Powerine and Storey adjudicated allegations concerning violations of the federal petroleum price regulations involving the sale of motor gasoline during the relevant audit periods.

The OHA will distribute the Remedial Order funds in a refund proceeding using the procedures described in the Proposed Decision and Order published in the **Federal Register** on May 8, 2007. See 72 FR 26083 (May 8, 2007). This refund proceeding seeks to provide restitution for those parties injured by Powerine or Storey's alleged violations of pricing regulations for motor gasoline. Purchasers of motor gasoline from Powerine or Storey will have the opportunity to submit refund applications. Refunds will be granted to applicants who satisfactorily demonstrate that they were injured by the pricing violations and who document the volume of motor gasoline they purchased from one of the firms during the relevant consent order period.

All applications must be postmarked by December 28, 2007. All applications received in this proceeding will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in Room 7132 (the public reference room), 950 L'Enfant Plaza, Washington, DC.

Dated: June 27, 2007.

Fred L. Brown,

Acting Director, Office of Hearings and Appeals.

Decision And Order—Department Of Energy

Implementation of Special Refund Procedures

Names of Firms: Powerine Oil Company, Storey Oil Company, Inc.

Dates of Filing: June 23, 2005, June 23, 2005.

Case Numbers: TEF–0006, TEF–0009.

The Office of General Counsel (OGC) of the Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 CFR 205.280. We have considered OGC's request to formulate refund procedures for the disbursement of monies remitted by Powerine Oil Company (Powerine) and Storey Oil Company (Storey) pursuant to Remedial Orders DOE has issued regarding them and have determined that such procedures are appropriate.

Under the terms of the Remedial Orders, Powerine's bankruptcy trustee has remitted a total of $1,546,302 to the DOE to remedy motor gasoline retailer-reseller pricing violations which occurred during the relevant audit period. Storey has remitted a total of $46,599 to remedy similar violations. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. This Decision sets forth OHA's plan to distribute those funds. The specific application requirements are detailed in Section III of this Decision.

I. Background

Powerine was a privately held corporation which operated a refinery located in Santa Fe Springs, California during the period of price controls, August 13, 1973 through January 27, 1981. During this period, Storey, operating in Colorado, was a reseller of refined petroleum products. Economic Regulatory Administration audits of Powerine and Storey revealed possible violations of the Mandatory Petroleum Price Regulations (MPPR) in their sales of motor gasoline. Subsequently, OHA issued Remedial Orders in each case directing Powerine and Storey to remit to the DOE $7,956,934 and $64,639 in restitution with respect to overcharges of each firm in regard to sales to their customers during the period of price controls.[1]

II. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On May 8, 2007, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Consent Order funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 72 FR 26083 (May 8, 2007). More than 30 days have elapsed and OHA has received no comments concerning these proposed refund procedures. Consequently, the procedures will be adopted as proposed.

III. Refund Procedures

A. Allocation of Consent Order Funds

Both firms violations of the MPPR involved sales of a refined petroleum product—motor gasoline. Consequently, all of the funds that have been remitted by Powerine and Storey will be allocated for restitution for those parties injured by the firms' alleged violations of the pricing regulations for motor gasoline.

B. Refined Petroleum Product Refund Procedures

1. Application Requirements

In cases where the ERA is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage, those who bought refined petroleum products from the consenting firms may apply for refunds, which are typically calculated on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the firm during the price control period covered by the remedial order.

In the present case, however, we lack much of the information that we normally use to provide direct restitution to injured customers of the consenting firms. In particular, we have been unable to obtain any information on the volumes of motor gasoline products sold by the firms during the price control period. Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we will accept any refund

[1] See Powerine Oil Company, 21 DOE ¶ 83,008 (1991); Storey Oil Company, Inc., 16 DOE ¶ 83,007 (1987).

claims submitted by persons who purchased motor gasoline from Powerine or Storey during the settlement periods discussed above. We will work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts.[2]

To apply for a refund from the Powerine or Storey Remedial Order funds, a claimant should submit an Application for Refund containing the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, social security number or taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[3]

(2) A monthly motor gasoline gallonage purchase schedule covering the price control order period. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its refined petroleum product purchases, but the estimation method must be reasonable and must be explained;

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization must be submitted;

(4) If the applicant is or was in any way affiliated with Powerine or Storey, it must explain this affiliation, including the time period in which it was affiliated;[4]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

> I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be made available at OHA.

All applications should be either typed or printed and clearly labeled with the name and case number of the relevant firm (Powerine Oil Company, Case No. TEF–0006 or Storey Oil Company, Inc., Case No. TEF–0009). Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated ''confidential,'' containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked on or before December 28, 2007: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1615.

We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by ''representatives,'' including refund filing services, consulting firms, accountants, and attorneys. See, e.g., Starks Shell Service, 23 DOE ¶ 85,017 (1993); Texaco Inc., 20 DOE ¶ 85,147 (1990) (Texaco); Shell Oil Co., 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant. The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated above.

Finally, the OHA reserves the authority to require additional information from an applicant before granting any refund in these proceedings.

2. Allocation Claims

We may receive claims based upon Powerine's or Storey's failure to furnish motor gasoline that they were obliged to supply under the DOE allocation regulations that became effective in January 1974. See 10 CFR Part 211. Any such application will be evaluated with reference to the standards set forth in Texaco (and cases cited therein). See Texaco, 20 DOE at 88,321.

3. Impact of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA) Amendments on Powerine and Storey Refined Product Refund Claims

The Interior and Related Agencies Appropriations Act for FY 1999 amended certain provisions of the Petroleum Overcharge and Distribution and Restitution Act of 1986 (PODRA). These amendments extinguished rights that refund applicants had under PODRA to refunds for overcharges on the purchases of refined petroleum products. They also identified and appropriated a substantial portion of the funds being held by the DOE to pay refund claims (including the funds paid by Powerine and Storey). Congress specified that these funds were to be used to fund other DOE programs. As a result, the petroleum overcharge escrow accounts in the refined product area contain substantially less money than before. In fact they may not contain sufficient funds to pay in full all pending and future refund claims (including those in litigation) if they should all be found to be meritorious. See Enron Corp./Shelia S. Brown, 27 DOE ¶ 85,036 at 88,244 (2000) (Brown). Congress directed OHA to ''assure the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among all claimants.'' Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, Public Law 105–277 section 337, 112 Stat 2681, 2681–295 (1998) (language added to PODRA); Brown, 27 DOE at 88,244. In view of this Congressional directive and the limited amount of funds available, it may become necessary to prorate the funds available for the meritorious claimants

[2] Applications for Refund be accepted only for motor gasoline pricing violations. With regard to crude oil pricing violations the deadline for filing applications for refund has passed. See infra.

[3] An applicant must submit the social security number or employer identification number of the person or legal entity that is seeking the refund. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law.

[4] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of a remedial order firm were not injured by the firm's overcharges. See, e.g., Marathon Petroleum Co./EMRO Propane Co., 15 DOE ¶ 85,288 (1987). This is because the remedial order firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), reconsideration denied, 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of the remedial order firm were granted a refund, the remedial order firm would be indirectly compensated from a Remedial Order fund remitted to settle its own alleged violations.

in the Powerine and Storey refund proceedings.

It Is Therefore Ordered That:

The payments remitted to the Department of Energy by Powerine Oil Company and Storey Oil Company, Inc., pursuant to remedial orders signed on August 30, 1991 and June 24, 1987 respectively, will be distributed in accordance with the foregoing Decision.

Dated: June 27, 2007.

Fred L. Brown,

Acting Director, Office of Hearings and Appeals.

[FR Doc. E7–12832 Filed 7–2–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0064, FRL–8334–6]

Agency Information Collection Activity; Proposed Collection; Comment Request; Information Collection Request for Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program, EPA ICR 1287.09, OMB Control Number 2040–0101

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). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 4, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OW–2003–0064, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: ow-docket@epa.gov* (Identify Docket ID number EPA–HQ–OW–2003–0064, in the subject line).
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments identified by the Docket ID number EPA–HQ–OW–2003–0064. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Gajindar Singh, Municipal Support Division, Office of Wastewater Management, OWM Mail Code: 4204M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0634; e-mail address: *singh.gajindar@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for the ICR identified in this document (ID number EPA–HQ–OW–2003–0064), which is available for online viewing at *www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

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:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

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 technical information/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. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. 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.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are public wastewater treatment plants, municipalities, industries, universities, manufacturing sites and States.

Title: Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program.

ICR numbers: EPA ICR No. 1287.09, OMB Control No. 2040–0101.

ICR status: This ICR is currently scheduled to expire on September 30, 2007. 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, and 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: This ICR requests reapproval to collect data from EPA's National Clean Water Act Recognition Awards nominees. The awards are for the following program categories: Operations and Maintenance (O&M) Excellence, Biosolids (Biosolids) Management Excellence, Combined Sewer Overflow Control (CSO) Program Excellence and Storm Water (SW) Management Excellence.

In 1985, EPA established the Operations and Maintenance (O&M) awards program to provide a positive incentive for compliance with the National Pollutant Discharge Elimination System. Because of the successes of the O&M Awards program, in 1988 EPA established the Beneficial Biosolids Use awards (formerly Sludge awards). In 1989, the Pretreatment awards were added. In 1990, EPA established the Combined Sewer Overflow (CSO) and Storm Water (SW) Management awards programs. The questionnaire provides the mechanism for the applicant to demonstrate outstanding and innovative wastewater management practices. The Pretreatment awards program is covered by ICR (OMB Control No. 2040–0009, EPA ICR No. 0002.12), approved through September 30, 2007. A framework to implement the awards recognition program is at 40 CFR part 105.

The respondent, *i.e.*, those applying for the award program, will read the instructions for completing the questionnaire. The respondent will use existing files, planning and progress reports, and institutional memory to complete the questionnaire. Based on the instructions provided with the questionnaire, the respondent will compile the requested information. The requested design and operating information should be readily available from wastewater treatment facility or pollution abatement program operating records. The data collection will include flow, permit, operating and environmental data.

The information collection will be used by the respective awards program in the Office of Water, Office of Wastewater Management to evaluate and determine which pollution abatement achievements should be recognized. Based on the collection, national panels will evaluate the nominee's efforts and recommend finalists. As currently structured, the O&M awards program has nine sub-categories to recognize municipal achievements based on plant flows and treatment level. The Biosolids awards program has four sub-categories which recognize municipal biosolids operations, technology and research achievements, and public acceptance. The CSO awards program has one sub-category which recognizes municipal programs, and the SW awards program has two sub-categories which recognize municipal and industrial programs. Regions and States may also have recognition awards programs and are included in these burden estimates. National second place category winners may also be recognized. Additionally, nominated activities may sometimes receive an honorable mention or special award. The National Clean Water Act Recognition Awards are presented annually at an EPA ceremony.

Burden Statement: The total number of respondents is estimated to be 145, including 100 for the O&M program, 25 for the Biosolids program, 10 for the CSO program, and 10 for the SW program. The responses are collected once annually. The respondents reporting burden of 8 person hours per response is estimated to be 1,160 hours and a cost of $49,458. The States' review burden of 6 person hours per response is 870 hours and a cost of $37,459. Total estimated burden for this collection is 2,030 hours and $86,917. The public reporting burden for respondents is estimated to average 8 hours per response per year. For State respondents, the reporting burden is estimated to average 6 hours per response per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose information. The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 195 (145 applicants respondents and 50 states).

Frequency of response: once annually.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 2,030 hours.

Estimated total annual costs: $86,917. This includes an estimated burden cost of $86,917 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Changes in the Estimates: There is no change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. EPA has not modified the requirements that were included in the previous ICR.

Dated: June 27, 2007.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. E7–12878 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—8334–8]

Clean Air Act Operating Permit Program; Petition for Objection to South Dakota State Operating Permit for GCC Dacotah Cement Manufacturing Plant, Rapid City, SD

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of direct final Order.

SUMMARY: This notice announces that the EPA Administrator has responded to a citizens' petition asking EPA to object to a State operating permit issued by the South Dakota Department of Environmental and Natural Resources (DENR). Specifically, the Administrator has partially granted and partially denied the petition submitted by Jeremy Nichols, and the other Petitioners, to object to the issuance of the operating permit issued to GCC Dacotah Cement Manufacturing Plant (''GCC Dacotah''), located in Rapid City, South Dakota.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioners may seek judicial review of those portions of the petition which EPA denied in the United States Court of Appeals for the appropriate Circuit. Any petition for review shall be filed within 60 days of the date this notice appears in the **Federal Register**, pursuant to section 307(d) of the Act.

ADDRESSES: You may review copies of the final Order, the petition, and other supporting information at the Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202–1129 after June 30, 2007. EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of these documents. You may view these documents Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. The final Order is also available electronically at each of the following addresses: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/dacotah_decision2006.pdf* and *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2006.htm*

FOR FURTHER INFORMATION CONTACT: Christopher Ajayi, Environmental Engineer, Air and Radiation Program, Office of Partnerships and Regulatory Assistance, Mail Code 8P–AR, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, telephone (303) 312–6320, or e-mail at *ajayi.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: The Clean Air Act (Act) affords EPA a 45–day period to review and object to, as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the Petitioner demonstrates that it was impracticable to object during the comment period or that the grounds for the objection or other issues arose after this period.

On January 18, 2006, the EPA received a petition from Petitioners requesting that EPA object to the issuance of the Title V operating permit issued by South Dakota Department of Environmental and Natural Resources (DENR) to GCC Dacotah Cement Manufacturing Plant in Rapid City, South Dakota (''the Facility'').

The Petitioners request that EPA object to the issuance of the proposed permit and raise the following objections as the bases for their petition:

1. The permit fails to ensure low sulfur coal is utilized to ensure compliance with BACT for Sulfur Dioxide emissions;
2. the permit fails to require the baghouses and electrostatic precipitators for control of Particulate Matter (PM) be operated and maintained in any specific way to ensure they control particulate emissions within acceptable limits;
3. the permit is vague, lacks enforceability and is inadequate to ensure compliance with PM limits;
4. the permit fails to require sufficient monitoring of BACT for Nitrogen Oxide emissions;
5. the permit fails to require operation and maintenance of equipment according to manufacture's specification thereby failing to ensure compliance with BACT for CO emissions;
6. the permit fails to require continuous PM monitoring or in the alternative fails to require sufficient periodic monitoring of PM for several units (kilns and clinker coolers);
7. the permit does not require prompt reporting of permit violations;
8. the permit fails to require prompt reporting of permit deviations;
9. the permit fails to require sufficient periodic monitoring in Condition 6.1 for the presence of uncombined water and/or its effects on opacity;
10. the permit fails to require sufficient periodic monitoring in Condition 6.4 and it is unclear how Test Method 201 (Method 201) will assure compliance with established limits;
11. the permit fails to require sufficient periodic monitoring in Condition 6.8 to ensure compliance with short-term BACT SO_2 and CO limits for kiln #6 system;
12. the permit is flawed in Condition 6.12 because it implies an affirmative defense to the Permittee with respect to injunction relief; and
13. the permit provides an inappropriate broad exemption for maintenance in Conditions 8.4 & 8.5 for Continuous Emissions Monitoring (CEMs) and Continuous Opacity Monitors (COMs) which render the Conditions unenforceable as a practical matter.

On June 15, 2007, the Administrator issued an Order in response to Petitioners' allegations outlined above. The Order explains the reasons for partially granting and partially denying objection #2 and granting objection #8 and directs DENR to revise certain permit conditions for clarification and/or include applicable provisions in the permit. The Order also directs DENR to take specific steps to improve compliance demonstration with certain permit conditions. Finally, the Order explains the reasons for denying the Petitioners' remaining claims.

Dated: June 22, 2007.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. E7–12852 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8334–5]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to Subcontractors of EPA Contractor U.S. Army Corps of Engineers: Science Applications International Corporation, Harry-Torchiana, and CACI, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comment.

SUMMARY: The U.S. Environmental Protection Agency (''EPA'') hereby complies with the requirements of 40 CFR 2.310(h) for authorization to

disclose confidential business information (''CBI'') submitted to EPA Region 9 pursuant to CERCLA to U.S. Army Corps of Engineers' contractors: Science Applications International Corporation (''SAIC'') of Santa Barbara, California; Harry-Torchiana of San Francisco, California; and CACI, Inc., of Arlington, Virginia.

DATES: Comments may be submitted by July 13, 2007.

ADDRESSES: Comments should be sent to: Keith Olinger, Environmental Protection Agency, Region 9, SFD–7–5, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3125.

FOR FURTHER INFORMATION CONTACT: Keith Olinger, Superfund Division, Environmental Protection Agency, Region 9, SFD–7–5, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3125.

Notice of Required Determinations, Contract Provisions and Opportunity to Comment

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'') as amended, (commonly known as ''Superfund'') requires completion of enforcement activities at Superfund sites in concert with other site events. EPA has entered into several contracts for enforcement support in relation to the Operating Industries, Inc. Superfund Site: (1) Contract No. W91238–05–F–0062, issued to SAIC by the U.S. Army Corps of Engineers (''CoE'') pursuant to Interagency Agreement No. DW 96955495 between EPA and the CoE; (2) Contract No. W91238–07–C–0008 issued to Harry-Torchiana by the CoE pursuant to Interagency Agreement No. DW 96955495 between EPA and the CoE; and (3) Task Order 263 issued to CACI, Inc. under the U.S. Department of Justice's (''DOJ'') MEGA2ALS contract, Contract No. 02–C–0437, pursuant to Interagency Agreement No. DW–15–95566201–1 between EPA and DOJ. Enforcement support services will be provided to EPA by SAIC, Harry-Torchiana, and CACI, Inc. EPA has determined that disclosure of CBI to SAIC, Harry-Torchiana, CACI, Inc., and their respective employees, is necessary in order for these companies to carry out their respective work for EPA under their respective contracts with the CoE and DOJ, as applicable. The information EPA intends to disclose includes submissions made by Potentially Responsible Parties to EPA in accordance with EPA's enforcement activities at the Operating Industries Inc., Superfund Site. The information would be disclosed to the above-named contractors for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis; to verify completeness; and to provide technical review of submittals. The respective contracts comply with all requirements of 40 CFR 2.310(h)(2). EPA Region 9 will require that each of the respective subcontractors' employees with access to CBI sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) will refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office, and (3) will return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by the subcontractor for performance of the work required by the subcontract or upon completion of the subcontract.

Dated: April 6, 2007.

Keith Takata,

Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. E7–12877 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8334–2]

Proposed Administrative Order on Consent—Belden Cribbing Site

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: As required by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, as amended (''CERCLA''), notice is hereby given that an Administrative Settlement Agreement and Order on Consent for Removal Action (''Agreement'') is proposed by the United States, on behalf of the Environmental Protection Agency (''EPA''), and Union Pacific Railroad Company (''Union Pacific'') for payment of certain response costs and for performance of a removal action at the Belden Cribbing Site, in Eagle County, Colorado (''Site'').

The Site is located in a steep canyon on the slopes of Battle Mountain just south of the historic mining mill station of Belden, between the towns of Minturn and Red Cliff, in Eagle County, Colorado. The Site includes at least twenty-one significant waste rock piles from former mining operations and a series of deteriorating wood cribbings holding up the waste piles, several of which are located on Union Pacific's right-of-way along the river at the bottom of the canyon. The removal action will address the threat posed by the potential collapse of the cribbing structures and the resulting deposition into the Eagle River of the waste rock. Waste rock entering the river would release large quantities of zinc, among other metals, endangering the trout fishery and other aquatic resources.

This Agreement requires Union Pacific to provide EPA with site access in order for EPA and its contractors to conduct necessary response actions within the Site in accordance with the EPA's June 2006 Action Memorandum. Union Pacific will either remove the track and ties on the Union Pacific right-of-way from Belden to the southern end of the Repository or will cover such track and ties in-place in order to create the necessary temporary access road. The Agreement also includes a grant of permanent access on Union Pacific's right-of-way for a waste rock repository, for seep collection systems and for additional rock-fall protection devices. EPA will construct and install the necessary repository, rock-fall protection devices and seep collection systems, as described in the Action Memorandum.

Under the Agreement, Union Pacific will reimburse the United States a portion of past and estimated future response costs incurred or to be incurred, respectively, by the United States at or in connection with the Site. EPA has notified the State of Colorado of this action pursuant to Section 106(a) of CERCLA.

DATES: Comments should be received by August 2, 2007. The Agency will consider all comments received on the proposed Agreement and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado. Comments and requests for a

copy of the proposed settlement should be addressed to Sharon Abendschan, Enforcement Specialist (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado, 80202–2466, (303) 312–6957, and should reference the Belden Cribbing Site proposed Agreement.

FOR FURTHER INFORMATION CONTACT: James Stearns, Legal Enforcement Attorney (ENF–L), Legal Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–2466, (303) 312–6912.

It Is So Agreed.
Dated: June 8, 2007.

Michael T. Risner,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. E7–12859 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8334–1]

Public Notice of Proposed Reissuance of NPDES General Permits for Facilities/Operations That Generate, Treat, and/or Use/Dispose of Sewage Sludge by Means of Land Application, Landfill, and Surface Disposal in EPA Region 8

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to reissue NPDES general permits and request for comments.

SUMMARY: Region 8 of EPA is hereby giving notice of its tentative determination to reissue National Pollutant Discharge Elimination System (NPDES) general permits for facilities or operations that generate, treat, and/or use/dispose of sewage sludge by means of land application, landfill, and surface disposal in the States of CO, MT, ND, and WY and in Indian country in the States of CO, MT, ND, SD, WY and UT (except for the Goshute Indian Reservation and the Navajo Indian Reservation).

On June 21, 2000 and September 21, 2000, U.S. District Judge Donald W. Molloy issued orders stating that until all necessary total maximum daily loads under Section 303(d) of the Clean Water Act are established for a particular water quality limited segment, the EPA is not to issue any new permits or increase permitted discharges under the NPDES program. (The orders were issued in the lawsuit *Friends of the Wild Swan, Inc., et al.*, v. *U.S. E.P.A., et al.*, CV 97–35–M–DWM, District of Montana, Missoula Division.) EPA finds that the reissuance of this proposed general permit does not conflict with this order, because (1) the proposed permit would not authorize any point source discharges and (2) as discussed under the ''Protection of Public Health and The Environment'' section of the Fact Sheet for the general permits, the use and/or disposal of sewage sludge in compliance with the conditions of this permit is not likely to have any adverse effect on any water body in Montana that has been listed under Section 303(d) of the Clean Water Act. If any member of the public believes that EPA should interpret the District Court's decision otherwise, EPA requests that this issue be brought to its attention during the public comment period on this proposed permit. Region 8 is proposing to continue to use general permits instead of individual permits for permitting such sewage sludge related activities in order to reduce the Region's administrative burden of issuing separate individual permits. The renewal permits are very similar to the previous permits. The administrative burden for most of the regulated sources is expected to be less under the general permits than with individual permits, and it will be much quicker to obtain permit coverage with general permits than with individual permits. The substantive permit requirements would be essentially the same with an individual permit or under the general permit. Facilities or operations that incinerate sewage sludge are not eligible for coverage under these general permits and must apply for an individual permit. Wastewater lagoon systems that are not using/disposing of sewage sludge do not need to apply for permit coverage unless notified by the permit issuing authority. The deadlines for applying for coverage under the general permits are given in the permits and the Fact Sheet. Facilities/operations that had coverage under the previous general permit and have submitted a timely request for coverage under this renewal permit are covered automatically under this permit unless the permit issuing authority requires the submittal of a new notice of intent (NOI).

DATES: Public comments on this proposal must be received, in writing, on or before August 2, 2007.

ADDRESSES: Public comments should be sent to: Wastewater Unit (8P–W–WW); Attention: Biosolids Program; U.S. EPA, Region 8; 1595 Wynkoop Street; Denver, CO 80202–1129.

FOR FURTHER INFORMATION CONTACT: For a copy of the draft permit and Fact Sheet, please write Ellen Bonner at the above address or telephone (303) 312–6371. Copies of the draft permit and Fact Sheet may also be downloaded from the EPA Region 8 Web page at *http://www.epa.gov/region08/biosolids*. Questions regarding the specific permit requirements may be directed to Bob Brobst, telephone (303) 312–6129.

Public Comment Period: Public comments are invited. Comments must be written and must be received by no later than August 2, 2007. Comments should be sent to: Wastewater Unit (8P–W–WW); Attention: Biosolids Program; U.S. EPA, REGION 8; 1595 Wynkoop Street; Denver, CO 80202–1129. Each comment should cite the page number and, where possible, the section(s) and/or paragraph(s) in the draft permit or Fact Sheet to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

SUPPLEMENTARY INFORMATION: On February 19, 1993 (58 FR 9248), the EPA promulgated ''Standards for the Use or Disposal of Sewage Sludge'' (40 CFR part 503) and made revisions to the NPDES regulations to include the permitting of facilities/operations that generate, treat, and/or use/dispose of sewage sludge. The 503 regulations were amended on August 4, 1999 (64 FR 42551).

The States of South Dakota and Utah currently are the only States in Region 8 that have been authorized to administer the biosolids (sludge) program. It is proposed that EPA general permits be reissued for facilities or operations that generate, treat, and/or use/dispose of sewage sludge by means of land application, landfill, and surface disposal within the following areas:

State	Permit No.	Area covered by the general permit
Colorado	COG650000	State of Colorado except for Federal Facilities and Indian country.
	COG651000	Indian country within the State of Colorado and the portions of the Ute Mountain Indian Reservation located in New Mexico and in Utah.

State	Permit No.	Area covered by the general permit
	COG652000	Federal Facilities in the State of Colorado, except those located in Indian country, which are covered under permit COG51000.
Montana	MTG650000	State of Montana except for Indian country.
	MTG651000	Indian country in the State of Montana.
North Dakota	NDG650000	State of North Dakota except for Indian country.
	NDG651000	Indian country within the State of North Dakota (except for Indian country located within the former boundaries of the Lake Traverse Indian Reservation, which are covered under permit SDG651000) and that portion of the Standing Rock Indian Reservation located in South Dakota.
South Dakota	SDG651000	Indian country within the State of South Dakota (except for the Standing Rock Indian Reservation, which is covered under permit NDG651000), that portion of the Pine Ridge Indian Reservation located in Nebraska, and Indian country located in North Dakota within the former boundaries of the Lake Traverse Indian Reservation.
Utah	UTG651000	Indian country within the State of Utah except for the Goshute Indian Reservation, Navajo Indian Reservation, and Ute Mountain Indian Reservation (which is covered under permit COG651000).
Wyoming	WYG650000	State of Wyoming except for Indian country.
	WYG651000	Indian country within the State of Wyoming.

The States of South Dakota and Utah have been authorized permitting authority for sewage sludge, therefore EPA's general permits will be reissued only for Indian country in those States. The general permit for Indian country in Utah does not include the portions of the Goshute Indian Reservation and the Navajo Indian Reservation in Utah because the permitting activities for these reservations are done by Region 9 of EPA. The State of Colorado has not been authorized permitting authority for Federal facilities, so a general permit is proposed for Federal facilities not located in Indian country.

Authorization for use/disposal of sewage sludge under the general permits may be for one of the following three categories: Category 1—Facilities/operations that generate and/or partially treat sewage sludge, but do not use/dispose of sewage sludge; Category 2—Facilities/operations that use/dispose of sewage sludge and may also generate and/or treat sewage sludge; and Category 3—Wastewater lagoon systems that need apply sewage sludge to land on an occasional, restricted basis. Authorization for use/disposal of sewage sludge under the general permit will be limited to one of the three categories, but authorization may be granted to one or more subcategories under Category 2. In applying for authorization for use/disposal of sewage sludge under the general permit, the applicant will be required to specify under which category or subcategory(s) authorization is being requested. However, the permit issuing authority will have the final determination as to which category or subcategory(s) the authorization will be granted. The requirements in the permit for the use/disposal of sewage sludge are based primarily on 40 CFR part 503.

Since these permits do not involve discharges to waters of the United States, certification under section 401(a)(1) of the Clean Water Act is not necessary for the issuance of these permits and certification will not be requested.

Economic Impact (Executive Order 12866): EPA has determined that the issuance of this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these proposed general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Regulatory Flexibility Act (RFA), 5 U.S.C 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA): The RFA requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit proposed today, however, is not a ''rule'' subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the RFA.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' defined to be the same as ''rules'' subject to the RFA) on tribal, state, local governments and the private sector. The permit proposed today, however, is not a ''rule'' subject to the RFA and is therefore not subject to the requirements of the UMRA.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: June 21, 2007.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. E7–12857 Filed 7–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

Program Requirement Revisions Related to the Public Water System Supervision Programs for the State of New Hampshire, and the Commonwealth of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Massachusetts and the State of New Hampshire are in

the process of revising their respective approved Public Water System Supervision (PWSS) programs to meet the requirements of the Safe Drinking Water Act (SDWA).

The Commonwealth of Massachusetts has adopted drinking water regulations for the Variances and Exemptions Rule (63 FR 43834–43851) promulgated on August 14, 1988, the Radionuclides Rule (66 FR 76708–76753) promulgated on December 7, 2000, and the Consumer Confidence Rule (63 FR 44511–44536) promulgated on August 19, 1998. After review of the submitted documentation, EPA has determined that the Commonwealth's rules are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve Massachusetts' PWSS program revision for these rules.

The State of New Hampshire has adopted drinking water regulations for the Public Notification Rule (65 FR 25982–26049) promulgated on May 4, 2000, and the Filter Backwash Recycling Rule (66 FR 31086–311054) promulgated on June 8, 2001. After review of the submitted documentation, EPA has determined that the State's rules are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve New Hampshire's PWSS program revision for these rules.

DATES: All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted within thirty (30) days of this Federal Register publication date to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective 30 days after the publication of this Federal Register Notice. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following office(s): U.S. Environmental Protection Agency, Office of Ecosystem Protection, One Congress Street, 11th floor, Boston, MA 02114.

For documents specific to that State: MA Department of Environmental Protection, Division of Water Supply, 1 Winter Street, 6th Floor, Boston, MA 02108.

New Hampshire Department of Environmental Services, Water Supply Engineering Bureau, 29 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION: Barbara McGonagle, Office of Ecosystem Protection (telephone 617–918–1608).

Authority: Section 1401 (42 U.S.C. 300f) and Section 1413 (42 U.S.C. 300g–2) of the Safe Drinking Water Act, as amended (1996), and (40 CFR 142.10) of the National Primary Drinking Water Regulations.

Dated: May 16, 2007.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 07–3228 Filed 7–3–07; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 17, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Bennie F. Ryburn, Jr., and Bennie F. Ryburn III, as trustees of the Bennie F. Ryburn Family Trust all of Monticello, Arkansas; to acquire Drew Bancshares, Inc., Monticello, Arkansas and indirectly acquire additional voting shares of Commercial Bank and Trust Company, Monticello, Arkansas.

2. James K. Maddox Irrevocable Trust and James K. Maddox as trustee, both of Clarkton, Missouri , individually and as group acting in concert with James K. Maddox, the James K. Maddox Irrevocable Trust, John W. Maddox, Candi H. Maddox, J. Jason Maddox, and Maco Construction, Inc., all of Clarkton, Missouri ; to acquire Sterling Bancshares, Inc., Poplar Bluff, Missouri and thereby indirectly acquire additional voting shares of Sterling Bank, Poplar Bluff, Missouri.

Board of Governors of the Federal Reserve System, June 28, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–12830 Filed 7–2–07; 8:45 am]

BILLING CODE 6210–01–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 Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Florida Bank Group, Inc., Tampa, Florida; to merge with Cygnet Financial Corporation, and thereby indirectly acquire Cygnet Private Bank, both of Ponte Vedra Beach, Florida.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Metropolitan Bank Group, Inc., and Alpha Bancorp, Inc., both of Chicago, Illinois; to acquire 100 percent of the voting shares of Oswego Bancshares, Inc., Oswego, Illinois, and thereby indirectly acquire Oswego Community Bank, Oswego, Illinois.

Board of Governors of the Federal Reserve System, June 27, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–12775 Filed 7–2–07; 8:45 am]

BILLING CODE 6210–01–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 July 30, 2007.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Adirondack Trust Company Employee Stock Ownership Trust, Saratoga Springs, New York; to acquire 50 additional shares of 473 Broadway Holding Corporation and to acquire one thousand additional shares of The Adirondack Trust Company, Saratoga Springs, New York.

2. CheckSpring Community Corporation, Bronx, New York; to become a bank holding company by acquiring 100 percent of the voting shares of CheckSpring Bank (in organization), New York, NY.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Providence Bancshares Corporation, Southlake, Texas; to become a bank holding company by acquiring 100 percent of Providence Bank of Texas, SSB, Southlake, Texas (in organization).

Board of Governors of the Federal Reserve System, June 28, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–12829 Filed 7–2–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:30 a.m., Monday, July 9, 2007.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS Closed.

Matters To Be Considered.

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, June 29, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–3264 Filed 6–29–07; 3:21 pm]

BILLING CODE 6210–01–S–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–232]

Intent To Develop Two Interaction Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services.

ACTION: Notice of intent.

SUMMARY: This notice announces the intent of ATSDR to develop two interaction profiles.

DATES: The development of the interaction profiles will start on or about July 15, 2007.

ADDRESSES: Previously completed interaction profiles are available on the ATSDR Web site, *http://www.atsdr.cdc.gov.*

FOR FURTHER INFORMATION, CONTACT: Dr. Hana Pohl, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, Atlanta, Georgia 30333, telephone (888) 422–8737

SUPPLEMENTARY INFORMATION: Interaction profiles are developed by ATSDR for hazardous substances at National Priority List (NPL) sites. Sections 104(i)(3) and (5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. Sections 9604(i)(3) and (5)], mandate that ATSDR shall assess whether adequate information on health effects

is available for the priority hazardous substances. Where such information is not available or under development, ATSDR shall, in cooperation with the National Toxicology Program, initiate a program of research to determine these health effects. The Act further directs that, where feasible, ATSDR shall develop methods to determine the health effects of substances in combination with other substances with which they are commonly found.

To carry out these legislative mandates, ATSDR has developed a program to evaluate the health effects of chemical mixtures. As part of this program, ATSDR developed a guidance manual that outlines the latest methods for assessing the health effects of chemical mixtures. In addition, ATSDR is developing a series of documents, called interaction profiles, for certain chemical mixtures of special concern to ATSDR. The purpose of an interaction profile is to evaluate data on the toxicology of the whole mixture (if available) and on the joint toxic action of the chemicals in the mixture in order to recommend approaches for the exposure-based assessment of the potential hazard to public health.

The entire interaction profile development process is as follows:

- ATSDR selects substances/chemicals for development of interaction profiles through inter/intra agency communications dialogue and literature reviews.
- After the selection, a letter is sent to individuals and agencies on ATSDR's mailing list providing notice of ATSDR's intent to create an interaction profile.
- A notice is posted in the **Federal Register** to inform the public of ATSDR's intent to develop a particular interaction profile.
- The draft interaction profile undergoes both internal and external peer review.
- A **Federal Register** notice announces the release of the official draft for public comment.
- ATSDR posts a link to the draft interaction profile on its Web site, giving the public an opportunity to provide comments.
- ATSDR reviews all public comments and revises the draft, as appropriate, before issuing the final version.

The following documents will be developed starting on or about July 15, 2007.

Document 1

Interaction profile for chlorinated dibenzo-p-dioxins, polybrominated diphenyl ethers, and phthalates.

Document 2

Interaction profile for pyrethroid pesticides, organophosphate pesticides, and polychlorinated biphenyls.

The notice of intent is open for comments during the June 15–July 15 period. Send all comments to Dr. Hana Pohl, ATSDR, Division of Toxicology and Environmental Medicine, Mailstop F–32, 1600 Clifton Road, Atlanta, GA 30333.

Dated: June 25, 2007.

Kenneth Rose,

Acting Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E7–12833 Filed 7–2–07; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Purpose of Notice: Availability of Funding Opportunity Announcement

Funding Opportunity Title/Program Name: Advanced Performance Outcome Measurement Project (POMP).

Announcement Type: Initial.

Funding Opportunity Number: HHS–2006–AoA–PO–0716.

Statutory Authority: The Older Americans Act, Public Law 109–365.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048, Title IV and Title II, Discretionary Projects.

Dates: The deadline date for the submission of applications is August 15, 2007.

I. Funding Opportunity Description

This announcement seeks proposals for Advanced Performance Outcome Measurement Projects (POMP) that will be funded with grant awards. Advanced POMP projects have been designed for the purpose of developing more robust performance outcome measures quantifying program impact in a manner that can be associated with cost. The purpose of this competition is to enhance or expand the existing POMP projects. Grant projects will receive technical support if requested.

A detailed description of the funding opportunity may be found at *http://www.aoa.gov* and *http://www.gpra.net.*

II. Award Information

1. Funding Instrument Type

Grant.

2. Anticipated Total Priority Area Funding per Budget Period

AoA intends to make available, under this program announcement, grant awards for up to nine projects for a two year period at a federal share of approximately $60,000–$70,000 per year for the first year and approximately $80,000–$100,000 for the second year contingent on the availability of funds.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants

Only state agencies on aging that received an Advanced Performance Outcome Measurement Project award in FY 2004 are eligible to apply. These states are Arizona, Florida, Georgia, Iowa, New York, North Carolina, Ohio, Rhode Island and South Carolina.

2. Cost Sharing or Matching

Grantees are required to provide at least 25 percent of the total program costs from non-federal cash or in-kind resources in order to be considered for the award.

3. DUNS Number

All grant applicants must obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/.*

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Application and Submission Information

Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Evaluation, Washington, DC 20201, by calling 202–357–0145, or online at *http://www.grants.gov* or *http://www.gpra.net.* Applications must be submitted electronically to *http://www.grants.gov.* In order to be able to submit the application, you must register in the Central Contractor Registry (CCR) database. Information about CCR is available at *http://www.grants.gov/CCRRegister.* Instructions for the electronic submission of grant applications are available at *http://www.grants.gov.* To receive consideration, applications must be submitted electronically by midnight

Eastern time by the deadline listed in the **DATES** section at the beginning of this Notice.

V. Responsiveness Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time. Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections III and IV of this Notice and the Program Announcement. Only complete applications that meet these requirements will be reviewed and evaluated competitively.

VI. Application Review Information

Eligible applications in response to this announcement will be reviewed according to the following evaluation criteria:

- Purpose and Need for Assistance—(20 points)
- Approach, Workplan and Activities—(30 points)
- Outcomes/Evaluation/Dissemination—(25 points)
- Level of Effort—(25 points).

VII. Agency Contacts

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Office of Evaluation, Washington, DC 20201, telephone: (202) 357–0145.

Dated: June 28, 2007.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E7–12858 Filed 7–2–07; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control—Special Emphasis Panel: Center To Protect Worker Rights, Program Announcement (PA) 07–318

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 1 p.m.–2 p.m., July 18, 2007 (Closed).

Place: 626 Cochran Mill Road, Building 20, Room 313, Pittsburgh, PA 15236.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of research grant applications in response to PA 07–318, ''Center to Protect Worker Rights.''

For Further Information Contact: George Bockosh, M.S., Designated Federal Officer, 626 Cochran Mill Road, Pittsburgh, PA 15236, telephone 412.386.6465.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 27, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–12837 Filed 7–2–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group (NCIPC/IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Date:
2 p.m.–2:30 p.m., July 31, 2007 (Open).
2:30 p.m.–5 p.m., July 31, 2007 (Closed).

Place: The conference call will originate at the Centers for Disease Control and Prevention, Yale Building, Koger Center, Atlanta, Georgia.

Status: Portions of the meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of individual research grant and cooperative agreement applications submitted in response to one Fiscal Year 2007 Request for Applications related to the following individual research announcement: RFA–CE–07–011, ''Multi-Level Parent Training Effectiveness Trial—Phase II (U49).''

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jane Suen, NCIPC/ERPO, CDC, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–4281, or Tony Johnson, telephone 770/488–1556.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 27, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–12822 Filed 7–2–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Device Good Manufacturing Practice Advisory Committee, certain device panels of the Medical Devices Advisory Committee, the National Mammography Quality Assurance Advisory Committee, and the Technical Electronic Products Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur through August 31, 2008.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when

possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: Send all nominations and curricula vitae to the following contact persons listed in table 1 of this document:

TABLE 1.

Contact Person	Committee/Panel
Geretta P. Wood, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3993, or e-mail *Geretta.Wood@fda.hhs.gov*	Certain Device Panels of the Medical Devices Advisory Committee
Nancy M. Wynne, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, e-mail: *Nancy.Wynne@fda.hhs.gov*	National Mammography Quality Assurance Advisory Committee
Collin L. Figueroa, Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, e-mail: *Collin.Figueroa@fda.hhs.gov*	Device Good Manufacturing Practice Advisory Committee
Richard V. Kaczmarek, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, e-mail: *Richard.Kaczmarek@fda.hhs.gov*	Technical Electronic Product Radiation Safety Standards Committee

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8938, e-mail: *Kathleen.Walker@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Vacancies

FDA is requesting nominations of voting members for vacancies listed as follows:

TABLE 2.

Committee/Panel Expertise Needed	Current & Upcoming Vacancies	Approximate Date Needed
Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee—anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia	2 3	Immediately December 1, 2007
Circulatory System Devices Panel of the Medical Devices Advisory Committee—interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure	3	July 1, 2008
Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee—doctors of medicine or philosophy with experience in clinical chemistry, clinical toxicology, clinical pathology, clinical laboratory medicine, endocrinology, and diabetes	2	March 1, 2008
Dental Products Panel of the Medical Devices Advisory Committee—dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy	2 3	Immediately November 1, 2007
General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee—surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians	2 2 1	Immediately September 1, 2007 September 1, 2008
Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee—hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and homeostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive and prognostic biomarkers	2	March 1, 2008

TABLE 2.—Continued

Committee/Panel Expertise Needed	Current & Upcoming Vacancies	Approximate Date Needed
Immunology Devices Panel of the Medical Devices Advisory Committee—persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine	3	March 1, 2008
Microbiology Devices Panel of the Medical Devices Advisory Committee—infectious disease clinicians, e.g., pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists	4	Immediately
Molecular and Clinical Genetics Devices Panel of the Medical Devices Advisory Committee—experts in human genetics and in the clinical management of patients with genetic disorders, e.g., pediatricians, obstetricians, neonatologists. Individuals with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology and related statistical training. Individuals with experience in genetic counseling, medical ethics as well as ancillary fields of study will be considered	4 3	Immediately June 1, 2008
Neurological Devices Panel of the Medical Devices Advisory Committee—neurosurgeons (cerebrovascular and pediatric), neurologists (stroke, pediatric, pain management, and movement disorders), interventional neuroradiologists, psychiatrists, and biostatisticians	2	December 1, 2007
Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee—experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing	1	February 1, 2008
Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee—orthopedic surgeons (joint, spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians	2 1	Immediately September 1, 2008
Radiological Devices Panel of the Medical Devices Advisory Committee—physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging and image analysis	2	February 1, 2008
National Mammography Quality Assurance Advisory Committee—physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography	4	February 1, 2008
Device Good Manufacturing Practice Advisory Committee: Nine vacancies occurring immediately; three government representatives, two industry representatives, two public representatives and two health professionals	9	Immediately

TABLE 2.—Continued

Committee/Panel Expertise Needed	Current & Upcoming Vacancies	Approximate Date Needed
Technical Electronic Product Radiation Safety Standards Committee—15 vacancies occurring immediately, five government representatives, five industry representative and five general public representatives	15	Immediately

II. Functions

A. Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions of the Federal Food, Drug, and Cosmetic Act (the act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area performs the following duties: (1) Advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories, (2) advises on any possible risks to health associated with the use of devices, (3) advises on formulation of product development protocols, (4) reviews premarket approval applications for medical devices, (5) reviews guidelines and guidance documents,(6) recommends exemption of certain devices from the application of portions of the act, (7) advises on the necessity to ban a device, and (8) responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or agency decisions or actions.

B. National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise FDA on the following topics: (1) Developing appropriate quality standards and regulations for mammography facilities, (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program, (3) developing regulations with respect to sanctions, (4) developing procedures for monitoring compliance with standards, (5) establishing a mechanism to investigate consumer complaints, (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities, (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas, (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999, and (9) determining the costs and benefits of compliance with these requirements.

C. Device Good Manufacturing Practice Advisory Committee

The functions of the committee are to review proposed regulations issuance regarding good manufacturing practices governing the methods used in, and the facilities and controls used for manufacture, packaging, storage, installation, and servicing of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Section 520 of the act (21 U.S.C. 360(j)), as amended, provides that the Device Good Manufacturing Practice Advisory Committee shall be composed of nine members as follows: (1) Three of the members shall be appointed from persons who are officers or employees of any Federal, State, or local government; (2) two shall be representatives of interests of the device manufacturing industry; (3) two shall be representatives of the interests of physicians and other health professionals; and (4) two shall be representatives of the interests of the general public.

D. Technical Electronic Product Radiation Safety Standards Committee

The function of the committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Section 534(f) of the act (21 U.S.C. 360kk(f)), as amended by the Safe Medical Devices Act of 1990, provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from governmental agencies, including State or Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor.

III. Qualifications

A. Panels of the Medical Devices Advisory Committee

Persons nominated for membership on the panels should have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert

suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

B. National Mammography Quality Assurance Advisory Committee

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography and individuals identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise.

The particular needs at this time for this committee are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

C. Device Good Manufacturing Practice Advisory Committee

Persons nominated for membership as a health professional or officer or employee of any Federal, State, or local government should have knowledge of or expertise in any one or more of the following areas: Quality assurance concerning the design, manufacture, and use of medical devices. To be eligible for selection as a representative of the general public or industry, nominees should possess appropriate qualifications to understand and contribute to the committee's work. The particular needs at this time for this committee are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

D. Technical Electronic Product Radiation Safety Standards Committee

Persons nominated should be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs at this time for this committee are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

IV. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or advisory committees. Self-nominations are also accepted. Nominations will include complete curriculum vitae of each nominee, current business address and telephone number. Nominations will specify the advisory panel(s) or advisory committee(s) for which the nominee is recommended. Nominations will include confirmation that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee if selected, and appears to have no conflict of interest that would preclude membership. Potential candidates will be required to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: June 26, 2007.

Randall W. Lutter

Deputy Commissioner for Policy.

[FR Doc. E7–12799 Filed 7–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1998N–0359] (formerly 98N–0359)

Program Priorities in the Center for Food Safety and Applied Nutrition; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning the establishment of program priorities in the Center for Food Safety and Applied Nutrition (CFSAN) for fiscal year (FY) 2008. As part of its annual planning, budgeting, and resource allocation process, CFSAN is reviewing its programs to set priorities and establish work product expectations. This notice is being published to give the public an opportunity to provide input into the priority-setting process.

DATES: Submit written or electronic comments by September 4, 2007.

ADDRESSES: Submit written comments concerning this document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Food Safety and Applied Nutrition (HFS–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20740, e-mail: *Tsummers@.fda.hhs.gov*, 301–827–1603.

SUPPLEMENTARY INFORMATION:

I. Background

On June 5, 2007, CFSAN released a document entitled ''FY 2007 Report to Stakeholders.'' The document, a copy of which is available on CFSAN's Web page (*http://www.cfsan.fda.gov/~dms/cfsan607.html*), includes the Center's priority workplan for fiscal year 2007, i.e., October 1, 2006, through September 30, 2007. The FY 2007 workplan is based on input we received from our stakeholders (see 71 FR 37083; June 29, 2006), as well as input generated internally. Throughout the priority-setting process, we focused on one central question: ''Where do we do the most good for consumers and the overall public health?''

The FY 2007 workplan is structured like the FY 2006 plan. It contains only those activities previously listed as ''A'' list items. Our goal is to fully complete at least 90 percent of the activities listed under sections 1 through 4 of the FY 2007 workplan by the end of the FY, September 30, 2007. The FY 2006 workplan also includes a fifth section entitled, ''Priority Ongoing Activities.'' Many of these activities are core functions that we perform on a regular basis and are among our very highest priorities.

II. 2008 CFSAN Program Priorities

FDA is requesting comments on what program priorities CFSAN should consider establishing for FY 2008. The input will be used to develop CFSAN's FY 2008 workplan. The workplan will set forth the Center's program priorities for the period of October 1, 2007, through September 30, 2008. FDA intends to make the FY 2008 workplan available on its Web site.

The format of the FY 2008 workplan will be similar to the FY 2007 workplan in that it will be divided into the following five sections:

(1) Food Defense
(2) Food Safety
(3) Nutrition and Labeling
(4) Dietary Supplements and Cosmetics
(5) Priority On-Going Activities

While there will likely be continuity and follow-through on many activities between the 2007 and 2008 work plans, the final FY 2008 Congressional

Appropriation will unquestionably affect what we will be able to commit to accomplish in FY 2008. Accordingly, FDA requests comments on broad program areas that should continue to be a priority as well as new program areas or activities that should be added as a high priority for FY 2008.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 22, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–12884 Filed 7–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications: RFA–FD08–001; Research Project Grants (R01); Catalog of Federal Domestic Assistance Number: 93.103

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

I. Funding Opportunity Description

The Food and Drug Administration (FDA) is announcing changes to its Office of Orphan Products Development (OPD) grant program for fiscal years (FY) 2009 and 2010. This announcement supersedes the previous announcement of this program, which was published in the **Federal Register** of December 19, 2005 (70 FR 75198).

1. Background

OPD was created to identify and promote the development of orphan products. Orphan products are drugs, biologics, medical devices, and foods for medical purposes that are indicated for a rare disease or condition (that is, one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Diagnostic tests and vaccines will qualify only if the U.S. population of intended use is fewer than 200,000 people a year. Additional information about OPD is available on FDA's Web site at *www.fda.gov/orphan*.

2. Program Research Goals

The goal of FDA's OPD grant program is to support the clinical development of products for use in rare diseases or conditions where no current therapy exists or where the product will improve the existing therapy. FDA provides grants for clinical studies on safety and/or effectiveness that will either result in, or substantially contribute to, market approval of these products. Applicants must include in the application's ''Background and Significance'' section documentation to support the estimated prevalence of the orphan disease or condition and an explanation of how the proposed study will either help gain product approval or provide essential data needed for product development. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331 *et seq.*), regulations issued under it, and applicable Department of Health and Human Services (HHS) statutes and regulations.

II. Award Information

Except for applications for studies of medical foods that do not need premarket approval, FDA will only award grants to support premarket clinical studies to determine safety and effectiveness for approval under section 505 or 515 of the act (21 U.S.C. 355 or 360e) or safety, purity, and potency for licensing under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262). FDA will support the clinical studies covered by this notice under the authority of section 301 of the PHS Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance (CFDA), No. 93.103.

1. Award Instrument

Support will be in the form of a research project (R01) grant. All awards will be subject to all policies and requirements that govern the research grant programs of the PHS Act as incorporated in the HHS Grants Policy Statement, dated October 1, 2006, (*http://www.hhs.gov/grantsnet/adminis/gpd/index.htm*), including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. The National Institutes of Health (NIH) modular grant program does not apply to this FDA grant program. All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 512, and 515 of the act (21 U.S.C. 360b), section 351 of the PHS Act, regulations issued under any of these sections, and other applicable HHS statutes and regulations regarding human subject protection.

2. Award Amount

Of the estimated FY 2009 funding ($14.2 million), approximately $10 million will fund noncompeting continuation awards, and approximately $4.2 million will fund 10 to 12 new awards, subject to availability of funds. It is anticipated that funding for the number of noncompeting continuation awards and new awards in FY 2010 will be similar to FY 2009. Grants will be awarded up to $200,000 or up to $400,000 in total (direct plus indirect) costs per year for up to 4 years. Please note that the dollar limitation will apply to total costs, not direct costs, as in previous years. A fourth year of funding is available only for phase 2 or 3 clinical studies. Applications for the smaller grants ($200,000) may be for phase 1, 2, or 3 studies. Study proposals for the larger grants ($400,000) must be for studies continuing in phase 2 or 3 of investigation.

Phase 1 studies include the initial introduction of an investigational new drug (IND) or device into humans, are usually conducted in healthy volunteer subjects, and are designed to determine the metabolic and pharmacological actions of the product in humans, the side effects including those associated with increasing drug doses. In some Phase 1 studies that include subjects with the rare disorder, it may also be possible to gain early evidence on effectiveness.

Phase 2 studies include early controlled clinical studies conducted to: (1) Evaluate the effectiveness of the product for a particular indication in patients with the disease or condition and (2) determine the common short-term side effects and risks associated with it.

Phase 3 studies gather more information about effectiveness and safety that is necessary to evaluate the overall risk-benefit ratio of the product and to provide an acceptable basis for product labeling. Budgets for each year of requested support may not exceed the $200,000 or $400,000 total cost limit, whichever is applicable.

3. Length of Support

The length of support will depend on the nature of the study. For those studies with an expected duration of

more than 1 year, a second, third, or fourth year of noncompetitive continuation of support will depend on the following factors: (1) Performance during the preceding year; (2) compliance with regulatory requirements of IND/investigational device exemption (IDE); and (3) availability of Federal funds. A fourth year of funding is available only for phase 2 or 3 clinical studies.

4. Funding Plan

In addition to the requirement for an active IND/IDE discussed in section V.B.4 of this document, documentation of assurances with the Office of Human Research Protection (OHRP) (see section IV.5.A of this document) must be on file with the FDA grants management office before an award is made. Any institution receiving Federal funds must have an institutional review board (IRB) of record even if that institution is overseeing research conducted at other performance sites. To avoid funding studies that may not receive or may experience a delay in receiving IRB approval, documentation of IRB approval and Federal Wide Assurance (FWA or assurance) for the IRB of record for all performance sites must be on file with the FDA grants management office before an award to fund the study will be made. In addition, if a grant is awarded, grantees will be informed of any additional documentation that should be submitted to FDA's IRB.

5. Dun and Bradstreet Number (DUNS)

Beginning October 1, 2003, applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a 9-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call 1–866–705–5711. Be certain that you identify yourself as a Federal grant applicant when you contact Dun and Bradstreet.

6. Central Contractor Registration

For the grants.gov electronic application process, applicants are required to register with the Central Contractor Registration (CCR) database. This database is a governmentwide warehouse of commercial and financial information for all organizations conducting business with the Federal Government. Registration with CCR is a requirement and is consistent with the governmentwide management reform to create a citizen-centered Web presence and build electronic government (e-gov) infrastructures in and across agencies to establish a ''single face to industry.'' The preferred method for completing a registration is through the Internet at *http://www.ccr.gov*.[1] This Web site provides a CCR handbook with detailed information on data you will need prior to beginning the online registration, as well as steps to walk you through the registration process. You must have a DUNS number to begin your registration. Call Dunn & Bradstreet, Inc. at the telephone number listed in section II.5 of this document if you do not have a DUNS number.

In order to access grants.gov, an applicant will be required to register with the Credential Provider. Information about this process is available at *http://www.grants.gov/applicants/iregister_credential_provider.jsp*.

III. Eligibility Information

1. Eligible Applicants

The grants are available to any foreign or domestic, public or private, for-profit or nonprofit entity (including State and local units of government). Federal agencies that are not part of HHS may apply. Agencies that are part of HHS may not apply. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations that engage in lobbying activities, as described in section 501(c)(4) of the Internal Revenue Code of 1968, are not eligible to receive grant awards. An application that has received two prior disapprovals is not eligible to apply.

2. Cost Sharing or Matching

This grant program does not require the applicant to match or share in the project costs if an award is made.

IV. Application and Submission Information

1. Content and Form of Application Submission

A. General Information

FDA is accepting new applications for this program electronically via *www.grants.gov*. Applicants should apply electronically by visiting the Web site *www.grants.gov* and following instructions under ''Apply for Grants.'' The required application, SF424 R&R (Research & Related Portable Document Formats) can be completed and submitted online. We strongly encourage using the ''Tips'' posted on *www.grants.gov* under the announcement number when preparing your submission. If you experience technical difficulties with your online submission, you should contact either the grants.gov Customer Response Center *http://www.grants.gov/contactus/contactus.jsp* or Dianna Jessee, Grants Management Specialist (see **AGENCY CONTACTS** in section VII of this document).

To comply with the President's Management Agenda, HHS is participating as a partner in the new governmentwide grants.gov application site. Users of grants.gov will be able to download a copy of the application package, complete it offline, and then upload and submit the application via the grants.gov Web site. When you enter the grants.gov Web site, you will find information about submitting an application electronically through the Web site. In addition, this process is similar to the R01 Grant Application process currently used at NIH. You can visit the following Web site for helpful background on preparing to apply, preparing an application, and submitting an application to grants.gov: *http://era.nih.gov/ElectronicReceipt/*. In order to apply electronically, the applicant must have a DUNS number and register in the CCR database as described in sections II.5 and II.6 of this document.

In unusual circumstances, additional information may be considered, on a case-by-case basis, for inclusion in the ad hoc expert panel review; however, FDA cannot assure inclusion of any information after the receipt date other than evidence of final IRB approval, FWA or assurance, and certification of adequate supply of study product.

If an application for the same study was submitted in response to a previous request for application (RFA) but has not yet been funded, an application in response to this notice will be considered a request to withdraw the previous application. The applicant for a resubmitted application should address the issues presented in the summary statement from the previous review and include a copy of the summary statement itself as part of the resubmitted application. An application that has received two prior disapprovals is not eligible for resubmission.

B. Format for Application

In FY 2009 and 2010, all applications must be submitted electronically through grants.gov. The application must be on SF424 R&R (Research and Related Portable Document Format). The title of the proposed study must include the name of the product and the

[1] (FDA has verified the non-FDA Web site addresses throughout this document, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

disease/disorder to be studied and the IND/IDE number. The narrative portion, excluding appendices, of the application may not exceed 100 pages in length and must be single-spaced in 12-point font. The appendices should also not exceed 100 pages in length (separate from the narrative portion of the application).

2. Submission Dates and Times

For FY 2009, the application receipt date is February 6, 2008, and for FY 2010, the application receipt date is February 4, 2009. Please note that there is only one receipt date for FY 2009 and one receipt date for FY 2010. Applications must be received by the close of business on the established receipt date. Late applications may be accepted under extreme circumstances beyond the control of the applicant. Applications not received on time will not be considered for review and will generally be returned to the applicant.

The protocol in the grant application should be submitted to the IND/IDE no later than January 7, 2008, for FY 2009 and no later than January 5, 2009, for FY 2010.

3. Intergovernmental Review

This program is not subject to review under the terms of Executive Order 12372.

4. Funding Restrictions

A. Protection of Human Research Subjects

All institutions engaged in human subject research financially supported by HHS must file an assurance of protection for human subjects with the OHRP (45 CFR part 46). Applicants are advised to visit the OHRP Web site at *http://www.hhs.gov/ohrp* for guidance on human subject protection issues.

The requirement to file an assurance applies to both ''awardee'' and collaborating ''performance site'' institutions. Awardee institutions are automatically considered to be ''engaged'' in human subject research whenever they receive a direct HHS award to support such research, even where all activities involving human subjects are carried out by a subcontractor or collaborator. In such cases, the awardee institution bears the responsibility for protecting human subjects under the award.

The awardee institution is also responsible for, among other things, ensuring that all collaborating performance site institutions engaged in the research hold an approved assurance prior to their initiation of the research. No awardee or performance site institution may spend funds on human subject research or enroll subjects without the approved and applicable assurance(s) on file with OHRP. An awardee institution must, therefore, have its own IRB of record and assurance. The IRB of record may be an IRB already being used by one of the ''performance sites,'' but it must specifically be registered as the IRB of record with OHRP.

For further information, applicants should review the section on human subjects in the application instructions as posted on the grants.gov application Web site. The clinical protocol should comply with ICHE6 ''Good Clinical Practice Consolidated Guidance'' which sets an international ethical and scientific quality standard for designing, conducting, recording, and reporting trials that involve the participation of human subjects. All human subject research regulated by FDA is also subject to FDA's regulations regarding the protection of human subjects (21 CFR parts 50 and 56). Applicants are encouraged to review the regulations, guidance, and information sheets on human subject protection and good clinical practice available on the Internet at *http://www.fda.gov/oc/gcp/*.

B. Key Personnel and Human Subject Protection Education

The awardee institution is responsible for ensuring that all key personnel receive appropriate training in their human subject protection responsibilities. Key personnel include all principal investigators, co-investigators, and performance site investigators responsible for the design and conduct of the study. HHS, FDA, and OPD do not prescribe or endorse any specific education programs. Many institutions have already developed educational programs on the protection of research subjects and have made participation in such programs a requirement for their investigators. Other sources of appropriate instruction might include the online tutorials offered by the Office of Human Subjects Research, NIH at *http://ohsr.od.nih.gov/* and by OHRP at *use http://www.hhs.gov/ohrp/education/*.

Within 30 days of the award, the principal investigator should provide a letter to FDA's grants management office that includes the names of the key personnel, the title of the human subjects protection education program completed for each key personnel, and a one-sentence description of the program. This letter should be signed by the principal investigator and cosigned by an institution official and sent to the Grants Management Specialist whose name appears on the official Notice of Grant Award (NGA).

5. Other Submission Requirements

Informed Consent

Consent forms, assent forms, and any other information given to a subject are part of the grant application and must be provided, even if in a draft form. The applicant is referred to HHS regulations at 45 CFR 46.116 and 21 CFR 50.25 for details regarding the required elements of informed consent.

V. Application Review Information

1. Criteria

A. General Information

FDA grants management and program staff will review all applications sent in response to this notice. To be responsive, an application must be submitted in accordance with the requirements of this notice. Applications found to be nonresponsive will be returned to the applicant without further consideration.

Applicants are strongly encouraged to contact FDA to resolve any questions about criteria before submitting their application. Please direct all questions of a technical or scientific nature to the OPD program staff and all questions of an administrative or financial nature to the grants management staff (see **AGENCY CONTACTS** in section VII of this document).

B. Program Review Criteria

1. Applications must propose clinical trials intended to provide safety and/or efficacy data.

2. There must be an explanation in the ''Background and Significance'' section of how the proposed study will either contribute to product approval or provide essential data needed for product development.

3. The ''Background and Significance'' section of the application must contain information documenting the prevalence, not incidence, of the population to be served by the product is fewer than 200,000 individuals in the United States. The applicant should include a detailed explanation supplemented by authoritative references in support of the prevalence figure. Diagnostic tests and vaccines will qualify only if the population of intended use is fewer than 200,000 individuals in the United States per year.

4. The study protocol proposed in the grant application must be under an active IND or IDE (not on clinical hold) to qualify the application for scientific and technical review. Additional IND/IDE information is described as follows:

• The proposed clinical protocol should be submitted to the applicable FDA IND/IDE review division a minimum of 30 days before the grant application deadline. The number assigned to the IND/IDE that includes the proposed study should appear on the face page of the application with the title of the project. The date the subject protocol was submitted to FDA for the IND/IDE review should also be provided. Protocols that would otherwise be eligible for an exemption from the IND regulations must be conducted under an active IND to be eligible for funding under this FDA grant program. If the sponsor of the IND/IDE is other than the principal investigator listed on the application, a letter from the sponsor permitting access to the IND/IDE must be submitted in both the IND/IDE and in the grant application. The name(s) of the principal investigator(s) named in the application and in the study protocol must be submitted to the IND/IDE. Studies of already approved products, evaluating new orphan indications, are also subject to these IND/IDE requirements.

• Only medical foods that do not need premarket approval and medical devices that are classified as nonsignificant risk (NSR) are free from these IND/IDE requirements. Applicants studying an NSR device should provide a letter in the application from FDA's Center for Devices and Radiological Health indicating the device is an NSR device.

5. The requested budget must be within the limits, either $200,000 in total costs per year for up to 3 years for any phase study, or $400,000 in total costs per year for up to 4 years for phase 2 or 3 studies. Any application received that requests support over the maximum amount allowable for that particular study will be considered non-responsive.

6. In an appendix to the application, there must be evidence that the product to be studied is available to the applicant in the form and quantity needed for the clinical trial proposed. A current letter from the supplier as an appendix will be acceptable. If negotiations regarding the supply of the study product are underway but have not been finalized at the time of application, please provide a letter indicating such in the application. Verification of adequate supply of study product will be necessary before an award is made.

7. The protocol should be submitted in the application. The narrative portion of the application should be no more than 100 pages, single-spaced, with 1/2-inch margins, and in unreduced 12–point font. The appendices should also be no more than 100 pages (separate from the narrative portion of the application).

C. Scientific/Technical Review Criteria

The ad hoc expert panel will review the application based on the following scientific and technical merit criteria:

1. The soundness of the rationale for the proposed study;

2. The quality and appropriateness of the study design, including the design of the monitoring plans;

3. The statistical justification for the number of patients chosen for the study, based on the proposed outcome measures, and the appropriateness of the statistical procedures for analysis of the results;

4. The adequacy of the evidence that the proposed number of eligible subjects can be recruited in the requested timeframe;

5. The qualifications of the investigator and support staff, and the resources available to them;

6. The adequacy of the justification for the request for financial support;

7. The adequacy of plans for complying with regulations for protection of human subjects and monitoring; and

8. The ability of the applicant to complete the proposed study within its budget and within time limits stated in this RFA.

2. Review and Selection Process

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Consultation with the proper FDA review division may also occur during this phase of the review to determine whether the proposed study will provide acceptable data that could contribute to product approval. Responsive applications will be subject to a second review by the National Cancer Institute, National Cancer Advisory Board (NCAB) for concurrence with the recommendations made by the first-level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs or his designee.

A score will be assigned based on the scientific/technical review criteria. The review panel may advise the program staff about the appropriateness of the proposal to the goals of the OPD grant program.

VI. Award Administration Information

1. Award Notices

A formal notification in the form of an NGA will be provided to the applicant organization. The NGA signed by the grants management officer is the authorizing document. Once all administrative and programmatic issues have been resolved, the NGA will be generated via e-mail or hard copy from FDA to the authorized grantee business official.

Selection of an application for award is not an authorization to begin performance. Any costs incurred before receipt of the NGA are at the recipient's risk. These costs may be reimbursed only to the extent they are considered allowable pre-award costs.

2. Administrative Requirements

All FDA grant awardees must adhere to the requirements stated in the RFA, the NGA, associated Terms and Conditions, as well as any relevant FDA or HHS statutory or regulatory requirements.

3. Reporting

A. Reporting Requirements

When multiple years are involved, awardees will be required to submit the Non-Competing Grant Progress Report (PHS 2590) annually and financial statements as required in the HHS Grants Policy Statement, dated October 1, 2006, (*http://www.hhs.gov/grantsnet/adminis/gpd/index.htm*). Also, all new and continuing grants must comply with all regulatory requirements necessary to keep the status of their IND/IDE ''active'' and ''in effect,'' that is, not on ''clinical hold.'' Failure to meet regulatory requirements will be grounds for suspension or termination of the grant.

B. Monitoring Activities

The program project officer will monitor grantees periodically. The monitoring may be in the form of telephone conversations, e-mails, or written correspondence between the project officer/grants management officer or specialist and the principal investigator. Information including, but not limited to, information regarding study progress, enrollment, problems, adverse events, changes in protocol, and study monitoring activities will be requested. Periodic site visits with officials of the grantee organization may also occur. The results of these monitoring activities will be recorded in the official grant file and will be available to the grantee upon request consistent with applicable disclosure statutes and with FDA disclosure

regulations. Also, the grantee organization must comply with all special terms and conditions of the grant, including those which state that future funding of the study will depend on recommendations from the OPD project officer. The scope of the recommendations will confirm the following: (1) There has been acceptable progress toward enrollment, based on specific circumstances of the study; (2) there is an adequate supply of the product/device; and (3) there is continued compliance with all applicable FDA and HHS regulatory requirements for the trial.

The grantee must file a final program progress report, financial status report, and invention statement within 90 days after the end date of the project period as noted on the notice of grant award.

VII. Agency Contacts

FDA encourages your inquiries concerning this funding opportunity and welcome the opportunity to answer questions from potential applicants. Inquiries may fall into two areas:

Scientific/Research Contact: Debra Y. Lewis, Director, Orphan Products Grants Program, Office of Orphan Products Development (HF–35), Food and Drug Administration 5600 Fishers Lane, rm. 6A–55, Rockville, MD 20857, 301–827–3666, e-mail: *debra.lewis@fda.hhs.gov.*

Administrative/Financial Management Contact: Dianna L. Jessee, Grants Management Specialist, Division of Acquisition Support and Grants, Office of Acquisitions & Grant Services (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2141, Rockville, MD 20857, 301–827–7177, e-mail: *dianna.jessee@fda.hhs.gov*.

VIII. Other Information

Required Federal Citations

Clinical Trials Data Bank

The Food and Drug Administration Modernization Act of 1997 established a requirement that certain information be entered into the Clinical Trials Data Bank (CTDB) for federally and privately funded clinical effectiveness trials conducted under an IND for drugs (including trials for biological products) to treat serious or life-threatening diseases or conditions (42 U.S.C. 282(j)). Information on noneffectiveness trials, or for drugs to treat diseases or conditions not considered serious or life-threatening, may also be entered into this database but such information is not required. This CTDB provides patients, family members, healthcare providers, researchers, and members of the public easy access to information on clinical trials for a wide range of diseases and conditions. The U.S. National Library of Medicine has developed this site in collaboration with NIH and FDA. The CTDB is available to the public through the Internet at *http://clinicaltrials.gov*.

The CTDB contains the following information: (1) Information about clinical trials, both federally and privately funded, of experimental treatments (drug and biological products) for patients with serious or life-threatening diseases or conditions; (2) a description of the purpose of each experimental drug; (3) the patient eligibility criteria; (4) a description of the location of clinical trial sites; and (5) a point of contact for those wanting to enroll in the trial. In 2007, the Best Pharmaceuticals for Children Act also required that the CTDB include a description of whether, and through what procedure, the manufacturer or sponsor of an IND will respond to a request for protocol exception, with appropriate safeguards, for single-patient and expanded access use of the investigational drug, particularly in children. The OPD program staff will provide more information to grantees about entering the required information in the CTDB after awards are made.

Freedom of Information Act (FOIA)

Data included in the application may be considered trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552) and FDA's statute and implementing regulations. FDA will protect trade secret or confidential commercial information to the extent allowed under applicable law.

Use of Animals in Research

Recipients of PHS support for activities involving live vertebrate animals must comply with PHS Policy on Humane Care and Use of Laboratory Animals (*http://grants.nih.gov/grants/olaw/references/PHSPolicyLabAnimals.pdf*) as mandated by the Health Research Extension Act of 1985 (*http://grants.nih.gov/grants/olaw/references/hrea1985.htm*), and the USDA Animal Welfare Regulations (*http://www.nal.usda.gov/awic/legislat/usdaleg1.htm*) as applicable.

Inclusion of Women And Minorities in Clinical Research

Applicants for PHS clinical research grants are encouraged to include minorities and women in study populations so research findings can be of benefit to all people at risk of the disease or condition under study. It is recommended that applicants place special emphasis on including minorities and women in studies of diseases, disorders, and conditions that disproportionately affect them. This policy applies to research subjects of all ages. If women or minorities are excluded or poorly represented in clinical research, the applicant should provide a clear and compelling rationale that shows inclusion is inappropriate.

Inclusion of Children as Participants in Clinical Research

FDA regulations at 21 CFR part 50, subpart D contain additional requirements that must be met by IRBs reviewing clinical investigations regulated by FDA and involving children as subjects. FDA is part of HHS; accordingly, the research project grants under this program are supported by HHS, and HHS regulations at 45 CFR part 46, subpart D also apply to research involving children as subjects.

Standards for Privacy of Individually Identifiable Health Information

HHS issued final modification to the ''Standards for Privacy of Individually Identifiable Health Information,'' the ''Privacy Rule,'' on August 14, 2002. The Privacy Rule is a federal regulation under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 that governs the protection of individually identifiable health information, and is administered and enforced by the HHS Office for Civil Rights (OCR).

Decisions about applicability and implementation of the Privacy Rule reside with the researcher and his/her institution. The OCR Web site *http://www.hhs.gov/ocr/* provides information on the Privacy Rule, including a complete regulation text and a set of decision tools on ''Am I a covered entity?'' Information on the impact of the HIPAA Privacy Rule on NIH processes involving the review, funding, and progress monitoring of grants, cooperative agreements, and research contracts can be found at *http://grants.nih.gov/grants/guide/notice-files/NOT-OD–03–025.html*.

Healthy People 2010

PHS is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a PHS-led national activity for setting priority areas. This Funding Opportunity Announcement is related to one or more of the priority areas. Potential applicants may obtain a

copy of ''Healthy People 2010'' at *http://www.health.gov/healthypeople*.

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and discourage the use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Authority and Regulations

This program is described in the CFDA at *http://www.cfda.gov/* and is not subject to the intergovernmental review requirements of Executive Order 12372 or Health Systems Agency review. Awards are made under the authorization of sections 301 and 405 of the PHS Act as amended (42 U.S.C. 241 and 284) and under federal regulations 42 CFR part 52 and 45 CFR parts 74 and 92. All awards are subject to the terms and conditions, cost principles, and other considerations described in the HHS Grants Policy Statement, dated October 1, 2006, (*http://www.hhs.gov/grantsnet/adminis/gpd/index.htm*).

Dated: June 22, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–12881 Filed 7–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005P–0207]

Medical Devices; Cardiovascular Devices; Denial of Request for Change in Classification of Impedance Plethysmograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; denial of petition.

SUMMARY: The Food and Drug Administration (FDA) is denying the petition submitted by Life Measurements Inc., to reclassify the SONAMET Body Composition Analyzers (BOD POD and PEA POD) from class II to class I. The agency is denying the petition because Life Measurements Inc., failed to provide sufficient new information to establish that general controls would provide reasonable assurance of the safety and effectiveness of the devices. This notice also summarizes the basis for the agency's decision.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4021.

SUPPLEMENTARY INFORMATION:

I. Classification and Reclassification of Devices Under the 1976 Amendments

The Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices under the 1976 amendments were class I (general controls), class II (performance standards), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device type; and (3) published a final regulation classifying the device type. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless: (1) The device type is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807, subpart E, of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a Premarket Application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section of the act provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based on ''new information.'' The reclassification can be initiated by FDA or by the petition of an interested person. The term ''new information,'' as used in sections 513(e) and 515(b)(2)(A)(iv) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F.Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in ''medical science.'' (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, the ''new information'' upon which reclassification under section 513(e) of the act is based must consist of ''valid scientific evidence,'' as defined in section 513(a)(3) of the act and § 560.7(c)(2) (21 CFR 860.7(c)(2)). (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985).) In addition, § 860.123(a)(6) (21 CFR 860.123(a)(6)) provides that a reclassification petition must include a ''full statement of the reasons, together with supporting data satisfying the requirements of § 860.7, why the device should not be classified into its present

classification and how the proposed classification will provide reasonable assurance of the safety and effectiveness of the device '' (§ 860.123(a)(6)). The ''supporting data satisfying the requirements of § 860.7'' referred to is ''valid scientific evidence.''

For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the act (21 U.S.C. 360j(c).)

II. Reclassification Under the SMDA

The SMDA further amended the act to change the definition of a class II device. Under the SMDA, class II devices are those devices which cannot be classified into class I because general controls by themselves are not sufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act). Thus, the definition of a class II device was changed from ''performance standards'' to ''special controls.'' In order for a device to be reclassified from class II into class I, the agency must determine that special controls are not necessary to provide reasonable assurance of its safety and effectiveness.

III. Background

In the **Federal Register** of February 5, 1980 (45 FR 7930), FDA issued a final rule classifying the Impedance Plethysmograph into class II (§ 870.2770 (21 CFR 870.2770)). The preamble to the proposal to classify the device included the recommendation of the Cardiovascular Device Classification Panel (the Panel). The Panel's recommendation, among other things, identified the following risks to health associated with the use of the device: (1) Cardiac arrhythmias or electrical shock—Excessive electrical leakage current can disturb the normal electrophysiology of the heart, leading to the onset of cardiac arrhythmias and (2) Misdiagnosis—If the zero or calibration of the device is inaccurate or unstable, or if frequency response of the device is improper, the device can generate inaccurate diagnostic data. If inaccurate diagnostic data are used in managing the patient, the physician may prescribe a course of treatment that places the patient at risk unnecessarily.

On May 25, 2005, FDA received a petition requesting that FDA reclassify SONAMET Body Composition Analyzers (BOD POD and PEA POD) from class II to class I (Ref. 1). Under § 860.120(b) (21 CFR 860.120(b)) the reclassification of any device within a generic type of devices causes the reclassification of all substantially equivalent devices within that generic type of device.

The May 25, 2005, petition also requested that the SONAMET Body Composition Analyzers (BOD POD and PEA POD) be given their own product code because their devices are based on air displacement plethysmography technology, not impedance plethysmograph technology.

IV. Device Description

The SONAMET Body Composition Analyzers (BOD POD and PEA POD) are classified within the generic type of device impedance plethysmograph (§ 870.2770) and given the product code MNW. Both SONAMET Body Composition Analyzers were found substantially equivalent to class II devices under § 870.2770.

V. FDA's Decision

After reviewing the reclassification petition, FDA has found that the petition does not contain sufficient valid scientific evidence to support a determination that general controls would provide reasonable assurance of the devices' safety and effectiveness for their intended uses. Therefore, FDA is denying the reclassification request.

FDA did determine that both SONAMET Body Composition Analyzers are substantially equivalent to other legally marketed body composition analyzers classified under § 870.2770, product code MNW, the product code for body composition analysis devices. However, due to variations in the technology of impedance plethysmographs and displacement plethysmographs, FDA has given displacement plethysmographs for body composition their own product code under § 870.2770. FDA is adding a new product code, OAC, to § 870.2770 and updating the product code for the SONAMET Body Composition Analyzers (BOD POD and PEA POD) under § 870.2770. This new product code will be used to classify any plethysmograph device using air displacement for body composition analysis that is determined to be substantially equivalent.

VI. Reasons for the Denial

FDA has determined that Life Measurement Inc., has not presented new scientific information sufficient to support the requested change in classification (class II to class I) of their devices. According to § 860.120(b), the reclassification of any device within a generic type of device causes the reclassification of all substantially equivalent devices within that generic type. Accordingly, a petition for the reclassification of a specific device will be considered a petition for reclassification of all substantially equivalent devices within the same generic type.

Life Measurement Inc., has (1) not provided sufficient evidence to reclassify their own devices and has (2) not provided the required elements of a reclassification petition to down-classify any or all other body composition analyzers of different technology under § 870.2770.

The petitioner's accompanying data refers only to one of Life Measurement Inc.'s two devices proposed for reclassification, the BOD POD. No new information on the PEA POD was provided. The PEA POD, which is intended for use in newborns and infants, is the more critical of the two devices. While the patient population being tested with the BOD POD can terminate usage of the device during measurement, the patient population using the PEA POD (infants) is helpless to intervene in any aspect of the device operation if safety is suddenly compromised.

All the evidence presented by the petitioner is anecdotal and not sufficient to support the conclusion that general controls would provide reasonable assurance of the safety and effectiveness of this type device, including the Life Measurement Inc., devices. No published studies have been provided specifically targeting safety regarding devices of this type, including the Life Measurement Inc., devices, to support the petition. Additionally, the petitioner has not provided any information about adverse events or time of use for either of these devices.

However, Life Measurement Inc.'s differing technology for body composition is a legitimate basis for consideration of a new product code. FDA agrees that variations in the technology of impedance plethysmographs and air displacement plethysmographs for body composition analysis warrant FDA's assigning air displacement plethysmographs for body composition analysis (e.g., BOD POD) their own product code under

§ 870.2770. FDA has added a new product code, OAC, to § 870.2770 and includes the SONAMET Body Composition Analyzers (BOD POD and PEA POD) under it.

FDA believes that the petition lacks sufficient valid scientific evidence to allow FDA to determine that general controls would provide reasonable assurance of the safety and effectiveness of the impedance plethysmograph for its intended use. Therefore, the impedance plethysmograph shall be retained in class II.

VII. References

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

1. Petition from Life Measurement Inc., for the reclassification of the SONAMET Body Composition Analyzers (BOD POD and PEA POD) devices, dated March 21, 2005.

Dated: June 25, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–12883 Filed 7–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005P–0213]

Neurological Devices; Denial of Request for Change in Classification of Cutaneous Electrode

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; denial of petition.

SUMMARY: The Food and Drug Administration (FDA) is denying the petition submitted by Scientific Laboratory Products LTD., to reclassify electroencephalogram (EEG) electrodes from class II to class I. The agency is denying the petition because the Scientific Laboratory Products LTD., failed to provide sufficient new information to establish that general controls would provide reasonable assurance of the safety and effectiveness of the devices. This document also summarizes the basis for the agency's decision.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4021.

SUPPLEMENTARY INFORMATION:

I. Classification and Reclassification of Devices Under the Medical Device Amendments of 1976 (the 1976 Amendments)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices under the 1976 amendments were class I (general controls); class II (performance standards); and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has done the following: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device type; and (3) published a final regulation classifying the device type. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless: (1) The device type is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act (21 U.S.C. 360c(e)). This section of the act provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based on ''new information.'' The reclassification can be initiated by FDA or by the petition of an interested person. The term ''new information,'' as used in sections 513(e) and 515(b)(2)(A)(iv) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F.Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in ''medical science.'' (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, the ''new information'' upon which reclassification under section 513(e) of the act is based must consist of ''valid scientific evidence,'' as defined in section 513(a)(3) of the act and § 860.7(c)(2) (21 CFR 860.7(c)(2)). (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985)). In addition, § 860.123(a)(6) (21 CFR 860.123(a)(6)) provides that a reclassification petition must include a ''full statement of the reasons, together with supporting data satisfying the requirements of § 860.7, why the device should not be classified into its present classification, and how the proposed classification will provide reasonable assurance of the safety and effectiveness of the device.'' (§ 860.123(a)(6).) The

''supporting data satisfying the requirements of § 860.7'' referred to is ''valid scientific evidence.''

For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the act (21 U.S.C. 360j(c).)

II. Reclassification under SMDA

SMDA further amended the act to change the definition of a class II device. Under SMDA, class II devices are those devices which cannot be classified into class I because general controls by themselves are not sufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act). Thus, the definition of a class II device was changed from ''performance standards'' to ''special controls.'' In order for a device to be reclassified from class II into class I, the agency must determine that special controls are not necessary to provide reasonable assurance of its safety and effectiveness.

III. Background

In the **Federal Register** of September 4, 1979 (44 FR 51732), FDA issued a final rule classifying the cutaneous electrode into class II (21 CFR 882.1320). The preamble to the proposal to classify the device included the recommendation of the Neurological Device Classification Panel (the Panel). The Panel's recommendation, among other things, identified the following risks to health associated with the use of the device: (1) Burns, since poor design or incorrect application of the electrodes could result in skin burns when the device is used to apply stimulation and (2) toxic reactions, since materials or substances in the electrodes that are in contact with the skin could produce adverse reactions.

The panel recommended that cutaneous electrodes be classified as class II because the electrical properties of the device must be controlled to assure that, when physiological signals are recorded, they are adequately reproduced. If inaccurate diagnostic data are used in managing the patient, the physician may prescribe a course of treatment that places the patient at risk unnecessarily. Additionally, the panel recommended Class II to assure that only materials with known and acceptable properties are used in electrodes.

On May 31, 2005, FDA received a petition requesting that FDA reclassify electroencephalogram electrodes from class II to class I (Ref. 1). Under § 860.120(b) (21 CFR 860.120(b)), the reclassification of any device within a generic type of devices causes the reclassification of all substantially equivalent devices within that generic type of device.

IV. Device Description

The electroencephalogram electrode device is classified within the generic type of device cutaneous electrode (21 CFR 882.1320). FDA identifies cutaneous electrode as an electrode that is applied directly to a patient's skin either to record physiological signals (e.g., the electroencephalogram) or to apply electrical stimulation.

V. FDA's Decision

After reviewing the reclassification petition, FDA has found that the petition contains insufficient valid scientific evidence to allow FDA to determine that general controls would provide reasonable assurance of the device's safety and effectiveness for its intended use. FDA, therefore, is denying the petition.

VI. Reasons for the Denial

FDA has determined that Scientific Laboratory Products LTD., has not presented sufficient new scientific information to support the requested change in classification of this device. According to § 860.120(b), the reclassification of any device within a generic type of device causes the reclassification of all substantially equivalent devices within that generic type. Accordingly, a petition for the reclassification of a specific device will be considered a petition for reclassification of all substantially equivalent devices within the same generic type. The petitioner has not provided any evidence to reclassify their own device or the generic cutaneous electrode device category.

FDA believes that the petition lacks sufficient valid scientific evidence to allow the agency to determine that general controls would provide reasonable assurance of the safety and effectiveness of the cutaneous electrode for its intended use. Therefore, the cutaneous electrode shall be retained in class II.

VII. References

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

1. Petition from Scientific Laboratory Products LTD., for the reclassification of the electroencephalogram electrode device, dated May 16, 2005.

Dated: June 25, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–12882 Filed 7–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0233]

Draft Guidance for Industry on Integrated Summaries of Effectiveness and Safety: Location Within the Common Technical Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Integrated Summaries of Effectiveness and Safety: Location Within the Common Technical Document.'' Since FDA began accepting new drug application (NDA) and biologics license application (BLA) submissions in the common technical document (CTD) format, there has been much confusion regarding where within the CTD to include an integrated summary of effectiveness (ISE) and integrated summary of safety (ISS), both of which are required components of an NDA submission and recommended components of a BLA submission. This guidance informs applicants on where to place the ISE and ISS in the CTD. This guidance addresses specific FDA requirements not discussed in the ICH guidance for industry M4E: The CTD—Efficacy. This guidance is intended to improve application quality and consistency.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the

final version of the guidance, submit written or electronic comments on the draft guidance by September 4, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The guidance may also be obtained from the Center for Biologics Evaluation and Research by mail by calling 1–800–835–4709 or 301–827–1800. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Howard Chazin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6470, Silver Spring, MD 20993–0002, 301–796–0700; or Leonard Wilson, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Integrated Summaries of Effectiveness and Safety: Location Within the Common Technical Document.'' This guidance is intended for applicants submitting an NDA or BLA in the CTD or electronic common technical document (eCTD) format. Since FDA adopted the CTD, a standard way to organize a marketing or licensing application, there has been much confusion regarding where to place an ISE and ISS within the CTD. The ISE and ISS are unique requirements of the United States and are not addressed fully by ICH M4E.

The pertinent Federal regulations that require an ISE and an ISS for NDAs are §§ 314.50(d)(5)(v) and 314.50(d)(5)(vi)(a), respectively (21 CFR 314.50(d)(5)(v) and 314.50(d)(5)(vi)(a)). Although there are no corresponding regulations requiring an ISE or ISS for BLAs, applicants are encouraged to provide these analyses.

A common problem with the way many of the CTD-formatted applications are submitted is that the applicants incorrectly assume that the clinical summaries in Module 2 satisfy the regulatory requirement for the ISE and ISS. This assumption can result in a determination by FDA that an application is incomplete. The ISE and ISS are detailed integrated analyses of all relevant data from the clinical study reports, not summaries, despite their names. FDA considers the ISE and ISS critical components of the clinical efficacy and safety portions of a marketing or licensing application. Therefore, the ISE and ISS are required in applications submitted to the FDA in accordance with the regulations (§§ 314.50(d)(5)(v) and 314.50(d)(5)(vi)(a)). This guidance focuses on where to place ISE and ISS documents within the structure of the CTD or eCTD.

When finalized, this guidance will update, in the guidance on the format and content of the clinical and statistical sections of an application, the part of sections II.G and H that relates to placement of the ISE and ISS.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the location for an ISE and ISS within the CTD. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: June 22, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–12792 Filed 7–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0197]

Medical Devices; General Hospital and Personal Use Devices; Classification of the Filtering Facepiece Respirator for Use by the General Public in Public Health Medical Emergencies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Filtering Facepiece Respirator for Use by the General Public in Public Health Medical Emergencies.'' This guidance document describes a means by which filtering facepiece respirators for use by the general public in public health medical emergencies may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify the filtering facepiece respirator for use by the general public in public health medical emergencies into class II (special controls). This guidance document is immediately in effect as a special control for the filtering facepiece respirator for use by the general public in public health medical emergencies, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance document are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Class II Special Controls Guidance Document: Filtering Facepiece Respirator for Use by the General Public in Public Health Medical Emergencies'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to

assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Sheila Murphey, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3700.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the filtering facepiece respirator for use by the general public in public health medical emergencies into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as a special control for the filtering facepiece respirator for use by the general public in public health medical emergencies. An additional special control is established in 21 CFR 880.6260. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Thus, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (§ 10.115). The guidance represents the agency's current thinking on special controls for the filtering facepiece respirator for use by the general public in public health medical emergencies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Class II Special Controls Guidance Document: Filtering Facepiece Respirator for Use by the General Public in Public Health Medical Emergencies,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1626 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations and in NIOSH regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB Control No. 0910–0120; the collections of information in 21 CFR part 801 have been approved under OMB Control No. 0910–0485; and the collections of information in 42 CFR part 84 (relating to NIOSH certification) have been approved under OMB Control No. 0920–0109. In addition, FDA concludes that the labeling statement in section 10.A of the guidance does not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995. Rather, this labeling statement is ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 22, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–12790 Filed 7–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0234]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Tissue Adhesive for the Topical Approximation of Skin; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: Tissue Adhesive for the Topical Approximation of Skin.'' This draft guidance document describes a means by which the tissue adhesive for the topical approximation of skin may comply with the requirement of

special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify tissue adhesive for the topical approximation of skin from class III into class II (special controls). This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by September 4, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Class II Special Controls Guidance Document: Tissue Adhesive for the Topical Approximation of Skin'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: George J. Mattamal, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3619.

SUPPLEMENTARY INFORMATION:

I. Background

Tissue adhesive for the topical approximation of skin devices are intended for topical closure of surgical incisions, including laparoscopic incisions, and simple traumatic lacerations that have easily approximated skin edges. Tissue adhesives for topical approximation of skin may be used in conjunction with, but not in place of, deep dermal stitches. This device is currently in class III and subject to premarket approval requirements (section 515 of the Federal Food, Drug, and Cosmetic Act (act); 21 U.S.C. 360e).

On August 25, 2006, at a public meeting of FDA's General and Plastic Surgery Devices Panel (the Panel), the Panel unanimously recommended that the tissue adhesive for the topical approximation of skin device be reclassified from class III into class II and recommended that a guidance document, which the Panel thought should include several voluntary consensus standards, be the special control for the device. FDA considered the Panel's recommendations and, elsewhere in this issue of the **Federal Register**, is proposing to reclassify the tissue adhesive for the topical approximation of skin device into class II. If this reclassification rule is finalized, FDA intends that this guidance document will serve as the special control for this device.

Following the effective date of any final reclassification rule based on this proposal, any firm submitting a premarket notification (510(k)) for a tissue adhesive for the topical approximation of skin device would need to address the issues covered in the special controls guidance document. However, the firm need only show that its device meets the recommendations of the guidance document or in some other way provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, if finalized, will represent the agency's current thinking on tissue adhesive for the topical approximation of skin devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''Class II Special Controls Guidance Document: Tissue Adhesive for the Topical Approximation of Skin,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number (1630) to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, Subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 22, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–12795 Filed 7–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Form I–590, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–590, Registration for Classification as Refugee; OMB Control Number 1615–0068.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 2, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail add the OMB Control Number 1615–0068 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–590. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information collection provides a uniform method for applicants to apply for refugee status and contains the information needed in order to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main*. We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: June 27, 2007.

Richard A. Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–12834 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5119–N–02]

Notice of Proposed Extension of a Currently Approved Information Collection: Comment Request; Housing Discrimination Information Form HUD–903.1, HUD 903.1A, HUD–903–1B, HUD–903.1F, HUD–903.1KOR, HUD–903.1C, HUD–903.1CAM, HUD–903.1RUS

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed extension of the currently approved information collection requirement concerning Housing Discrimination Information Forms HUD 903.1, HUD 903.1A, HUD–903–1B, HUD–903.1F, HUD–903.1KOR, HUD–903.1C, HUD–903.1CAM, and HUD–903.1RUS will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD will also solicit public comments on the subject proposal.

DATES: *Comments Due Date:* September 4, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to Juanina B. Harris, Administrative Support Specialist, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 5124, Washington, DC 20410–2000; telephone: (202) 402–6979.

FOR FURTHER INFORMATION CONTACT: Lynn Grosso, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 5226, Washington, DC 20410–2000; telephone: (202) 402–5361 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY/ASCII by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD is proposing this extension of a currently approved information collection to the OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed extension of the collection of information regarding alleged discriminatory housing practices under the Fair Housing Act (Act) (42 U.S.C. 3601 *et seq.*). The Act prohibits discrimination in the sale, rental, occupancy, advertising, and insuring of residential dwellings, and in residential real estate-related transactions, based on race, color, religion, sex, handicap (disability), familial status, or national origin.

Any person who claims to have been injured by a discriminatory housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice

occurred or terminated. Form HUD–903.1 was developed in order to promote consistency in the documents that, by statute, must be provided to persons against whom complaints are filed, and for the convenience of the general public. Section 103.25 of HUD's Fair Housing Act regulation describes the information that must be included in each complaint filed with HUD. For purposes of meeting the Act's one-year time limitation for filing complaints with HUD, complaints need not be initially submitted on the Form that HUD provides. Housing Discrimination Information Form HUD–903.1 (English language), HUD–903.1A (Spanish language), HUD–903–1B (Chinese language), HUD–903.1F (Vietnamese language), HUD–903.1KOR (Korean language), HUD–903.1C (Arabic language), HUD–903.1CAM (Cambodian language), and HUD–903.1RUS (Russian language) may be submitted to HUD by mail, in person, by facsimile, or via the Internet to HUD's Office of Fair Housing and Equal Opportunity (FHEO). FHEO staff uses the information provided on the Form to verify HUD's authority to investigate the aggrieved person's allegations under the Act.

Notice of Submission of Proposed Extension of Information Collection to OMB

Title of Proposal: Housing Discrimination Information Form.

Office: Fair Housing and Equal Opportunity, HUD.

OMB Control Number: 2529–0011.

Description of the need for the information and proposed use: HUD uses the Housing Discrimination Information Form HUD–903.1 (Form) to collect pertinent information from persons wishing to file housing discrimination complaints with HUD under the Fair Housing Act (Act). The Act makes it unlawful to discriminate in the sale, rental, occupancy, advertising, or insuring of residential dwellings; or to discriminate in residential real estate-related transactions, based on race, color, religion, sex, handicap (disability), familial status, or national origin.

Any person who claims to have been injured by a discriminatory housing practice, or any person who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurs or terminates. The Form promotes consistency in the collection of information necessary to contact persons who file housing discrimination complaints with HUD. It also aids in the collection of information necessary for initial assessments of HUD's authority to investigate alleged discriminatory housing practices under the Act.

This information may subsequently be provided to persons against whom complaints are filed (''respondents''), as required under section 810(a)(1)(B)(ii) of the Act.

Agency form numbers, if applicable: Form HUD–903.1 (English), Form HUD–903.1A (Spanish), Form HUD–903–1B (Chinese), Form HUD–903.1F (Vietnamese), Form HUD–903.1K (Korean), Form HUD–903.1AR (Arabic), Form HUD–903.1CAM (Cambodian), and Form HUD–903.1R (Russian).

Members of affected public: Individuals or households; businesses or other for-profit, not-for-profit institutions; State, Local, or Tribal Governments.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of responses: During FY 2006, HUD staff received approximately 18,824 information submissions from persons wishing to file housing discrimination complaints with HUD. Telephone contacts accounted for 9,655 of this total. The remaining 9,169 complaint submissions were transmitted to HUD by mail, in-person, and via the Internet. HUD estimates that an aggrieved person requires approximately 45 minutes to complete the HUD 903.1 Form. The Form is completed once by each aggrieved person. Therefore, the total number of annual burden hours for this Form is 6,877 hours.

9,169 × 1 (frequency) × .45 minutes (.75 hrs.) = 6,877 (6,876.75) hours.

Annualized cost burden to complainants: HUD does not provide postage-paid mailers for this information collection. Accordingly, persons who choose to submit this Form to HUD by mail must pay the prevailing cost of First Class Postage. As of the date of this Notice, the annualized cost burden per person, based on a one-time submission of this Form to HUD via First Class Postage, is Forty-One Cents ($0.41) per person. During FY 2006, FHEO staff received approximately 6,897 submissions of potential complaint information by mail. Based on this number, HUD estimates that the total annualized cost burden for aggrieved persons who submit this Form to HUD by mail is $2,815.47.

Aggrieved persons also may submit the Form to HUD in person, by facsimile, or electronically via the Internet.

Status of the proposed information collection: Renewal of a currently approved collection of pertinent information from persons wishing to file Fair Housing Act complaints with HUD.

Authority: The Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35, as amended].

Dated: June 26, 2007.

Lynn Grosso,

Director, Office of Enforcement, FHEO.

[FR Doc. E7–12892 Filed 7–2–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL, WYW164812, WYW172388, WYW172685, WYW173408]

Notice of Intent (NOI) To Prepare an Environmental Impact Statement (EIS) and Notice of Public Meeting on Four Federal Coal Lease Applications in the Decertified Powder River Federal Coal Production Region, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and notice of public meeting.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Casper Field Office announces its intent to prepare one EIS on the potential impacts of leasing four tracts of Federal coal. The EIS will be called the Wright Area Coal EIS. Under the provisions of 43 Code of Federal Regulations (CFR) 3425.1, the BLM received the following applications to lease maintenance tracts (a maintenance tract is a parcel of land containing Federal coal reserves that can be leased to maintain production at an existing mine) in Campbell County, Wyoming:

- Ark Land Company applied for a maintenance coal lease for approximately 4,590.19 acres (approximately 588.2 million tons of coal) in a maintenance tract of Federal coal adjacent to the Black Thunder Mine. The tract, which is referred to as the Hilight Field Tract, has been assigned case number WYW164812.
- Ark Land Company applied for a maintenance coal lease for approximately 2,370.52 acres (approximately 428 million tons of coal) in a maintenance tract of Federal coal adjacent to the Black Thunder Mine. The tract, which is referred to as the West Hilight Field Tract, has been assigned case number WYW172388.

• Jacobs Ranch Coal Company applied for a maintenance coal lease for approximately 5,944.37 acres (approximately 956 million tons of coal) in a maintenance tract of Federal coal adjacent to the Jacobs Ranch Mine. The tract, which is referred to as the West Jacobs Ranch Tract, has been assigned case number WYW172685.

• BTU Western Resources, Inc. applied for a maintenance coal lease for approximately 5,116.65 acres (approximately 598 million tons of coal) in a maintenance tract of Federal coal adjacent to the North Antelope Rochelle Mine. The tract, which is referred to as the Porcupine Tract, has been assigned case number WYW173408.

Consistent with Federal regulations under NEPA and the Mineral Leasing Act of 1920, as amended, the BLM must prepare an environmental analysis prior to holding a competitive Federal coal lease sale. The Powder River Regional Coal Team recommended that BLM process these four coal lease applications after they reviewed the Hilight Field, West Hilight Field, and West Jacobs Ranch Tracts at a public meeting held on April 19, 2006, in Casper, Wyoming, and the Porcupine Tract at a public meeting held on January 18, 2007, in Casper, Wyoming.

DATES: This notice initiates the public scoping process. To provide the public with an opportunity to review the proposal and gain understanding of the coal leasing process, the BLM will host a meeting on July 24, 2007, at 7 p.m. at the Clarion Hotel and Convention Center, 2009 South Douglas Highway, in Gillette, Wyoming. At the meeting, the public is invited to submit comments and resource information, plus identify issues or concerns to be considered in the coal leasing process. The BLM can best use public input if comments and resource information are submitted by August 31, 2007. The BLM will announce future public meetings and other opportunities to submit comments on this project at least 15 days prior to the events. Announcements will be made through local news media and the Casper Field Office's Web site, which is: *http://www.wy.blm.gov/cfo/.*

FOR FURTHER INFORMATION CONTACT: Sarah Bucklin or Mike Karbs, BLM Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604. Ms. Bucklin or Mr. Karbs may also be reached at (307) 261–7600.

ADDRESSES: Please submit written comments or concerns to the BLM Casper Field Office, Attn: Sarah Bucklin, 2987 Prospector Drive, Casper, Wyoming 82604. Written comments or resource information may also be hand-delivered to the BLM Casper Field Office or sent by facsimile to the attention of Sarah Bucklin at (307) 261–7587. Comments may be sent electronically to *casper_wymail@blm.gov*. Please include ''Wright Area Coal EIS/Sarah Bucklin'' in the subject line.

Members of the public may examine documents pertinent to this proposal by visiting the Casper Field Office during its business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Ark Land Company submitted an application on October 7, 2005, to lease a maintenance tract of Federal coal adjacent to the company's Black Thunder Mine in Campbell County, Wyoming, which is operated by Thunder Basin Coal Company. The tract is known as the Hilight Field Tract. The Hilight Field Tract includes approximately 588.2 million tons of Federal coal reserves underlying the following lands in Campbell County, Wyoming:

T. 44 N., R. 70 W., 6th PM, Wyoming
Section 19: Lots 5 through 20;
T. 43 N., R.71 W., 6th PM, Wyoming
Section 23: Lots 1 through 16; Section 26: Lots 1 through 16; Section 35: Lots 1 through 16;
T. 44 N., R. 71 W., 6th PM, Wyoming
Section 23: Lots 1 through 16; Section 24: Lots 1 through 16; Section 26: Lots 1 through 16.

Containing 4,590.19 acres, more or less.

Ark Land Company proposes to mine the tract as a part of the Black Thunder Mine. At the 2006 mining rate of 92.2 million tons per year, the coal included in the Hilight Field Tract would extend the life of the Black Thunder Mine by as many as six years.

Ark Land Company submitted an application on January 17, 2006, to lease a maintenance tract of Federal coal adjacent to the company's Black Thunder Mine in Campbell County, Wyoming, which is operated by Thunder Basin Coal Company. The tract is known as the West Hilight Field Tract.

The West Hilight Field Tract includes approximately 428 million tons of Federal coal underlying the following lands in Campbell County, Wyoming:

T. 43 N., R. 71 W., 6th PM, Wyoming Section 8: Lots 1, 2, 7 through 16; Section 9: Lots 1 through 16; Section 10: Lots 3 through 6, 11 through 14; Section 17: Lots 1 through 16; Section 20: Lots 1 through 4 Section 21: Lots 3, 4.

Containing 2,370.52 acres, more or less.

Thunder Basin Coal Company proposes to mine the tract as a part of the Black Thunder Mine. At the 2006 mining rate of 92.2 million tons per year, the coal included in the West Hilight Field Tract would extend the life of the Black Thunder Mine by as many as four years.

Jacobs Ranch Coal Company submitted an application on March 24, 2006, to lease a maintenance tract of Federal coal adjacent to the company's Jacobs Ranch Mine in Campbell County, Wyoming. The tract is known as the West Jacobs Ranch Tract. The West Jacobs Ranch Tract includes approximately 956 million tons of Federal coal underlying the following lands in Campbell County, Wyoming:

T. 43 N., R. 71 W., 6th PM, Wyoming
Section 3: Lots 2, 5 through 19; Section 4: Lots 5 through 20; Section 5: Lots 5 through 20;
T. 44 N., R. 71 W., 6th PM, Wyoming
Section 22: Lots 9 through 16; Section 27: Lot 1 through 16; Section 28: Lots 1 through 3, 5 through 16; Section 29: Lots 5 through 15, SE¼SE¼; Section 32: Lots 1 through 15, SW¼SE¼; Section 33: Lots 1 through 15, NE¼SE¼; Section 34: Lots 1 through 16.

Containing 5,944.37 acres, more or less.

Jacobs Ranch Coal Company proposes to mine the tract as a part of the Jacobs Ranch Mine. At the 2006 mining rate of 39.9 million tons per year, the coal included in the West Jacobs Ranch Tract would extend the life of the Jacobs Ranch Mine by as many as 23 years.

BTU Western Resources, Inc. submitted an application on September 29, 2006, to lease a maintenance tract of Federal coal adjacent to the company's North Antelope Rochelle Mine in Campbell County, Wyoming, which is operated by Powder River Coal, LLC. The tract is known as the Porcupine Tract.

The Porcupine Tract includes approximately 598 million tons of Federal coal underlying the following lands in Campbell County, Wyoming:

T. 41 N., R. 70 W., 6th PM, Wyoming
Section 7: Lots 17, 18; Section 18: Lots 6 through 11, 14 through 19;
T. 42 N., R. 70 W., 6th PM, Wyoming
Section 19: Lots 17 through 20; Section 20: Lots 13 through 16; Section 26: Lots 9 through 16; Section 27: Lots 9 through 16; Section 29: Lots 1 through 4; Section 30: Lots 5 through 8
T. 41 N., R. 71 W., 6th PM, Wyoming
Section 12: Lots 13 through 16; Section 13: Lots 1 through 16; Section 14: Lots 1, 8, 9, 16; Section 23: Lots 1, 8(N½); Section 24: Lots 2 through 4, 5(N½), 6(N½), 7(N½);
T. 42 N., R. 71 W., 6th PM, Wyoming
Section 22: Lots 13 through 16; Section 23: Lots 13 through 16; Section 24: Lots 13 through 16; Section 25: Lots 1 through 4; Section 26: Lots 1 through 6, 11 through 14; Section 27: Lots 1 through 16;

Section 35: Lots 3 through 6, 11 through 14.

Containing 5,116.65 acres, more or less.

BTU Western Resources, Inc. proposes to mine the tract as a part of the North Antelope Rochelle Mine. At the 2006 mining rate of 89.7 million tons per year, the coal included in the Porcupine Tract would extend the life of the North Antelope Rochelle by as many as six years.

Lands in the Hilight Field, West Hilight Field, and Porcupine Tracts contain Federal surface administered by the Forest Service and private surface estate which overlies the Federal coal. Lands in the West Jacobs Ranch Tract contain private surface estate which overlies the Federal coal.

The Black Thunder Mine, Jacobs Ranch Mine, and North Antelope Rochelle Mine are operating under approved mining permits from the Land Quality and Air Quality Divisions of the Wyoming Department of Environmental Quality. The USDA Forest Service and the Office of Surface Mining Reclamation and Enforcement (OSM) will be cooperating agencies in the preparation of the EIS. Before the tracts can be leased, the Forest Service must consent to leasing the portions of the tracts that are part of the Thunder Basin National Grassland. If the four tracts are leased to the applicants, the new leases must be incorporated into the existing mining and reclamation plans for the adjacent mines. Before the Federal coal in each tract can be mined, the Secretary of the Interior must approve the revised Mineral Leasing Act (MLA) mining plan for the mine in which each tract will be included. The OSM is the Federal agency that is responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the Secretary of the Interior. Other cooperating agencies may be identified during the scoping process.

The BLM will provide interested parties the opportunity to submit comments or relevant information or both. This information will help the BLM identify issues to be considered in preparing the Wright Area Coal EIS. Issues that have been identified in analyzing the impacts of previous Federal coal leasing actions in the Wyoming Powder River Basin (PRB) include the need for resolution of conflicts between existing and proposed oil and gas development and coal mining on the tracts proposed for coal leasing; potential impacts to big game herds and hunting; potential impacts to Greater sage-grouse; potential impacts to listed threatened and endangered species; potential health impacts related to blasting operations conducted by the mines to remove overburden and coal; the need to consider the cumulative impacts of coal leasing decisions combined with other existing and proposed development in the Wyoming PRB; and potential site-specific and cumulative impacts on air and water quality.

Your response is important and will be considered in the EIS process. If you do respond, we will keep you informed of the availability of environmental documents that address impacts that might occur from this proposal.

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.

Alan Rabinoff,

Acting State Director.

[FR Doc. E7–12889 Filed 7–2–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, July 30, 2007, from 8 a.m. to 5 p.m., local time. This will be a one day meeting.

ADDRESSES: The Advisory Board will meet at The Grove Hotel, 245 South Capitol Blvd., Boise, Idaho, 83702. The Grove's phone number is 208–333–8000.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business, July 25, 2007. See the **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. DeLorme at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, July 30, 2007 (8 a.m.–5 p.m.)

8 a.m. Call to Order & Introductions.
8:15 a.m. Old Business:
  Approval of February 2006 Minutes.
  Update Pending Litigation.
8:45 a.m. Program Updates:
  Gathers.
  Adoptions.
  Facilities.
  Forest Service Update.
Break (9:30 a.m.–9:45 a.m.)
9:45 a.m. Program Updates (continued):
  Program Accomplishments.
  BLM Response to Advisory Board Recommendations.
Lunch (11:45 a.m.–1 p.m.)
1 p.m. New Business.
Break (2:45 p.m.–3 p.m.)
3 p.m. Public Comments.
4 p.m. Board Recommendations.
4:45 p.m. Recap/Summary/Next Meeting/Date/Site.
5 p.m. Adjourn.

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in

the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on July 30, 2007, at the appropriate point in the agenda. This opportunity is anticipated to occur at 3 p.m., local time. Persons wishing to make statements should register with the BLM by noon on July 30, 2007, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *ramona_delorme@blm.gov*. Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: June 27, 2007.

Bud Cribley,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. E7–12800 Filed 7–2–07; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–449 and 731–TA–1118–1121 (Preliminary)]

Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary phase countervailing duty investigation and preliminary phase antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigation and commencement of preliminary phase countervailing duty investigation No. 701–TA–449 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(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 of light-walled rectangular pipe and tube, currently provided for in subheading 7306.61.50 of the Harmonized Tariff Schedule of the United States,[1] that are alleged to be subsidized by the Government of the People's Republic of China. The Commission also hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–1118–1121 (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, Korea, Mexico, and Turkey of light-walled rectangular pipe and tube, currently provided for in subheading 7306.61.50 of the Harmonized Tariff Schedule of the United States,[1] 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 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping and countervailing duty investigations in 45 days, or in this case by Monday, August 13, 2007. The Commission's views are due at Commerce within five business days thereafter, or by Monday, August 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:* June 27, 2007.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (*russell.duncan@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 these investigations 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 June 27, 2007, by the following firms: Allied Tube and Conduit, Harvey, IL; Atlas Tube, Plymouth, MI; California Steel and Tube, City of Industry, CA; Ex-L-Tube, Kansas City, MO; Hannibal Industries, Los Angeles, CA; Leavitt Tube Company LLC, Chicago, IL; Maruichi American Corporation, Sante Fe Springs, CA; Searing Industries, Rancho Cucamonga, CA; Southland Tube, Birmingham, AL; Vest Inc., Los Angeles, CA; Welded Tube, Concord,

[1] Prior to February 3, 2007, the merchandise subject to these investigations was properly classified under subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States.

Ontario (Canada); and Western Tube and Conduit, Long Beach, CA.

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 and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to 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 the 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 Wednesday, July 18, 2007, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Russell Duncan (*russell.duncan@usitc.gov*) not later than Monday, July 16, 2007, to arrange for their appearance. Parties in support of the imposition of countervailing and of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour each 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 Monday, July 23, 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 the 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: June 28, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–12846 Filed 7–2–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on March 29, 2007, Applied Science Labs, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import these controlled substances for the manufacture of reference standards.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 2, 2007.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C 958(a), 21 U.S.C 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12950 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 17, 2007, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Codeine (9050), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance as an intermediate to other opiates and supply as API to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 4, 2007.

Dated: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12952 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 19, 2007, Dade Behring Inc., 100 GBC Drive, MS514, Post Office Box 6101, Attention: RA/QS, Newark, Delaware 19714–6101, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Benzoylecgonine (9180)	II
Morphine (9300)	II

The company plans to produce the listed controlled substances in bulk to be used in the manufacture of reagents and drug calibrator/controls for DEA exempt products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 4, 2007.

Dated: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12949 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated November 21, 2006 and published in the **Federal Register** on December 1, 2006, (71 FR 69590), Hospira, Inc., 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Remifentanil (9739), a basic class of controlled substance listed in schedule II.

The company plans to import Remifentanil for use in dosage form manufacturing.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Hospira, Inc to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Hospira, 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. 952(a) and section 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12953 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on February 12, 2007, Johnson Matthey Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Coca Leaves (9040), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to manufacture bulk Cocaine HCL for sale to finished dosage form manufacturers.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21

CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12941 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 13, 2007, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, 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
Cocaine (9041)	II
Ecgonine (9180)	II

The company plans on producing cocaine for sale to its customers, who are final dosage manufacturers. The ecgonine is formed during the manufacturing process for cocaine.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administrator, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537; or any being sent via express mail should be sent to Drug Enforcement Administration, Federal Register Representative (ODL); 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 4, 2007.

Dated: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12947 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on February 2, 2007, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedules II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Methaqualone (2565)	I
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
2,5–Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5–Trimethoxyamphetamine (7390).	I
4–Bromo-2,5-dimethoxyamphetamine (7391).	I
4–Bromo-2,5-dimethoxyphenethylamine (7392).	I
4–Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5–Dimethoxyamphetamine (7396).	I
2,5–Dimethoxy-4-ethylamphetamine (7399).	I
3,4–Methylenedioxyamphetamine (7400).	I
3,4–Methylenedioxy-N-ethylamphetamine (7404).	I
3,4–Methylenedioxymethamphetamine (7405).	I
4–Methoxyamphetamine (7411)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II
Sufentanil (9740)	II

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C 952 (a)(2)(B) may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537; or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 2, 2007.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C 958(a); 21 U.S.C 823(a); and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12954 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 15, 2007, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal 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
Gamma hydroxybutyric acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The company plans to manufacture bulk products for finished dosage units and distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 4, 2007.

Dated: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12946 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 8, 2007, Penick Corporation, 33 Industrial Road, Pennsville, New Jersey 08070, made application by renewal 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
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances as bulk controlled substance intermediates for distribution to its customers for further manufacture or to manufacture pharmaceutical dosage forms.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 4, 2007.

Dated: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12945 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 19, 2007, and published in the **Federal Register** on March 27, 2007, (72 FR 14297), Roche Diagnostics Operations, Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

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 Roche Diagnostics Operations, Inc., to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Operations, 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: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12951 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 19, 2007, and published in the **Federal Register** on March 27, 2007, (72 FR 14297), Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal 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
Cocaine (9041)	II
Ecgonine (9180)	II

The company plans to manufacture in bulk for distribution to its customers.

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 Stepan Company to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Stepan Company 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: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12942 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Michael F. Myers, M.D.; Revocation of Registration

On January 10, 2007, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Michael F. Myers, M.D. (Respondent) of Woodruff, South Carolina. The Order to Show Cause proposed the revocation of Respondent's DEA Certificate of Registration, BM5526009, as a practitioner, on the ground that Respondent's continued registration would be inconsistent with the public interest. Show Cause Order at 1 (citing 21 U.S.C. 824(a)(4)). The Immediate Suspension was imposed based on my preliminary finding that Respondent had ''diverted large quantities of controlled substances,'' and that there was a ''substantial likelihood that [he] would continue to divert controlled substances to drug abusers.'' *Id.* at 1–2. 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.'' *Id.*

The Show Cause Order alleged that Respondent ''frequently grew marijuana in [his] residence,'' that he ''regularly purchased large quantities of marijuana,'' that ''he smoked marijuana throughout the day on a daily basis,'' and that he ''regularly distributed marijuana from [his] residence.'' *Id.* at 2. The Show Cause Order further alleged that Respondent ''regularly exchanged controlled substance prescriptions for marijuana and other prescription controlled substances.'' *Id.* The Show Cause Order also alleged that Respondent ''routinely sold controlled substance prescriptions and large quantities of marijuana to known drug peddlers.'' *Id.*

More specifically, the Show Cause Order alleged that Respondent had distributed marijuana on a continuing basis in quantities ranging from ''small user amounts'' to as much as five pounds. *Id.* The Show Cause Order also alleged that Respondent had prescribed Adderall, a schedule II controlled substance, and hydrocodone, a schedule III controlled substance, for a person without ''performing any tests or formulat[ing] a diagnosis during the initial visit,'' and he had ''continued to authorize prescriptions for [these] controlled substances without an examination or further care.'' *Id.* Relatedly, the Show Cause Order alleged that Respondent subsequently ''received some of the hydrocodone from the prescriptions [he] wrote for this'' person. *Id.*

Next, the Show Cause Order alleged that Respondent had ''prescribe[d] controlled substances to a person [he] knew was addicted to [them],'' and that Respondent also ''knew [that] this person was selling the filled prescriptions to support [his] addiction.'' *Id.* The Show Cause Order further alleged that Respondent had engaged in a scheme to provide controlled prescription drugs to drug dealers. *Id.* According to the Show Cause Order, the dealers' runners would go to Respondent's residence to receive the prescriptions; after the prescriptions were filled, the dealer would provide Respondent with half of the drugs and sell the other half to drug abusers. *Id.* Finally, the Show Cause Order alleged that on May 10, 2006, law enforcement officers executed a search warrant at Respondent's home during which they found marijuana, pills which appeared to be prescription controlled substances, and assorted drug-related paraphernalia. *Id.*

On January 12, 2007, DEA investigators personally served the Show Cause Order on Respondent. 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 contained in the investigative file and make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BM5526009, as a practitioner, which authorizes him to dispense controlled substances in schedules II through V. Respondent's registration was last renewed on February 15, 2006, and expires on January 31, 2009.

In July 1996, Respondent was disciplined by the State Board of Medical Examiners of South Carolina, which found that he had written prescriptions for Lortab 7.5 (hydrocodone), and Didrex (benzphetamine),[1] using the names of other patients, which he then had filled and diverted to his personal use. Respondent admitted to the State's allegation. The Board fined him $7500, issued a reprimand, and imposed various conditions on his medical license including random drug testing. On October 17, 2000, however, the Board removed the conditions.

According to the investigative file, the Board's conditions appeared to have had only a limited impact on Respondent. Beginning in the summer of 1999, while the Board's conditions were still in effect, Respondent purchased marijuana from a person who

[1] Both drugs are schedule III controlled substances. *See* 21 CFR 1308.13.

lived with him. During an interview, this person related that from 1999 until 2003, he had sold Respondent approximately 100 pounds of marijuana. The person further stated to investigators that he regularly traded marijuana for Lortab and Xanax prescriptions issued by Respondent. More specifically, Respondent would provide this person with prescriptions for 240 Lortab and 120 Xanax at the beginning of each month; Respondent would also write identical prescriptions in the name of the person's girlfriend at the end of each month. The person also told investigators that he could make more money selling the Lortab and Xanax than he could selling marijuana. Finally, the person related that Respondent gave him the combination to a safe that was located in Respondent's home and instructed him to place the marijuana in the safe.

Investigators also interviewed a person who related that his father was the number one seller of OxyContin in the Williamston, South Carolina area. According to this person, his father was addicted to OxyContin, which Respondent had prescribed to him. This person stated that Respondent would write controlled substance prescriptions in other persons' names, and that his father would send a ''runner'' to Respondent's practice to pick up the prescriptions. The person further advised that after the prescriptions were filled, his father would give half of the drugs to the runner and swap the remaining half with Respondent for marijuana. The person also related that he had been present during a fall 2004 incident in which his father had gone to Respondent's home and obtained 2.5 pounds of marijuana. Moreover, during this incident, Respondent showed this person ten marijuana plants that he was growing in his basement. This person also told investigators of another fall 2004 incident in which he accompanied his father to Respondent's home as the latter retrieved one pound of marijuana from the mailbox.

Finally, this person, who was being treated by Respondent for anxiety, related a late fall/early winter 2004 visit to Respondent's medical office. During the appointment, Respondent issued him prescriptions for both Xanax and Lortab. The person related to investigators that he was surprised to receive the Lortab prescription. Shortly after leaving Respondent's office, the person was contacted by his father who asked for half of the Lortab. The person further told investigators that he believed that Respondent had told his father about the issuance of the Lortab prescription.

Subsequently, investigators interviewed the above person's brother, who corroborated his father's relationship with Respondent. Specifically, this person confirmed that for approximately five years, Respondent had provided his father with prescriptions for Lortab, Xanax, Roxicodone, Percocet and Oxycontin. The person stated that he had lived with his father from the year 2000 until 2003, during which time he observed his father sell large quantities of controlled substances to numerous individuals in the Williamston, South Carolina area. According to this person, his father would sell controlled substances to as many as twenty persons a day and made a significant amount of money doing so. The person further related that his father had both personally obtained controlled substance prescriptions from Respondent and also used a ''runner'' to obtain them.

The person also stated that he was present on approximately five to seven occasions during which his father purchased marijuana from Respondent. The person also told investigators that while he was between the ages of fifteen to eighteen, he had purchased marijuana approximately twenty times from Respondent's son at his residence, and that on some occasions, he personally witnessed Respondent hand the marijuana to his son, who then delivered it to him.

Investigators also interviewed a person who stated that he had sold marijuana for Respondent from the summer of 2004 through the summer of 2005. The person further related that from the time he first met Respondent in the year 2003 until the summer of 2005, he had observed approximately twenty-five to thirty pounds of marijuana at Respondent's home, scales used to weigh marijuana for resale, and a box of index cards which contained records of customers to whom Respondent had extended credit. The person also related that Respondent provided him with discounted marijuana as payment for his selling the drug on the latter's behalf, and that he had observed Respondent give another individual five to six pounds of the drug to sell.

This person also told investigators that anytime he was in Respondent's presence, Respondent would be smoking marijuana. The person also stated that he was present numerous times when Respondent came home for lunch and that Respondent would smoke marijuana before returning to work.

Investigators interviewed another person who related that between 1999 and the end of 2003, he had supplied Respondent with over one hundred pounds of marijuana. This person stated that during the last three to four months of 2003, he traveled to North Carolina every other week for the purpose of obtaining marijuana for Respondent. According to this person, prior to each trip, Respondent provided him with approximately $ 2000 to $ 3000 dollars, which was used to purchase three to four pounds of marijuana. Moreover, the person observed Respondent sell approximately twenty-five to thirty pounds of marijuana and that he was growing marijuana.

The person also told investigators that from the end of 2002 through the end of 2003, Respondent issued him and another person, prescriptions for 240 Lortab and 120 Xanax in exchange for one pound of marijuana. The person stated that after filling the prescriptions, he would sell the Lortab and Xanax on the street. Finally, this person related an incident in which he and Respondent had smoked marijuana prior to the latter's performing surgery on his girlfriend.

Investigators next interviewed the father of the two individuals whose statements are related above. This person stated that he had been abusing drugs most of his adult life, but it was not until Respondent gave him prescriptions for 150 Oxycontin (80 mg.) per month that he developed the worst addiction he had experienced in his life. According to this person, he became ''hooked'' on Oxycontin within six to eight months after Respondent first prescribed it for him, and began taking the drug intravenously. According to this person, Respondent also provided him with prescriptions for 240 Roxicodone tablets each month.

The person also told investigators that he had had numerous conversations with Respondent regarding his addiction to Oxycontin, that he had told Respondent that he was shooting up the drug, and that he told Respondent that he was selling the drug to support his habit. Respondent, however, never suggested taking him off of Oxycontin, or that he enter a treatment program.

The person further related that he and Respondent would supply each other with marijuana when the other's supply was low. The person stated that he had supplied Respondent with approximately ¼ pound to one pound of marijuana and that Respondent had supplied him with three to four pounds. The person also told investigators that he had observed multiple pounds of marijuana while at Respondent's residence.

On May 10, 2006, law enforcement authorities executed a search warrant at Respondent's residence. During the search, the authorities found marijuana roaches, marijuana seeds, two scales, and various paraphernalia including rolling papers, hemostats, pipes, and rollers.

Thereafter, investigators interviewed an additional acquaintance of Respondent, who had met him through the latter's son. This person corroborated the information regarding Respondent's dealings in marijuana including the name of his primary supplier, his index card system for recording transactions, and his personal use. The person also stated that Respondent had given him marijuana to try on five to ten occasions, and that between 2003 and the end of 2004, he would obtain marijuana from a safe in Respondent's home approximately one to two times per week.

The person further related that towards the end of 2004, he had told Respondent that he had knee pain and suspected that he suffered from Attention Deficit Disorder. Respondent told him to come to his office. While Respondent tested his reflexes during the visit, he conducted no further tests and gave no diagnosis. Nonetheless, Respondent prescribed Adderall, a schedule II controlled substance, and hydrocodone. Shortly after filling the initial prescription, the person visited Respondent's home and smoked marijuana. During this visit, Respondent asked the person to give him some of his hydrocodone. Moreover, upon filling a second prescription for hydrocodone, Respondent again asked the person to give him the tablets that he did not need.

Respondent issued this person prescriptions for hydrocodone on a monthly basis between January 2005 and May 2006. The person admitted to investigators that he took very few hydrocodone tablets and regularly provided Respondent with sixty of them. The person further admitted to selling the majority of the remaining tablets to his mother. The person also stated that following Respondent's arrest, Respondent told him not to tell the authorities that he was giving hydrocodone to Respondent.

On December 12, 2006, a federal grand jury indicted Respondent, charging him with conspiring to possess with the intent to distribute, and to distribute, marijuana, see 21 U.S.C. 846; and maintaining a residence for the purpose of distributing and using marijuana. *See id.* section 856(a)(1). The grand jury also indicted Respondent on twelve counts of knowingly and intentionally distributing Lortab (hydrocodone), and three counts of knowingly and intentionally distributing Xanax (alprazolam), outside of the usual course of medical practice and for other than a legitimate medical purpose, to an individual identified only as person A. *See id.* sections 841(a)(1), 841(b)(1)(D), & 841(b)(2). Finally, the grand jury indicted Respondent on thirteen additional counts of knowingly and intentionally distributing Lortab, outside of the usual course of medical practice and for other than a legitimate medical purpose, to an individual identified only as person B. *See* 21 U.S.C. 841(a)(1) & 841(b)(1)(D).

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. *Id.* ''[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).

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). Here, analyzing the evidence under factors two and four establishes that Respondent has committed acts ''inconsistent with the public interest,'' and posed ''an imminent danger to public health or safety,'' which justified the immediate suspension of his registration. Relatedly, the record also demonstrates that Respondent's continued registration would be inconsistent with the public interest and that his registration should be revoked.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance with Applicable Laws

The evidence in this case overwhelmingly establishes that Respondent has engaged in the criminal distribution of controlled substances in violation of 21 U.S.C. 841. More specifically, the evidence shows that Respondent was a marijuana dealer/distributor and had engaged in this criminal conduct for a period of at least five years. Moreover, the evidence establishes that Respondent engaged in the illegal manufacturing of marijuana. *Id.*

Furthermore, Respondent used his DEA registration for criminal purposes. More specifically, the evidence shows that Respondent issued prescriptions for controlled substances which included OxyContin and Percocet (schedule II), Lortab (hydrocodone, schedule III), and Xanax (schedule IV), which he then traded for marijuana.

Respondent also issued prescriptions without a legitimate medical purpose. *See* 21 CFR 1306.04(a) (''A prescription for a controlled substance * * * must be issued for a legitimate medical purpose by an individual acting in the usual course of his professional practice.''). Relatedly, Respondent issued prescriptions in the names of other ''patients'' so that he or his associates would then be able to acquire the drugs. Notably, Respondent had previously been sanctioned by the State Board for the same conduct. Finally, the record establishes that Respondent continued to prescribe Oxycontin to a ''patient,'' notwithstanding that the ''patient'' had told him: (1) That he was addicted to the drug, (2) that he was taking the drug intravenously, and (3) that he was selling the drug to support his habit.

It is indisputable that Respondent's criminal conduct created an ''imminent danger to public health or safety,'' 21 U.S.C. 824(d), and was ''inconsistent with the public interest.'' *Id.* 824(a)(4). I therefore hold that Respondent's continued registration would be ''inconsistent with the public interest''

and that his registration should be revoked. *Id.* Moreover, for the same reasons that 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.

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 of Registration, BM5526009, issued to Michael F. Myers, M.D., be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective immediately.

Dated: June 22, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–12771 Filed 7–2–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07–7]

Southwood Pharmaceuticals, Inc.; Revocation of Registration

On November 30, 2006, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Southwood Pharmaceuticals, Inc. (Respondent), of Lake Forest, California. The Order immediately suspended Respondent's DEA Certificate of Registration, RS0204898, based on my preliminary finding that its continued registration ''constitute[s] an imminent danger to the public health and safety because of the substantial likelihood that Southwood [would] continue to supply pharmacies that divert large quantities of controlled substances.'' Show Cause Order at 3. The Order also sought the revocation of Respondent's registration on the ground that its continued registration is ''inconsistent with the public interest.'' Id. at 1 (citing 21 U.S.C. 823(d) & 824(a)(4)).

The Show Cause Order alleged that between November 2005 and August 2006, Respondent's sales to pharmacies of hydrocodone products ''increased from approximately 7,000 dosage units per month to approximately 3,000,000 dosage units per month,'' and that the increase was ''directly attributable to [its] supplying controlled substances to pharmacies that it knew or should have known were engaged in the widespread diversion of controlled substances.'' Id. The Show Cause Order alleged that several of Respondent's customers were distributing ''large amounts of hydrocodone based on orders placed by customers using various Internet Web sites.'' Id.

The Show Cause Order specifically alleged that ''from December 12, 2005, to August 31, 2006, [Respondent] distributed approximately 8,671,000 dosage units of hydrocodone products to Medipharm-Rx, Inc.,'' and did so ''under circumstances that clearly indicated that Medipharm was engaged in the diversion of controlled substances.'' Id. at 1–2. The Show Cause Order further alleged that these circumstances included that ''ninety-nine percent of Medipharm's business [with Respondent] involved the sale of controlled substances,'' that Medipharm was owned by an individual who also owned a Web site ''that solicit[ed] orders for controlled substances'' and used practitioners who issued prescriptions outside of ''the usual course of professional practice,'' and that ''Medipharm's orders were of an unusual size, deviated substantially from a normal pattern, and were of an unusual frequency.'' Id. at 2.

Relatedly, the Show Cause Order alleged that Respondent had ''also supplied controlled substances under similarly suspicious circumstances'' to fourteen other pharmacies. Id. The Show Cause Order thus alleged that Respondent ''repeatedly supplied excessive quantities of hydrocodone to pharmacies that it knew or should have known were diverting hydrocodone.'' Id. Moreover, the Show Cause Order alleged that notwithstanding ''the unusual size and frequency of the orders placed by Medipharm and others, as well as the fact that the orders substantially deviated from the normal pattern of orders received by'' it, Respondent never reported any of the orders as suspicious. Id. at 2–3.

Next, the Show Cause Order alleged that on July 17, 2006, the Office of Diversion Control's E-Commerce Section held a conference call with Respondent's representatives to discuss ''the distribution of controlled substances to Internet pharmacies.'' Id. at 3. During the call, DEA officials allegedly presented Respondent with ''information on the characteristics of Internet pharmacies and the nature of their illegal activities.'' Id. DEA officials also allegedly discussed with Respondent such subjects as DEA's 2001 Guidance Document on the use of the Internet to prescribe controlled substances, the requirement for a valid prescription under federal law and existing professional standards, DEA's regulation requiring the reporting of suspicious orders, and the ''practices and ordering patterns of internet pharmacies.'' Id. The Show Cause Order further alleged that notwithstanding this information, in August 2006, Respondent proceeded to distribute large quantities of hydrocodone to five different internet pharmacies. Id. The Show Cause Order thus alleged that Respondent ''has failed to maintain effective controls against diversion and that [its] continued registration * * * would be inconsistent with the public interest.'' Id.

On December 6, 2006, the Show Cause Order was served on Respondent. ALJ Ex. 2. Thereafter, on December 29, 2006, Respondent, through its counsel, requested a hearing. ALJ Ex. 3. The matter was assigned to Administrative Law Judge (ALJ) Gail Randall, who conducted a hearing in Arlington, Virginia, from February 5 through February 8, 2007. At the hearing, both parties called witnesses and introduced documentary evidence. Following the hearing, both parties submitted briefs containing proposed findings of fact, conclusions of law, and argument.

On March 30, 2007, the ALJ issued her recommended decision (ALJ). In that decision, the ALJ concluded that DEA had proved that ''Respondent's continued registration to handle hydrocodone products would be against the public interest.'' ALJ at 61–62. The ALJ concluded, however, that Respondent ''has kept an open dialogue with the DEA and has attempted to come into compliance with the DEA's regulations.'' Id. at 62. While acknowledging ''the egregious quantities of hydrocodone products the Respondent irresponsibly sold to registered [i]nternet pharmacies during 2005 and 2006,'' the ALJ nonetheless ''conclude[d] that revocation of * * * Respondent's entire DEA registration is too severe a remedy.'' Id.

Continuing, the ALJ explained that ''the record contains no evidence of * * * Respondent's improper handling of any other controlled substances, especially in its sales of manufactured products to its practitioner customers.'' Id. Noting that Respondent had hired an ''experienced officer who will be making the final decisions concerning [its] compliance measures,'' and that this would provide ''an increased level of protection of the public interest,'' the ALJ recommended that Respondent's authority to handle hydrocodone products be revoked but that it retain its

authority to handle other controlled substances. Id. The ALJ further recommended that DEA monitor Respondent to ensure that it comply with both her proposed restrictions and Respondent's decision to cease distributing to Florida-based internet pharmacies. Id.

Thereafter, the Government filed exceptions. In its exceptions, the Government contended that the record established that Respondent had also distributed excessive quantities of other controlled substances included phentermine and alprazolam. See Gov. Exceptions at 2–9. The Government also contended that the ALJ's reliance on Respondent's hiring of a new Chief Operating Officer (COO) was misplaced because the company had, in fact, sold increasing amounts of controlled substances to ''rogue [i]nternet pharmacies'' for several months thereafter. Id. at 11. The Government further argued that under the ''day to day leadership'' of its new COO, Respondent had continued to constructively distribute controlled substances to its physician clients after its registration was suspended. Id. According to the Government, this conduct ''refutes the ALJ's hypothesis that [the new COO] will effectively manage Respondent's compliance program.'' Id.

In response, Respondent argued that the Government had ''largely buried its concerns'' regarding the distribution of phentermine noting that the drug was not mentioned in the Show Cause Order, the lengthy stipulation of facts, or in the Government's opening statement. Respondent's Resp. at 2–3. Respondent further argued that it has stipulated that it will not ''ship phentermine to any pharmacy, should its registration be restored.'' Id. at 2. With respect to alprazolam, Respondent argued that ''the government wholly buried its concern with this substance, making explicit reference to it only in its Exceptions.'' Id. Finally, Respondent argued that the ALJ's findings regarding its new COO are based on credibility determinations and are entitled to deference. Id. at 4–6.

Thereafter, on May 8, 2007, the ALJ forwarded the record to me for final agency action. Having reviewed the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's findings of fact and conclusions of law except as expressly noted herein. However, for reasons explained below, I conclude that the ALJ's proposed remedy is insufficient to protect the public interest. While I am mindful of the corrective measures engaged in by Respondent, its sales of extraordinary quantities of controlled substances to entities which it had reason to know were diverting the drugs caused extraordinary harm to public health and safety. Therefore, Respondent's registration will be revoked and its pending renewal application will be denied. I make the following findings.

Findings

Respondent Southwood Pharmaceuticals, Inc., is the holder of DEA Certificate of Registration, RS0204898, which authorizes it to manufacture controlled substances in schedules 3, 3N, 4, and 5. GX 1. While the expiration date of its registration was February 28, 2007, see id., Respondent submitted a timely renewal application. See Resp. Ex. 110. Respondent's registration thus remains in effect (although in suspended status) pending the issuance of this order. 5 U.S.C. 558(c).

Respondent's market niche was the repackaging of oral dose generic drug products into common prescription quantities which it then distributed. ALJ at 3. Until December 2005, Respondent's customer base was primarily comprised of dispensing physicians who specialized in treating injured workers, pain management and urgent care. Id. at 3–4. Respondent also distributed its products to group practices, specialty clinics and some traditional retail pharmacies. Id. Among the drugs distributed by Respondent were schedule III controlled substances containing hydrocodone.[1] See 21 CFR 1308.13(e).

Respondent's Hydrocodone Sales

According to data submitted by Respondent through DEA's ARCOS system, during the four-month period from August through November 2005, it sold 3,949,454 dosage units of hydrocodone products. ALJ at 4. Of this amount, Respondent's individual practitioner customers purchased 3,882,507 dosage units of the drug. Id. By contrast, Respondent sold approximately 29,940 dosage units of hydrocodone products to its retail pharmacy customers, for an average of 7,485 dosage units per month. Id. at 5.

On December 7, 2005, Respondent entered a new line of business—supplying internet pharmacies—by selling hydrocodone to Medipharm-Rx, Inc. (Medipharm), a Florida-based internet pharmacy.[2] Id. Over the ensuing months, Respondent acquired numerous additional internet pharmacy customers to whom it repeatedly sold large quantities of hydrocodone.

According to the stipulated facts, from December 2005 through October 2006, Respondent supplied Medipharm with an average of 1,011,882 dosage units of hydrocodone per month. ALJ at 5. Respondent also supplied Medipharm with approximately 538,290 dosage units of hydrocodone during the first half of November 2006, at which time Medipharm's registration was immediately suspended under 21 U.S.C. 824(d). Id. at 5–6.

The following table reflects Respondent's monthly distributions of hydrocodone to Medipharm:

Month	Quantity
December 2005	817,010
January 2006	939,340
February 2006	1,142,250
March 2006	1,071,450
April 2006	703,550
May 2006	808,500
June 2006	1,142,000
July 2006	800,340
August 2006	1,246,560
September 2006	1,450,380
October 2006	1,009,320

Id. at 5. According to a July 2006 report created by Respondent of its largest purchasers of controlled substances from December 2005 through June 2006, controlled substances constituted ninety-nine percent of its prescription drug sales to Medipharm. Resp. Ex. 47.

On December 19, 2005, Respondent obtained another Florida-based internet pharmacy customer, Accumed Rx, Inc. (Accumed). ALJ at 7. Respondent supplied Accumed with approximately 5,884,212 dosage units of hydrocodone as tabulated below:

[1] By itself, hydrocodone is a schedule II controlled substance. 21 CFR 1308.12(b)(1). Respondent did not, however, distribute schedule II hydrocodone. Throughout this decision, the term hydrocodone refers to those schedule III controlled substances which contain hydrocodone.

[2] For purposes of this decision, the term ''internet pharmacy'' refers to a pharmacy that fills a prescription that is issued by the physician without the physician having entered into a legitimate doctor-patient relationship under existing professional standards. Typically, a person seeking controlled substances goes to an internet site, fills out a questionnaire which requests basic medical information and payment/shipping information, and requests a specific drug; some Web sites may require that the patient submit a medical record, which is easily falsified. Thereafter, the customer's information is forwarded to a physician either contracted to or employed by the Web site, who reviews the information and issues a prescription, either with or without the benefit of a perfunctory telephone consultation, but always without having conducted a face-to-face review of the person's medical history and a physical exam. The prescription is then either forwarded to the pharmacy or downloaded electronically by the pharmacy; the pharmacy then fills the prescription and ships it to the customer. See GX 3.

Month	Quantity
December 2005	273,630
January 2006	203,070
February 2006	147,180
March 2006	83,500
April 2006	169,000
May 2006	519,380
June 2006	320,470
July 2006	442,000
August 2006	1,267,770
September 2006	503,020
October 2006	393,610
November 2006	1,561,582

Id. at 8. Between December 2005 and June 2006, controlled substances comprised ninety-nine percent of Respondent's prescription drug sales to Accumed. Resp. Ex. 47.

On December 21, 2005, Respondent obtained another Florida-based internet pharmacy customer, Avee Pharmacy, Inc. (Avee). ALJ at 6. Respondent's sales of hydrocodone to Avee averaged 566,259 dosage units a month and are tabulated below:

Month	Quantity
December 2005	346,140
January 2006	859,860
February 2006	0
March 2006	912,190
April 2006	76,190
May 2006	212,000
June 2006	442,800
July 2006	94,000
August 2006	506,430
September 2006	695,800
October 2006	537,900
November 2006	2,111,800

Id. Respondent also supplied Avee with 238,140 dosage units during the first five days of December 2006. Id. at 7. From December 2005 through June 2006, controlled substances constituted one hundred percent of Respondent's sales to Avee. Resp. Ex. 47.

On November 17, 2006, Respondent notified Avee by letter that effective December 15, 2006, it would not supply the pharmacy, whose registration had been continued on a day-to-day basis past its expiration date and not renewed, unless it obtained a renewal of its registration.[3] Resp. Ex. 77. Between November 17 and December 5, 2006, however, Respondent supplied Avee with approximately 1,804,940 dosage units of hydrocodone. ALJ at 7.

On January 4, 2006, United Prescription Services, Inc. (United), another internet pharmacy, became a customer of Respondent. ALJ at 14. Respondent sold an average of 92,988 dosage units of hydrocodone per month to United as tabulated below:

Month	Quantity
February 2006	341,160
March 2006	288,000
April 2006	18,000
May 2006	18,000
June 2006	37,200
July 2006	18,000
August 2006	18,000
September 2006	0
October 2006	12,000
November 2006	179,520

Id.

From the date United became a customer through June 2006, controlled substances constituted one hundred percent of Respondent's prescription drug sales to it. Resp. Ex. 47. On November 17, 2006, Respondent notified United that it would stop supplying the pharmacy if it did not obtain a renewal of its registration. Id. at 14. From November 21, 2006, through December 5, 2006, however, Respondent distributed to United approximately 158,280 dosage units of hydrocodone. Id.

On January 25, 2006, Respondent acquired two more internet pharmacy customers, RKR Holdings, d/b/a Medichem RX Pharmacy (Medichem), and Bi-Wise Drugs, Inc. (Bi-Wise). ALJ at 11, 13. Between January and November 2006, Respondent sold Medichem a monthly average of 216,638 dosage units of hydrocodone as tabulated below:

Month	Quantity
January 2006	66,000
February 2006	264,000
March 2006	276,000
April 2006	168,000
May 2006	286,200
June 2006	264,000
July 2006	120,000
August 2006	216,000
September 2006	220,680
October 2006	262,140
November 2006	240,000

Id. at 11–12. From the date it became a customer through June 2006, controlled substances constituted one hundred percent of Respondent's prescription drug sales to Medichem. Resp. Ex. 47.

From January 25 through October 2006, Respondent's hydrocodone sales to Bi-Wise averaged 117,150 dosage units per month. ALJ at 13. Moreover, from the date Bi-Wise became a customer through the end of June 2006, controlled substances constituted ninety-nine percent of Respondent's prescription drugs sales to it. Resp. Ex. 47. Respondent's hydrocodone sales to Bi-Wise are tabulated below:

Month	Quantity
January 2006	70,800
February 2006	18,240
March 2006	152,750
April 2006	63,860
May 2006	112,300
June 2006	180,000
July 2006	131,750
August 2006	185,940
September 2006	111,180
October 2006	144,680

ALJ at 13.

On February 16, 2006, Respondent acquired another internet pharmacy customer, Vin-Kash, Inc., d/b/a/ Medicom RX. Id. at 12. Through October 2006, Respondent supplied Medicom with an average of 190,281 dosage units of hydrocodone per month. Id. Respondent's sales are tabulated below:

Month	Quantity
February 2006	14,000
March 2006	54,430
April 2006	157,850
May 2006	175,850
June 2006	231,100
July 2006	227,240
August 2006	117,650
September 2006	164,000
October 2006	375,690
November 2006	385,000

Id. Respondent also supplied Medicom with approximately 82,750 dosage units of hydrocodone during the first five days of December 2006. Id. at 13. Moreover, from the date it became a customer through June 2006, controlled substances comprised one hundred percent of Respondent's prescription drug sales to Medicom. Resp. Ex. 47.

On February 20, 2006, Respondent obtained another internet pharmacy customer, Discount Mail Meds (Discount). ALJ at 8. From the inception of the relationship through November 2006, Respondent supplied Discount with an average of 330,324 dosage units of hydrocodone per month as tabulated below:

Month	Quantity
February 2006	72,000
March 2006	269,500
April 2006	269,000
May 2006	364,500
June 2006	373,600
July 2006	317,780
August 2006	292,720
September 2006	340,100
October 2006	501,280
November 2006	502,760

[3] Effective December 15, 2006, Respondent instituted a policy of not supplying registrants whose registration remained in effect on a day-to-day basis for more than two months past the expiration date. Resp. Ex. 77. Respondent's DEA registration was suspended before the policy became effective.

Id. at 9. Respondent also supplied Discount with 43,200 dosage units of hydrocodone during the first five days of December 2006. Id. Moreover, from the date it became a customer through June 2006, controlled substances comprised one hundred percent of Respondent's prescription drug sales to Discount. Resp. Ex. 47.

On February 22, 2006, Respondent commenced doing business with Universal Rx (Universal). ALJ at 9. From February through October 2006, Respondent supplied Universal with an average of 308,679 dosage units of hydrocodone per month as tabulated below:

Month	Quantity
February 2006	60,000
March 2006	164,250
April 2206	291,000
May 2006	245,250
June 2006	384,700
July 2006	422,670
August 2006	394,070
September 2006	340,500
October 2006	453,690
November 2006	330,660

Id. at 9–10. From the date it became a customer through June 2006, controlled substances comprised one hundred percent of Respondent's prescription drug sales to Universal. Resp. Ex. 47.

On November 17, 2006, Respondent notified Universal that, effective December 15, 2006, it would stop supplying the pharmacy unless it obtained a renewal of its registration. ALJ at 10. During the last two weeks of November 2006, Respondent shipped approximately 150,210 dosage units of hydrocodone to Universal. *Id.* On November 30, 2006, Respondent stopped shipments to Universal. *Id*

On March 3, 2006, Respondent began doing business with Medcenter, Inc. (Medcenter), an entity owned by the same person who owned Medipharm. Id. at 10–11. From March through October 2006, Respondent supplied Medcenter with an average of 333,063 dosage units of hydrocodone per month as tabulated below:

Month	Quantity
March 2006	340,500
April 2006	141,000
May 2006	153,000
June 2006	375,000
July 2006	102,000
August 2006	567,000
September 2006	378,000
October 2006	608,000

Id. Additionally, during the first two weeks of November, at which point Medcenter's DEA registration was suspended pursuant to 21 U.S.C. 824(d), Respondent distributed 313,680 dosages units of hydrocodone to it. *Id.* at 11. Moreover, from the date it became a customer through June 2006, controlled substances constituted one hundred percent of Respondent's prescription drug sales to Medcenter. Resp. Ex. 47.

On March 9, 2006, Respondent commenced doing business with CRJ Pharmacy, Inc. (CRJ). ALJ at 15. From March through October 2006, Respondent sold CRJ an average of 79,803 units of hydrocodone per month as tabulated below:

Month	Quantity
March 2006	63,360
April 2006	76,200
May 2006	25,320
June 2006	49,240
July 2006	52,200
August 2006	75,700
September 2006	96,000
October 2006	200,400

Id. From the date it became a customer through June 2006, controlled substances comprised ninety-eight percent of Respondent's prescription drug sales to CRJ. Resp. Ex. 47.

In May 2006, Respondent acquired another two customers, Grand Pharmacy (Grand), and Akshar Chemists, Inc., d/b/a Medicine Shoppe (Medicine Shoppe). ALJ at 16–17. Respondent supplied Grand with an average of 144,102 dosage units of hydrocodone per month between May and November 2006 as tabulated below:

Month	Quantity
May 2006	24,000
June 2006	228,720
July 2006	180,000
August 2006	180,000
September 2006	144,000
October 2006	144,000
November 2006	108,000

Id. at 17.

During the same period, Respondent supplied the Medicine Shoppe with an average of 73,365 dosage units of hydrocodone per month as tabulated below:

Month	Quantity
May 2006	62,100
June 2006	162,340
July 2006	164,875
August 2006	21,200
September 2006	12,000
October 2006	33,300
November 2006	57,740

Id. During the first five days of December 2006, Respondent also supplied the Medicine Shoppe with approximately 17,010 dosage units of hydrocodone. *Id.*

In July 2006, Q–R–G, Inc., d/b/a Duane's Discount Group (Duane's), began purchasing hydrocodone from Respondent. *Id.* at 16. From July through November 2006, Respondent supplied Duane's with an average of 191,808 dosage units of hydrocodone per month as tabulated below:

Month	Quantity
July 2006	188,400
August 2006	188,940
September 2006	145,500
October 2006	276,900
November 2006	159,300

Id. During the first five days of December 2006, Respondent supplied Duane's with an additional 74,850 dosage units of hydrocodone.[4] Id.

From the date it began supplying internet pharmacies in December 2005 through November 2006, Respondent sold a total of approximately 44,087,355 dosage units of hydrocodone to these entities. Gov. Ex. 43. at 1.[5] Respondent's monthly sales of hydrocodone to these entities grew from approximately 1.44 million dosage units in December 2005 to 5.78 million dosage units in November 2006. Id. at 2. By contrast, during the even longer time frame of August 2005 through November 2006, Respondent's sales of hydrocodone to its retail pharmacy customers never exceeded more than 16,040 dosage units in a month and typically never exceeded 10,000 dosage units in a month. Id. at 3.

The Government also introduced into evidence a table showing the average purchase of hydrocodone products by retail pharmacies in the State of Florida and nationwide during the period October 1, 2005, through January 31, 2006. See Gov. Ex. 45, at 8. This evidence established that Florida retail pharmacies purchased an average of 23,850 dosage units of hydrocodone during the four month period; nationwide, retail pharmacies bought an average of 24,227 dosage units of the drug. Id.

The record further establishes that many of Respondent's Florida-based pharmacy customers were, in fact,

[4] Respondent also sold 502,750 dosage units of hydrocodone to Woody Pharmacy Waterside, Inc., during April and May 2006, for an average of 251,375 units per month. ALJ at 15–16. Respondent also supplied Elite Pharmacy, Inc., with 140,000 dosage units of hydrocodone during the month of January 2006. Id. at 18.

[5] This exhibit covers the period from August 2005 through November 2006. Gov. Ex. 43. As found above, Respondent did not begin distributing to internet pharmacies until December 2005.

dispensing illegal prescriptions for controlled substances. More specifically, the record demonstrates that Avee (see GX 51), Medipharm (see GX 53 & 62), United (see GX 54), YPM Total Care Pharmacy (see GX 66), CRJ (GX 67), Bi-Wise (see Tr. 671–72); Universal (see id.), and Accumed (see id.), were dispensing large numbers of prescriptions which were not issued in the course of a legitimate doctor-patient relationship and thus violated Federal law. See 21 CFR 1306.04; see also Tr. 628–29, 639–45, 655–57, 660–67.

Respondent's Due Diligence Efforts

During the events at issue here, Mr. Robert Goodrich was Respondent's Director of Operations and Regulatory Affairs. Tr. 311. According to Mr. Goodrich, from ''a regulatory perspective,'' Respondent's due diligence in approving a new customer was limited to verifying that the customer had a State license and a DEA registration. Id. at 313–14. When asked by the Government whether Respondent had any processes in place prior to approving a new customer to purchase controlled substances, Mr. Goodrich testified that the primary process was to check the customer's DEA registration and that there was ''no'' secondary process. Id. at 318; see also ALJ at 34 (FOF 117). Based solely on its verifications of the entities' DEA registrations and state licenses, Respondent commenced to ship large quantities of controlled substances to the various internet pharmacies.

In early February 2006, Mr. Goodrich traveled to the Tampa Bay, Florida area, to conduct on-site visits with Respondent's sales representative, Tom Mollick, at several of the internet pharmacy customers which Respondent had recently acquired including Medipharm, Accumed, Medichem, Bi-Wise, and Avee. Tr. 319. According to Mr. Goodrich, the pharmacies were selected because ''it was apparent that they were a different type of a customer than what we'd been used to dealing with.'' Id.

At Medipharm, Mr. Goodrich found that it was filling 700 prescriptions a day and noted that it was a ''Closed-Door (Mail Order) Pharmacy.'' GX 16. In his report, Mr. Goodrich specifically noted that ''[t]he mail order business has ties to internet pharmacy with a large amount of pain management and a growing percentage of traditional maintenance medications.'' Id.

At Accumed, Mr. Goodrich determined that it was filling 350 prescriptions a day and that it also was a ''Closed-Door (Mail Order) Pharmacy.'' GX 17. In his report, Mr. Goodrich observed that Accumed has ''ties to the internet and * * * explained [its] requirement to check prescriber credentials.'' Id.

At Medichem, Mr. Goodrich found that it was both a ''Retail & Closed-Door (Mail-Order) Pharmacy'' with a volume of 100 prescriptions per day. GX 18. Mr. Goodrich noted that while ''Medichem is primarily filling prescriptions on a local and state level * * * there was evidence of prescriptions being mailed out-of-state as well.'' Id. Mr. Goodrich further observed that Medichem does ''have some ties to the internet community and they appear to be in the process of determining their market niche.'' Id.

At Avee, Mr. Goodrich found that it was a ''Closed-Door (Mail-Order) Pharmacy,'' with a prescription volume of 500 per day. GX 20. Mr. Goodrich specifically noted that ''Avee operates a closed pharmacy that provides mail order fulfillment of prescriptions from various sources, *including internet-connected medical providers who provide patient assessments and diagnosis through unconventional practice models. Many of these prescriptions are connected to pain management therapies involving the prescription of controlled substances.*'' GX 20 (emphasis added).

Mr. Goodrich's report further noted that DEA investigators had inspected Avee ''earlier that day.'' Id. Moreover, Avee's management discussed with him ''the concerns that DEA had with establishing the validity of the doctor-patient relationship that formed the basis *of the digital diagnosis that resulted in a prescription for controlled substances being submitted to Avee for filling.* Id. (emphasis added). Mr. Goodrich further noted that the position of Avee's management ''was that if the prescriber was not authorized to prescribe controlled substances, then the DEA should revoke the prescriber's DEA registration.'' Id. According to Mr. Goodrich's report, DEA investigators had suggested to Avee's management that they meet with the physicians ''from whom they receive the most prescriptions to better evaluate them.'' Id.

When asked by the Government what constitutes an ''unconventional practice model?,'' Mr. Goodrich testified that as he ''understood it, that did not involve a patient going to the doctor's office necessarily and presenting themselves in person.'' Tr. 347. Mr. Goodrich subsequently acknowledged that he knew as early as February 2006, that ''[s]ome of the prescriptions [Avee] filled were not the result of physical contact between the doctor and the patient.'' Id. at 348. Mr. Goodrich also testified that Avee had provided him with the names of two internet sites which were the source of some of the prescriptions it filled. Id. at 351–52.

Notwithstanding the information he obtained during his visit with Avee, Mr. Goodrich made no follow-up inquiries with its management regarding whether they had determined if the physicians were writing legitimate prescriptions. Id. at 352–53. Indeed, Mr. Goodrich made no further inquiries of Avee regarding its business practices until the middle of August 2006, after a meeting with DEA. Id. at 353. When asked by the Government whether he was concerned by the fact that DEA had visited Avee, Mr. Goodrich acknowledged that he did not ''know[] much about this telemedicine thing,'' but ''felt that if [Avee] weren't doing what they were supposed to do right, DEA wouldn't allow them to continue in business.'' Id. at 354. Mr. Goodrich also testified that he was not troubled by Avee management's contention that ''if the prescriber was not authorized to prescribe controlled substances, then the DEA should revoke the prescriber's DEA registration.'' Id.

Mr. Goodrich further acknowledged that at the time of his visit to Avee, he was not ''versed'' in the requirement that a prescription must be issued by a physician acting in the usual course of professional practice even though he asserted that he was then ''aware that pharmacies had obligations to ensure that they had valid prescriptions.'' Id. at 355. Mr. Goodrich admitted that he had not gone to DEA's website prior to Respondent's engaging in business with internet pharmacies to determine whether the Agency had posted any guidance on the subject. Id. at 358. Mr. Goodrich further testified that he ''received most of'' the information regarding the requirements for a valid prescription from DEA during a July 2006 meeting (which will be described more fully below). Id. at 357.

Mr. Goodrich also attempted to visit Bi-Wise, but found that it was closed. Tr. 321; GX 19. According to his report, Bi-Wise was a retail and closed-door pharmacy with minimal prescription volume. GX 19. Mr. Goodrich further described it as a ''[v]ery small retail unit located in strip mall'' and that the ''[c]ustomer is in [the] process of determining direction for [the] business.'' Id.

Mr. Goodrich testified that he did not attempt to go back to the pharmacy when it was open, Tr. 322, and never contacted anyone from Bi-Wise to further inquire into the nature of its business. Id. at 323. Furthermore,

notwithstanding that Bi-Wise's purchases of hydrocodone from Respondent increased from 18,240 dosage units in February 2006 to 152,750 dosage units in March 2006, Mr. Goodrich never followed up with anyone at Bi-Wise to determine the reason for the increase. Id. at 325–26. This was so, Mr. Goodrich testified, because he did not ''routinely look[] at'' the data regarding the purchases of Respondent's customers. Id. at 326.

As found above, during the ensuing months, Respondent took on additional internet pharmacies as customers and Respondent proceeded to sell extraordinary quantities of hydrocodone to them. Other than the five pharmacies visited on or about February 8, 2006, there is no evidence that Mr. Goodrich visited any of the other internet pharmacies which Respondent began supplying.

Because of the large quantities of hydrocodone that Respondent was distributing to these entities, Respondent ''was invited to the DEA Field Office in Riverside to be educated on the [Agency's] view of Internet pharmacies.'' ALJ at 22 (FOF 72). On July 17, 2006, Michael Mapes, Chief of the Office of Diversion Control's E-Commerce Section, conducted a conference call with Mr. Goodrich and Ms. Grace Gonzales, Respondent's operations manager [6] to discuss various issues related to the dispensing of controlled substances by internet pharmacies. GX 49. Prior to the conference call, Mr. Goodrich was provided with a document entitled ''Internet Diversion of Controlled Pharmaceuticals.'' Tr. 411–12; GX 45. Included in the document was a table which showed the average sales by McKesson, another distributor, to seven internet pharmacies during the month of October 2005. See GX 45, at 7. Six of the seven pharmacies listed were Respondent's customers: Avee, Medipharm, Accumed, United, Universal, and Bi-Wise. Id. The table included a notation that the ''Average Sales by McKesson to Each Targeted Pharmacy'' was ''311,057 dosage units.'' Id. (emphasis added). It further indicated that McKesson's average sales of hydrocodone ''to other customers'' was ''2,413 dosage units.'' [7] Id. The document also included a page labeled ''The Internet Pharmacies'' which included photographs of both Avee and Medipharm. Id. at 9.

At the time of the conference call, Mr. Goodrich was provided with an additional package of materials which included a powerpoint presentation, two Supreme Court decisions,[8] two agency final orders revoking the registrations of internet pharmacies for dispensing prescriptions that were not issued in the course of valid physician-patient relationships,[9] DEA's April 2001 Guidance Document on ''Dispensing and Purchasing Controlled Substances over the Internet,'' [10] and a copy of 21 CFR 1301.74, which sets forth the requirements pertaining to suspicious orders. See Gov. Ex. 61. The materials also contained a document from the National Association of Boards of Pharmacy entitled ''Verified Internet Pharmacy Practice Sites (VIPPS ®) Most Frequently Asked Questions,'' the American Medical Association's ''Guidance for Physicians on Internet Prescribing,'' the Federation of State Medical Boards' ''Model Guidelines for the Appropriate Use of the Internet in Medical Practice,'' and a list of suggested questions for determining the legitimacy of internet pharmacies. See id. Finally, DEA provided Mr. Goodrich with a copy of 21 U.S.C. 823. Id.

During the conference call, Mr. Mapes specifically discussed the activities of Medipharm, Avee, Accumed, United, Bi-Wise and Universal in distributing controlled substances ''through the internet'' and reviewed the various slides from the Power Point presentation. Tr. at 30–31. Mr. Mapes also discussed various issues that Respondent should consider in assessing the legitimacy of its customers including the size and frequency of a pharmacy's orders, the range of products ordered by the pharmacy, the percent of controlled substances versus non-controlled drugs ordered, and the locations of/type of facility used by the pharmacies. Id. at 36–38. More specifically, Mr. Mapes advised that eighty percent of U.S. ''pharmacies * * * are buying less than 5,000 dosages of hydrocodone in a month's time,'' and that ''in a typical retail pharmacy,'' controlled substances might amount to between five and twenty percent of the pharmacy's purchases'' with the other eighty to ninety percent of its purchases being non-controlled drugs. Id. at 37. Mr. Mapes also advised Respondent that as a distributor it was required to maintain effective controls against diversion. Id. at 39–40.

Mr. Mapes later discussed with Mr. Goodrich and Ms. Gonzales the requirement under Federal Law that for a prescription to be valid, it must be issued in the usual course of medical practice, and ''that an internet questionnaire alone is not sufficient to legally prescribe controlled substances.'' Id. at 42–43; see also 21 CFR 1306.04(a). Mr. Mapes also discussed the factors that are necessary to establish a bonafide doctor-patient relationship. These include that a patient has a medical complaint, that a history be taken of the patient, that a physical exam be conducted, and that there be a nexus between the complaint, the history, the exam and the drug being prescribed. Id. at 42–43, 45–46; GX 61, at 13.

Mr. Mapes also provided Mr. Goodrich and Ms. Gonzales with several examples of illegal internet pharmacies. Tr. at 48–49. In one of the examples, which involved a Florida pharmacy, the pharmacy's purchases of phentermine had doubled in a five month period from approximately 200,000 to 400,000 units and ''one hundred percent of the drugs purchased by [the] pharmacy were controlled substances.'' GX 61, at 10; Tr. 49. In another example, the pharmacy was located in an industrial warehouse and sold only hydrocodone and alprazolam (a schedule IV controlled substance), which it purchased in large quantities. Tr. 49; GX 61, at 11. In the final example, the pharmacy had advised the distributor that they were doing business over the Internet. Tr. 50. The pharmacy did not, however, have a VIPPS certification, made frequent large purchases of hydrocodone and various benzodiazepines, and ninety-nine percent of the drugs it ordered were controlled substances. Id.; GX 61, at 12.

Mr. Mapes informed Mr. Goodrich and Ms. Gonzales that ''a pattern of drugs being distributed to pharmacies [which] are diverting controlled substances demonstrates a lack of effective controls against diversion by the distributor'' and could lead to the revocation of the distributor's registration. Tr. 51. Mr. Mapes further advised ''that any distributor who was selling controlled substances that are being dispensed outside the course of professional practice must stop that distribution immediately.'' Id.

Mr. Mapes also discussed with Respondent's representatives whether it could ship an order which it had reported as suspicious. Id. at 57. Mr.

[6] Additional DEA personnel were on the call including Group Supervisor (GS) Lisa Young and Diversion Investigator (DI) Cynthia Hooks of the DEA Riverside Office. GX 49.

[7] The document also included the data (discussed earlier) regarding the average hydrocodone purchases over a four month period of pharmacies in Florida and nationwide, as well as the average purchases by the ''Targeted Internet Pharmacies.'' GX 45, at 8.

[8] *Direct Sales Co., Inc.* v. *United States,* 319 U.S. 703 (1943); *United States* v. *Moore,* 423 U.S. 122 (1975).

[9] EZRX, LLC, 69 FR 63178 (2004); *RX Network of South Florida, LLC,* 69 FR 62093 (2004).

[10] Published at 66 FR 21181 (2001).

Mapes advised that even if Respondent reported the order, the company still had to make the decision as to whether to ship the order. Id. at 57–58; GX 61, at 9. Moreover, Respondent's personnel asked DEA whether it should stop shipping controlled substances to the internet pharmacies. Tr. 79, 119–20, 342–43. DEA personnel told Mr. Goodrich and Ms. Gonzales that it cannot tell a distributor whether a particular order is legitimate or not, GX 61, at 9; and that whether to ship was ''a business decision,'' Tr. 79; but that Respondent ''had an obligation to ensure that the products [it] distributed were used for legitimate medical purposes.'' Id. 343.

Following the meeting, Respondent continued to distribute large quantities of hydrocodone to numerous internet pharmacies including the six pharmacies that DEA officials specifically referred to as ''targeted.'' For instance, in August 2006, Respondent distributed ''in excess of 1.2 million'' dosage units of hydrocodone to Accumed. Id. at 341.

Mr. Goodrich cited several reasons to justify Respondent's decision to continue shipping hydrocodone to Accumed. First, he stated that DEA ''did not instruct us to cease shipments'' and thus Respondent did not ''have distinct direction.'' Id. at 343–44. Second, Mr. Goodrich asserted that Respondent was conducting due diligence. Id. at 343. Third, Mr. Goodrich did not believe that Accumed was acting illegally. Id. at 345.

In August 2006, Respondent also shipped large quantities of hydrocodone to the other internet pharmacies which DEA officials had referred to as ''targeted.'' It shipped 1,246,560 dosage units to Medipharm, 506,340 units to Avee, 185,940 units to Bi-Wise, and 399,070 units to Universal. Respondent also shipped large quantities to other entities which it had identified as internet pharmacies. See Resp. Ex. 52.

Moreover, Respondent continued to make large shipments of hydrocodone to many of these pharmacies until either its registration was immediately suspended or the pharmacies' registrations were suspended. For example, it shipped Medipharm 1.45 million dosage units in September 2006 and just over 1 million dosage units in October 2006; it shipped Accumed 1.56 million dosage units in November 2006; it shipped Avee 2.11 million dosage units in November 2006; and it shipped Discount over 500,000 dosage units in both October and November 2006.

Following the July 2006 conference call, Respondent did undertake additional measures to investigate the business activities of the pharmacies it had identified as filling prescriptions issued through the internet. On July 31, 2006, Mr. Goodrich wrote the Executive Director of the Florida State Board of Pharmacy identifying nineteen pharmacies located in the Tampa Bay area which, as a result of the DEA conference call and ''additional research'' conducted by Respondent, had led it to ''question whether or not these pharmacies are operating legitimately.'' Resp. Ex. 49, at 1–2. Respondent thus requested that the Florida Board ''provide additional information to enable us to qualify the legitimacy of these customers.'' Id. at 2.

By letter dated August 14, 2006, the Executive Director of the Florida Board responded. Resp. Ex. 50. In the letter, the Executive Director wrote that ''[t]he Board of Pharmacy can verify for you that these particular pharmacies do have active community pharmacy licenses in the state of Florida. Id. The Executive Director further advised that ''only one of these licenses [sic] has been disciplined by the Florida Board,'' that pharmacy being Avee, and enclosed a copy of the Board's final order pertaining to it.[11] Id. The letter, however, offered no specific information regarding the legitimacy of the various pharmacies' activities. See id.

On August 15, 2006, Mr. Goodrich sent out a six-page questionnaire to seventeen of the pharmacies including all of the pharmacies which DEA had described as ''targeted.'' Resp. Ex. 51. The questionnaire noted that Respondent was conducting a ''due diligence review of our business relationship'' which had been prompted by four factors: (1) An ''[e]xtremely high percentage of controlled substance purchases vs. non controlled substance purchases,'' (2) ''[e]xtremely high volume of controlled substance dosage units,'' (3) ''[i]dentification of your operation as an internet pharmacy,'' and (4) ''[i]dentification of your pharmacy filling prescriptions based on telemedicine.'' Id. The questionnaire then stated that Respondent ''has a responsibility to insure [sic] that all medications we distribute are used for legitimate medical purposes, much in the same way that your pharmacy has an obligation to ensure that every prescription you fill is a result of a valid medical examination by an authorized prescriber.'' Id.

The document asked a variety of questions. The first question asked the pharmacies to indicate the ''overall percentage of controlled substances filled by [the] pharmacy,'' and to list their other suppliers. Id. The second question was prefaced with the observation that ''[t]he volume of controlled substances purchased by your pharmacy far exceeds the 'average' quantity of controlled substances purchased by pharmacies nationwide.'' Id. at 2. The questionnaire then asked the pharmacy to ''provide an explanation for the volume of your controlled substance purchases.'' Id.

The next set of questions began by noting that ''[y]our pharmacy has been identified as an 'internet pharmacy,' '' and that ''both the FDA and DEA have raised concerns citing the potential for abuse.'' Id. at 2. The questions then asked the pharmacy to provide the ''percentage of prescriptions filled by your pharmacy [that] originate from the Internet,'' to ''list the website identifying your pharmacy,'' to describe how ''a patient provides prescriptions to your pharmacy,'' and to indicate how patients pay for their prescriptions. Id. at 2–3.

Later, the questionnaire observed that the ''[u]se of the internet in a medical practice has raised many issues in regards to the issuance of a prescription, including, but not limited to, ensuring the validity of medical examinations, the establishment of a 'bona fide' doctor/patient relationship and the appropriateness of treatment where the physician is located in a different jurisdiction from the patient's residence.'' Id. at 4. The questionnaire then asked a series of questions regarding how the pharmacies performed their ''due diligence on prescriptions issued by doctors who use the internet in the course of their medical practice.'' Id. These included asking the pharmacy to ''list the web sites identifying the physicians who most commonly issue prescriptions filled by your pharmacy,'' whether the pharmacy verified the physician's state license and DEA registrations, and whether the pharmacy verified that the physician was ''also authorized to practice medicine in the state in which the patient is located.'' Id. The questionnaire also asked whether the pharmacy had a protocol to ensure that ''prescriptions issued through an internet-assisted encounter constitute[d] a valid medical exam.'' Id.

Next, the questionnaire observed that ''a preponderance of prescription orders issued by a physician for the same

[11] According to the materials, Avee was sanctioned because it shipped hydrocodone to a person in Tennessee when it did not hold a Tennessee license authorizing it to dispense to residents of that State. See Resp. Ex. 50. Avee entered into a stipulation with the State under which it was fined $2,000 and required to pay $719.95 as costs. See id. Avee did, however, retain its Florida license.

products in the same prescription quantities'' was indicative of ''potential prescription abuse'' and asked the pharmacy to attach its ''policies and procedures that address prescription abuse.'' Id. at 5. Finally, the questionnaire noted that ''[m]any states have adopted laws and regulations pertaining to internet prescribing'' that mandate ''direct contact between the doctor and patient and the requisite physical exam(s).'' Id. The questionnaire thus asked the pharmacy to ''list those states [it had] identified that allow the filling of prescriptions issued without a face-to-face encounter between the physician and the patient.'' Id.[12]

Upon receiving the questionnaires, which Respondent sent by certified mail, the pharmacies responded in a variety of ways. Some, such as Bi-Wise, did not respond at all. See Resp. Ex. 58. Others, such as CRJ and YPM, failed to answer questions or indicated ''N/A.'' See Resp. Ex. 59 & 71. Others such as Accumed completed the questionnaire maintaining that they were not internet pharmacies, indicated ''N/A'' when asked to list the websites of the physicians who wrote the prescriptions they filled, and answered affirmatively that they had a protocol to ensure that the prescriptions were issued pursuant to a valid medical exam. Resp. Ex. 54. Likewise, Duane's stated that zero percent of the prescriptions it filled originated on the internet, that it had retained counsel to implement a strict compliance program to ensure that the prescriptions it filled were valid, and indicated ''N/A'' where asked to list the websites of the physicians who were commonly issuing the prescriptions that it filled. Res. Ex. 61.

Some of the pharmacies provided information which Respondent deemed adequate but which clearly suggested that the prescriptions were illegal. For example, Respondent deemed Grand Pharmacy's response adequate. See ALJ at 24 (FOF 81). Yet in a letter, Grand's owner/president indicated that ''[a]ll doctors Grand deal with require a current physical done in a physician's presence. All doctors Grand deal with have a physical *or extended phone dialogue* with the patient to establish the diagnosis and need for the medication.'' Resp. Ex. 63, at 2 (emphasis added). It is noteworthy that Grand's response did not say that the physical was performed by the prescribing physician, what constituted a ''current physical,'' or that the doctors prescribing on the basis of a telephone call were the same doctors that had performed the physical exam. Notwithstanding the suspicious nature of the information, Mr. Goodrich deemed the answers satisfactory and did not inquire further, see Resp. Ex. 64; Respondent continued to ship large quantities of hydrocodone to Grand.

The questionnaires completed by the Medicine Shoppe and Medicom, which apparently were owned by the same person, were of similar nature. For example, while the Medicine Shoppe's questionnaire indicated that it was ''not an internet pharmacy,'' and that only one to two percent of the prescriptions it filled originated on the internet, it also indicated the name of a website used by the ''physicians who most commonly issue prescriptions filled by [the] pharmacy.'' Resp. Ex. 65, at 2–4. Furthermore, in answer to the question of whether the pharmacy verified that the physicians were ''authorized to practice medicine in the state [where] the patient is located,'' the Medicine Shoppe stated: ''No. The doctor[s] makes the consult from [the] state in which they are licensed.'' Id. at 4.

The Medicom questionnaire indicated that ''[w]e are not [an] internet pharmacy; I receive Rx from doctors who have spoken [to] patients, discussed therapy, and also reviewed entire medical history.'' Resp. Ex. 66, at 2. The questionnaire also indicated that it received prescriptions ''via telemedicine,'' and included the names of three websites used by physicians whose prescriptions the pharmacy was filling. Id. at 3–4. Furthermore, when asked whether the pharmacy verified that the physicians were ''authorized to practice medicine in the state in which the patient is located,'' Medicom likewise stated: ''No. The doctor makes the consultation from the state they are licensed'' in.[13] Id. at 4.

Mr. Goodrich deemed both the Medicine Shoppe and Medicom's responses to be adequate. ALJ at 24–25 (FOFs 82 & 83). Notwithstanding the suspicious nature of their responses, Respondent continued to ship large quantities of hydrocodone to both pharmacies.

The Medipharm and Universal questionnaires were prepared by the same attorney, who had previously served as an Assistant State Attorney. See Resp. Exs. 67 & 69. Both questionnaires indicated that the pharmacies were ''not an 'internet pharmacy,' '' and that zero percent of the prescriptions originated on the internet. Resp. Exs. 67 at 2, 69 at 2. Both questionnaires indicated ''N/A'' where asked to ''list the websites identifying the physicians who most commonly issue prescriptions filled by your pharmacy.'' Resp. Exs. 67 at 4, 69 at 4. Moreover, both questionnaires indicated that the pharmacies had ''retained counsel to prepare and implement a strict compliance program to ensure compliance with the applicable rules and regulations for prescription practice in each of the states in which [the pharmacy] is licensed and transacts business.'' Id. The questionnaires also indicated that the pharmacies ''routinely verif[ied]'' that the doctors were ''authorized to practice medicine in the state in which the patient is located.'' Id. Finally, both pharmacies stated that they did ''not fill prescriptions where the patient has not had a face-to-face encounter with a physician.'' [14] Resp. Ex. 67, at 5; Resp. 69, at 5.

United's questionnaire, which was submitted more than five weeks after Respondent's deadline, stated that it was ''not an internet pharmacy'' and that ''[r]egulations regarding physicians requiring a face-to-face consultation is an issue of compliance for the physician and the relevant medical board.'' Resp. Ex. 70. With respect to whether United verified that the physicians were authorized to practice medicine in the States where their patients were located, the pharmacy gave the non-responsive answer that ''We are advised by the prescribing physician that they are authorized to practice medicine for their patients.'' Id. Finally, in answering the question as to whether United had a protocol to ensure that the prescriptions were issued pursuant to a valid medical exam, the pharmacy stated: ''United has a policy, through a signed affidavit, as well as providing us with recent medical history for the patient file, that

[12] In a letter dated August 15, 2006, Mr. Goodrich transmitted a copy of the questionnaire to the DEA Diversion Group Supervisor and advised that he had requested that the pharmacies respond ''by the end of the month.'' Resp. Ex. 52. Mr. Goodrich further wrote that ''[i]f we do not receive a response, we will cease business with that particular company.'' Id.

[13] Both the Medicine Shoppe and Medicom included logs showing that the pharmacies had reviewed medical records pertaining to internet prescriptions and a form letter the pharmacy represented as sending to the physicians and which the physicians were supposedly required to sign and return to the pharmacies. See, e.g., Resp. Ex. 66. The record does not establish whether these two pharmacies actually sent the letter and whether the physicians signed it.

[14] On November 2, 2006, the DEA Riverside Group Supervisor met with Mr. Goodrich at Respondent's facility to discuss Respondent's criteria and procedures for determining whether to ship to internet pharmacies. Tr. 102–03. During the meeting, Medipharm was specifically discussed. Id. at 104. According to the testimony of the Group Supervisor, Mr. Goodrich stated that ''Medipharm * * * had a comprehensive compliance program, and * * * he ha[d] determined that they were innocent until proven guilty.'' Id.; see also ALJ at 29 (FOF 98).

the physician meets the standards noted. However, that being the case, we are not required [to determine] whether or not the physician has an internet or in-office encounter with his patient.'' Id. United further stated that it was ''not aware that it is a commonly accepted practice in the pharmacy industry, that the pharmacy verify the type of consultation a physician has with a patient.'' Id.

United also included a December 2005 report by Mudri Associates regarding the pharmacy's compliance with the CSA.[15] The report specifically noted that ''[a] doctor expecting to have his prescriptions filled by [United] can anticipate having to complete an extensive background questionnaire. This background consists of samples of writing along with a signed acknowledgement pertaining to a notification of [United's] adherence to fulfilling their corresponding responsibilities with the physician.'' Id. According to the report:

The physician is contacted and asked to acknowledge that there *[sic]* practice subscribes to sound medical judgment criteria, such as valid patient medical complaints, extensive physician interview and consultation, in-person patient examination, or supervision and/or direction of an examination by a consulting medical professional, documented in a patient file, along with the appropriateness of medications based upon this physician/patient relationship.

Id. Respondent deemed United's response adequate. ALJ at 25 (FOF 84).

Avee submitted its questionnaire nearly a month late. Resp. Ex. 55. Avee admitted that controlled substances comprised ninety percent of the prescriptions it filled and answered ''N/A'' to the question ''What percentage of prescriptions filled by your pharmacy originate on the internet.'' Id. at 1–2. Avee further maintained that it was not an internet pharmacy but rather a ''mail order pharmacy,'' and that it did not know what percentage of the physicians whose prescriptions it filled used the internet in the course of their medical practice. Id. at 3–4. Where asked to identify the websites of the physicians who were ''most commonly issu[ing the] prescriptions filled by your pharmacy,'' Avee wrote ''N/A.'' Id. at 4. Where asked if it verified that the prescribing physician was ''authorized to practice medicine in the state in which the patient is located,'' Avee wrote: ''where the doctor is located.'' Id.

Upon reviewing Avee's questionnaire, Mr. Goodrich wrote back to it noting that he ''was surprised that your responses to our questionnaire did not support the observations I made on site,'' and added that he was ''curious if your business model has changed in the past six months.'' Resp. Ex. 56. Mr. Goodrich further noted that he was ''unable to reconcile the information provided on our questionnaire with the information observed during a visit to [its] facility.'' Id. Mr. Goodrich then indicated that he wished to visit Avee again and requested that it provide ''a current overview of [its] internal due diligence protocols.'' Id.

In an undated letter, Avee outlined its compliance procedures and provided Mr. Goodrich with a copy of a letter regarding prescribing practices which it claimed it sent to the physicians whose prescriptions it filled. Resp. Ex. 57. Avee maintained that it required that this letter be signed annually by the physician and that it also conducted site visits at the physician's offices. Id. at 2. In its letter to the physicians, Avee listed the four elements of a legitimate doctor/patient relationship. Id. at 5.

While the pharmacy accurately stated the four elements, the letter further added that ''[t]o these, Avee would add an opportunity for the prescribing practitioner and patient, via some means, to confer.'' Id. (emphasis added). Avee further maintained that ''[i]t is not a requirement that the prescribing physician himself/herself took the history or performed the physical examination, as long as the prescribing practitioner *had full and meaningful access to the medical history and physical examination, and an opportunity to confer with the patient.*'' Id. (emphasis added).

Avee's letter to its physicians clearly raised a substantial question as to the legality of the prescriptions it was filling and conflicted with information that DEA had previously provided Respondent regarding the requirements to establish a legitimate doctor-patient relationship. Indeed, it indicated that Avee's practices remained the same as Mr. Goodrich had observed during his February 2006 visit when he noted that the pharmacy filled ''prescriptions from various sources, *including internet-connected medical providers who provide patient assessments and diagnosis through unconventional practice models.''* GX. 20 (emphasis added). Here again, Respondent continued to ship large quantities of controlled substances to Avee and did so up until December 6, 2006, when the immediate suspension order was served.

As a result of the surveys, Respondent stopped shipping controlled substances to Bi-Wise, CRJ and YPM. ALJ at 25 (FOF 86). Even then, however, Respondent did not stop accepting orders from these entities until October 20, 2006, and did not stop shipping to them until October 27, 2006, nearly two months after the completed questionnaires were due. Id.; see also Gov. Ex. 36 (memorandum dated December 20, 2006, from Respondent's counsel to DEA attorney regarding discontinued pharmacy customers); Resp. Ex. 52 (questionnaire at p.6).

Moreover, Respondent's own evidence indicates that it never sent a questionnaire to Discount Mail Meds (a/k/a Liddy's), see Resp. Ex. 52, at 2, and there is no completed questionnaire from it. See Resp. Exs. 51–72. Respondent, however, continued to sell large quantities of hydrocodone to Discount and sold it more than 500,000 dosage units a month in both October and November 2006.

Finally, there is no evidence that Respondent ever received a completed questionnaire from Medcenter and Medichem. See Resp. Exs. 54–72; ALJ at 24–25 (Stipulated FOFs 77–86). Respondent nonetheless continued to supply Medcenter with large quantities until November 16, 2006, when the latter's registration was immediately suspended. It also continued to supply Medichem with large quantities of hydrocodone through November 2006.

Respondent also adopted a policy under which it would, effective on December 15, 2006, cease distributing controlled substances to those pharmacies whose DEA registrations had not been automatically renewed but were continued on a day-to-day basis for a period of more than two months. Accordingly, on November 17, 2006, Mr. Goodrich wrote Avee, United, and Universal, notifying them of the policy and its effective date. See Resp. Exs. 77, 78, 79. Between the date of this letter and December 5, 2006 (the day before service of the Immediate Suspension), Respondent supplied Avee with more than 1.8 million dosage units of hydrocodone. ALJ at 7 (FOF 21). Moreover, between the date of its letter and November 30, 2006, Respondent supplied Universal with 150,210 dosage units. ALJ at 10 (FOF 31). Finally, from November 21, 2006 through December 5, 2006, Respondent supplied United with 158,280 dosage units of hydrocodone. ALJ at 14 (FOF 45).[16]

[15] According to the stipulated facts, Mr. Mudri is a retired DEA Diversion Investigator.

[16] The parties also stipulated that between January and May 2006, Respondent stopped accepting orders from seven other pharmacies based

Continued

As a result of the surveys, in October 2006, Respondent updated its customer profile questionnaire for potential pharmacy customers. Id. at 26 (FOF 88). On this questionnaire, Respondent required potential customers to disclose information related to the prescriptions the pharmacy was dispensing including whether ''they [were] the result of an internet- or telephone-based medical encounter.'' Resp. Ex. 75. Respondent also required the pharmacy's responsible officer to attest to the validity of the information it provided. Id.

Relatedly, in October 2006, Respondent revised its standard operating procedures (SOP) pertaining to the sale of controlled substances to pharmacy customers. ALJ 26 (FOF 88). The SOP adopted the requirement that Respondent's pharmacy customers certify whether they knowingly filled prescriptions that arose out of an internet or telephone-based medical encounter. Resp. Ex. 76. It also directed that ''[i]f [a] pharmacy affirms that they fill prescriptions of this nature, they will be required to provide details of the compliance program they have adopted to ensure that these prescriptions are legal and valid.'' Id. The SOP further noted that ''[c]ustomers with significant purchases of controlled substances, significant activity in mail-order dispensing or with significant amounts of telemedicine dispensing will be subject to on-site assessments within four months after being accepted as a customer.'' Id. at 2.

Respondent's Failure to Report Suspicious Orders

Under federal regulations, a registrant must ''design and operate a system to disclose to the registrant suspicious orders of controlled substances''; suspicious orders must be reported to the local Field Division Office upon discovery by the registrant. 21 CFR 1301.74(b). Under the regulation, ''[s]uspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.'' Id.[17]

While the record establishes that Respondent had worked with a DEA DI to develop a system for detecting and reporting suspicious orders, ALJ at 20 (FOF 64), the system had been created when most of Respondent's customer base was comprised of physicians. Tr. 739. Moreover, no one from Respondent contacted the DI to discuss its decision to supply internet pharmacies and the criteria and procedures that should be used to determine whether the pharmacies' orders were suspicious. Id. at 741.

Under Respondent's procedures, a monthly report was generated which identified those customers purchasing controlled substances and the percentage of controlled versus non-controlled drugs purchased by the customer. Resp. Ex. 109, ¶ 25.2. If a customer's monthly purchases of controlled substances deviated by ''over 150%'' from the customer's average monthly percentage of controlled substance purchases for the preceding six months, it was then subject to further review. Id. at ¶ 25.3.

Under Respondent's system, ''[i]f no customers [were] deemed suspicious,'' it would send DEA ''a report stating 'no suspicious activity' for the period.'' Id. at ¶ 25.6. Moreover, twice a year, Respondent sent to DEA ''a list of the largest purchasers of controlled substances.'' Id. at ¶ 25.8. The customers on this list were not ''reported as having suspicious purchases.'' Id. According to Mr. Goodrich's testimony, Respondent did not have a procedure in place to monitor and detect excessive purchases on a monthly basis. Tr. 397–98.

Respondent sent DEA e-mails reporting that it had ''no suspicious activity to report'' for the months of December 2005 (GX 9), January 2006 (GX 10), March 2006 (GX 11), and April 2006 (GX 12). In addition to the exhibits, testimony establishes that ''Respondent did not report any suspicious orders through the month of December 2006,'' ALJ at 36 (FOF 129, citing Tr. 95–96), even though the Florida internet pharmacies were purchasing quantities that greatly exceeded the average amount of hydrocodone (6,000 dosage units per month) purchased by a traditional brick-and-mortar retail pharmacy. GX 45, at 8; Tr. 608.

Respondent, however, twice provided the DEA Riverside Field Office with a report listing its top purchasers of controlled substances. See Resp. Ex. 46, 47, & 48. The first of these, which Mr. Goodrich e-mailed to the DEA Riverside office on February 13, 2006, covered the period June through December 2005. See Resp. Ex. 46. The report included Avee, Medipharm and Accumed, indicated the date the pharmacies had become customers,[18] the number of bottles of controlled substances the pharmacies had ordered, and the percentage of prescription drugs ordered by the pharmacies that were controlled substances. See id.

Mr. Goodrich provided the second report to DEA at the July 17, 2006 conference call. ALJ at 23 (FOF 72). This report covered the period December 2005 through June 2006, and included Medipharm, Accumed, Avee, United, Medichem, Bi-Wise, Medicom, Discount, Universal, Medcenter, CRJ, and Woody Pharmacy. See Resp. Ex. 47. The report likewise listed the date the pharmacies had become customers, the total amount of controlled substances ordered, and the percentage of prescription drugs ordered that were controlled substances. See id. Of the aforementioned pharmacies, the lowest percentage of controlled substances ordered was ninety-eight percent by CRJ. See id. Almost all of the above pharmacies had ordered only controlled substances. See id. Finally, the list did not include several of Respondent's recently acquired customers including Grand Pharmacy and the Medicine Shoppe. See id.

At the hearing, Mr. Goodrich acknowledged that ''an unusual quantity could be a determining factor'' in deciding whether an order must be reported as suspicious. Tr. 490. Mr. Goodrich further admitted that some of the orders received by Respondent were of an unusual size. Id. Moreover, Mr. Goodrich further testified that following the July 17, 2006 conference call with DEA, Respondent did not report any of the orders placed by the Florida-based pharmacies to be suspicious because ''[w]e considered [all of the pharmacies] suspicious at that point.'' Tr. 424.

On cross-examination, Mr. Robert Schwartz, who became Respondent's Chief Operating Officer on September 26, 2006, was asked a series of hypothetical questions based on the evidence in the case regarding the reporting of suspicious orders. Tr. 953–57. Mr. Schwartz testified that while he had previously worked in senior management positions at major pharmaceutical distributors such as H.D. Smith and Barnes Wholesale, he could not recall a pharmacy ordering 800,000 dosage units of hydrocodone in a month. Id. at 953. Mr. Schwartz also testified that an order for 2.1 million dosage units of the drug was ''a lot of hydrocodone'' and should be reported as suspicious because, based on his experience at Barnes, it was not

on ''the cessation of their'' registrations by DEA. ALJ at 25 (FOF 86).

[17] The parties also stipulated that every month since July 2002, Respondent had submitted ARCOS reports regarding its distributions of schedule III controlled substances including hydrocodone to the ARCOS Unit at DEA headquarters. ALJ at 18 (FOF 58)

[18] According to the document, Medipharm had become a customer on December 7, 2005; Accumed and Avee became customers on December 19, 2005, and December 21, 2005, respectively. See Resp. Ex. 46.

consistent with what pharmacies ordered. Id. at 953–54. Similarly, Mr. Schwartz admitted that various changes in a pharmacy's ordering history (such as those which occurred here) would be suspicious and should be reported to DEA. Id. at 954–57.

The ALJ further found that Mr. Schwartz ''provided credible testimony concerning two possible justifications for the Respondent's sharp rise in the sale of hydrocodone products in August of 2006.'' ALJ at 38 (FOF 135 (citing Tr. 930)). The first reason given was that there are ''year-end inventory shortages'' from the manufacturers and thus ''wholesalers begin 'to buy extra product from manufacturers in August, building up our inventories for the year-end,'' and pharmacies ''buy extra inventory at this time.'' Id. The second reason was the State of Florida's implementation of its requirement, effective July 1, 2006, that ''pedigree must be passed by each distributor who is not a manufacturer, before each distribution of a drug and provided to each person who receives the drug.'' ALJ at 38–39 (FOF 137). Respondent met the pedigree requirements, and the developer of the software it used issued a press release announcing that Respondent was compliant with Florida law. See id.; Resp. Ex. 105.

Respondent, however, introduced no evidence that it contacted any of its pharmacy customers that increased their purchases between July and August 2006 to determine if they had done so for either reason. Tr. 487. As Mr. Goodrich testified, he did not ''know that the pedigree program had a direct impact on the hydrocodone that we distributed to our pharmacy customers.'' Id. at 488. In fact, only seven of the pharmacies increased their purchases of hydrocodone from July to August 2006. During this period, four of the pharmacies actually decreased their hydrocodone purchases from Respondent and the remaining three purchased roughly the same amount. Relatedly, Mr. Goodrich admitted that Respondent did not even ''develop a [suspicious orders] policy that specifically addressed the pharmacy customers until September of 2006.'' ALJ at 34 (FOF 119).

Furthermore, the orders of the Florida-based internet pharmacies were suspicious from the beginning because of their large size, their frequency, and the fact that controlled substances constituted the overwhelming percentage (and frequently 100 percent) of the products being purchased. See ALJ at 36–37 (FOF 130–132); see also Resp. Exs. 46 & 47. Even if Respondent had contacted the seven pharmacies and determined that they had increased their orders for either of the above reasons, their orders were still suspicious and subject to reporting. And as Mr. Goodrich testified, following the July 17, 2006 conference, he considered all of the Florida-based pharmacies to be suspicious. Tr. 424.

Respondent's Corrective Actions and Post-Suspension Conduct

The ALJ also made several findings regarding corrective actions instituted by Respondent. First, the ALJ found credible the testimony of Mr. Schwartz that on December 5, 2006, the day before the immediate suspension order was served on Respondent, he and its owner, Mr. John Sempre, had determined that it should stop supplying the Florida-based internet pharmacies. ALJ at 40 (citing Tr. 938–39).

Mr. Schwartz also testified that if Respondent regained its registration, he and not Mr. Goodrich, would be responsible for reviewing suspicious order reports before they were submitted to DEA. Tr. 1027. Moreover, Mr. Schwartz was to ''have ultimate authority'' to accept or reject any new customer seeking to purchase controlled substances. ALJ at 41 (citing Tr. 1027). Finally, Respondent entered into an agreement with SynTegra, L.L.C., to review its procedures for monitoring and reporting suspicious orders to DEA. Resp. Ex. 102.

After the immediate suspension of its registration, Respondent continued to receive orders for controlled substances which it forwarded on to Pharmapac, a competitor, for filling. Tr. 184–87, GX 63. Under the ''Sold To'' line on the Pharmapac invoices, typically the name of the individual practitioner who ordered the controlled substances was listed above Respondent's name and address. See GX 63, at 281–351. However, on the invoices ''Ship To'' line, the invoices contained the individual practitioner's name and address. See id. The invoices also included a label which stated: ''Please send payment to: SOUTHWOOD PHARMACEUTICALS, INC., 60 Empire Drive, Lake Forest, CA 92630.'' See id.

On February 1, 2007, Respondent Mr. Schwartz wrote a letter to Respondent's customers indicating that it had ''mistakenly placed a sticker on these invoices directing payment to Southwood Pharmaceuticals.'' Resp. Ex. 107. The letter instructed Respondent's customers that the sticker be disregarded and that payment should be made directly to Pharmapac at its address. Id.

The ALJ found that ''Respondent processed an extensive number of orders for controlled substances in January of 2007,'' and that ''Respondent did receive payment from many of these customers consistent with the invoices dated during January of 2007.'' ALJ at 44 (FOF 157) (citing GX 63). During the hearing, however, the parties stipulated that ''[i]t was not [Respondent's] intent to retain any payment submitted to or through Southwood by [its] customers, in connection with orders forwarded to and filled by Pharmapac.'' Tr. 1030. Moreover, the Government introduced no evidence establishing that Pharmapac is not registered with DEA to manufacture or distribute controlled substances.

Discussion

Section 304(a) of the Controlled Substances Act provides that ''[a] registration * * * to manufacture, distribute, or dispense a controlled substance or a list I chemical may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render [its] registration under section 823 * * * inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). As relevant here, Congress directed that the following factors be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule III, IV, or V compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable State and local law;

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

21 U.S.C. 823(d). These factors are considered in the disjunctive. I may rely on any one or a combination of factors and give each factor the weight I deem appropriate in determining whether to revoke a registration or to deny a pending application for renewal of a registration. See Green Acre Farms, Inc., 72 FR 24607, 24608 (2007); ALRA Laboratories, Inc., 59 FR 50620, 50621 (1994). 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); *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

The Government bears the burden of proving that Respondent's continued registration would be inconsistent with the public interest. 21 CFR 1301.44(e). If, however, the Government establishes a prima facie case, the burden shifts to Respondent to show why its continued registration would not be inconsistent with the public interest. See Gregory D. Owens, 67 FR 50461, 50464 (2002).

In this case, I conclude that factors one, five and six establish that Respondent's continued registration would ''be inconsistent with the public interest.'' 21 U.S.C. 823(d). Indeed, Respondent ''concedes that the Government has established a prima facie case * * * that [its] continued registration may be inconsistent with the public interest.'' Resp. Proposed Findings of Fact and Conclusions of Law (hereinafter, Resp. Br.) at 31. Respondent maintains, however, that the record ''encompasses sufficient examples of mitigation and ongoing remediation by'' it to compel the conclusion that revoking its registration ''would be inconsistent with the public interest.'' Id. For the reasons set forth below, I conclude otherwise and will order the revocation of Respondent's registration and the denial of its pending renewal application.

Factors One and Five—Maintenance of Effective Controls Against the Diversion of Controlled Substances Into Other Than Legitimate Channels and Respondent's Past Experience in Distributing Controlled Substances

Under DEA regulations, all ''registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.'' 21 CFR 1301.71(a). A registrant is further required to ''design and operate a system to disclose to the registrant suspicious orders of controlled substances'' and is required to ''inform the [DEA] Field Division Office * * * in his area of suspicious orders when discovered by the registrant.'' Id. 1301.74(b). As explained below, the record establishes that Respondent failed repeatedly to comply with both requirements.

Respondent's Distributions of Hydrocodone and Due Diligence Efforts

Beginning in December 2005, Respondent distributed massive quantities of hydrocodone, a highly abused drug and schedule III controlled substance, to entities which, notwithstanding their various assertions to Mr. Goodrich, were nothing more than drug pushers operating under the patina of legitimate authority. Respondent's due diligence measures '' which initially involved nothing more than verifying a pharmacy's DEA registration and state license—were wholly deficient.

As the record demonstrates, Respondent sold Medipharm in excess of 1.75 million units of hydrocodone in the months of December 2005 and January 2006, before Mr. Goodrich even visited this entity to inquire into the nature of its business. Likewise, during the months of December 2005 and January 2006, Respondent sold more than 1.55 million dosages units of hydrocodone to Avee and 476,000 dosage units of the drug to Accumed before Mr. Goodrich even visited these entities. It also sold large quantities of hydrocodone to Medichem and Bi-Wise before Mr. Goodrich visited them. As Mr. Goodrich admitted, Respondent had ''no'' process in place to determine the nature of a potential customer's business before it sold to them.

Moreover, during the February on-site visits with the above entities, Mr. Goodrich received substantial information which raised serious doubt as to the legality of their business practices. As the evidence demonstrates, Mr. Goodrich determined that Medipharm had a ''mail order business [with] ties to internet pharmacy,'' GX 16, that Accumed had ''ties to the internet,'' GX 17, and that Medichem was mailing prescriptions out-of-state and had ''some ties to the internet community.'' GX 18.

At Avee, Mr. Goodrich found that it ''provide[d] mail order fulfillment of prescriptions from various sources, *including internet-connected medical providers who provide patient assessments and diagnosis through unconventional practice models,''* with *''[m]any of these prescriptions* [being] *connected to pain management therapies involving the prescription of controlled substances.''* GX 20 (emphasis added). Avee's management also discussed with Mr. Goodrich a visit earlier that day by agency investigators and their concern as to ''the validity of the doctor-patient relationship that formed the basis *of the digital diagnosis that resulted in a prescription for controlled substances being submitted to Avee for filling.''* Id. (emphasis added). Moreover, in his testimony, Mr. Goodrich admitted that he knew as early as his visit to Avee that ''[s]ome of the prescriptions [it] filled were not the result of physical contact between the doctor and the patient,'' Tr. 348, and that Avee had also provided him with the names of two websites that were the source of the prescriptions it filled. Id. at 351–52.

The evidence further establishes that notwithstanding that he did not ''know [] much about this telemedicine thing,'' id. at 354, Mr. Goodrich did not order that Respondent's shipments to these pharmacies be stopped. Indeed, following the visits, Respondent shipped even larger monthly quantities of hydrocodone to some of the pharmacies. Furthermore, Mr. Goodrich testified that he did not assess whether Avee was operating illegally, claiming that he did not think he could ''make that assessment.'' Tr. 359. Indeed, Respondent remained disinterested in determining whether the Florida-based pharmacies were lawfully filling prescriptions until after the July 17, 2006, conference call with DEA officials.[19]

Notwithstanding that Mr. Goodrich had reason to know that the Florida-based internet pharmacies were not filling lawful prescriptions, Respondent proceeded to supply large quantities of hydrocodone to an additional eleven internet pharmacies (most of which were located in the Tampa Bay area) including United, Medicom, Discount, Universal, Medcenter, CRJ, Grand, Medicine Shoppe, Duane's, Woody, and Elite. Moreover, notwithstanding the large quantities that these pharmacies ordered, Mr. Goodrich apparently did not deem it necessary to conduct site visits to inquire into the nature of their businesses and whether they were filling lawful prescriptions. See, e.g., Resp. Br. at 34–35 (discussing ''steps taken by Mr. Goodrich to ascertain that [Respondent's] pharmacy customers in Florida were not diverting controlled substances,'' and noting only Goodrich's Feb. 8, 2006 site visits and the August 2006 pharmacy questionnaires). Moreover, Respondent continued to supply the pharmacies, notwithstanding that they were ordering hydrocodone in quantities that far exceeded what its traditional retail pharmacy customers ordered, that Respondent had information that controlled substances comprised between 98 and 100 percent

[19] It is true that Mr. Goodrich testified that he visited the DEA Diversion Control website in early 2006. However, he testified that he received most of the information about prescriptions during the July 2006 conference call. Tr. 357. Neither Mr. Goodrich nor any other witness for Respondent claimed to have reviewed the DEA April 2001 policy statement on prescribing controlled substances over the internet prior to it being provided to him by DEA officials. Moreover, Respondent makes no claim that following the February visits it consulted legal counsel to determine the legality of the prescribing practices of the Florida pharmacies.

of the prescription drugs being ordered by these entities, and that as Mr. Goodrich explained, these entities ''were a different type of a customer than what we'd been used to dealing with.'' Tr. 319.

Respondent contends that it is ''unfair'' to compare what Mr. Goodrich learned during the site visits through his ''lay inquiry'' with what a DEA Diversion Investigator learned, ''armed as she was by two decades of diversion investigation experience, search warrants, and a team of armed agents carrying intimidating badges.'' Resp. Br. 35. The record demonstrates, however, that even without a warrant, a badge and a gun, Mr. Goodrich was able to obtain from Avee substantial information indicating that its practices were illegal and already subject to DEA's scrutiny. He was also able to obtain information from several other pharmacies which suggested that further inquiry was warranted as they were engaged in practices similar to those of Avee. Moreover, Respondent's argument ignores that it sold to numerous additional internet pharmacies without even conducting site visits.

Furthermore, even after DEA presented information to it—on the proverbial silver platter—that Respondent's Florida-based internet pharmacy customers were likely engaged in illegal activity and even specifically mentioned that six of its customers were ''targeted,'' Respondent continued to distribute extraordinarily large quantities of hydrocodone to these pharmacies.

To Medipharm, an entity described as a target of an investigation, in August 2006, Respondent distributed 1.25 million dosage units of hydrocodone. In September 2006, Respondent distributed to Medipharm 1.45 million dosage units of the drug, and in October 2006, more than 1 million dosage units. Furthermore, Respondent distributed an additional 538,000 dosage units to Medipharm during the first half of November 2006, at which time Medipharm's registration was suspended.

To Accumed, another of the targeted pharmacies, in August 2006, Respondent sold approximately 1.268 million dosage units of hydrocodone. While in September and October 2006, Respondent's hydrocodone sales to Accumed declined to approximately 503,000 and 394,000 dosage units respectively, in November 2006, Respondent sold 1.56 million dosage units to it.

As for Avee, which was also identified as a target, in August 2006, Respondent sold 506,430 dosage units of hydrocodone, an amount that was more than five times the previous month's sale. In September 2006, Respondent sold Avee approximately 696,000 dosage units; in October, it sold Avee 537,900 dosage units; and in November, it sold Avee 2.11 million dosage units.[20]

It is true that following the July 17, 2006 conference call, Respondent attempted to perform additional due diligence. More specifically, Mr. Goodrich requested information from the Florida Board of Pharmacy as to whether the pharmacies were operating legitimately. The Florida Board, however, only provided information as to the licensure status of the pharmacies. Resp. Ex. 50.

On August 15, 2006, Respondent also sent out a questionnaire to its internet pharmacy customers. It is true that Respondent did eventually cease shipping controlled substances to three of the pharmacies (Bi-Wise, CRJ and YPM) because these pharmacies either failed to respond (Bi-Wise) or gave inadequate responses on their questionnaires (CRJ and YPM). But even with respect to these pharmacies, Respondent did not cut off its shipments to them until late October 2006, nearly two months after its own deadline for completing the questionnaires, and sold them large quantities of hydrocodone notwithstanding that the pharmacies had failed to comply with Respondent's request for additional information.

It is also true—as Respondent contends—that two of the pharmacies (Medipharm and Universal) submitted questionnaires which were ''prepared by an apparently reputable attorney,'' Resp. Br. 35, and which indicated that the pharmacies had ''retained counsel to * * * implement a strict compliance program to ensure compliance with the applicable rules and regulations for prescription practice in each of the states in which'' the pharmacies did business. Resp. Ex. 67, at 4; Resp. Ex. 69, at 4. These questionnaires further stated that the pharmacies ''routinely verif[ied]'' that the doctors were ''authorized to practice medicine in the state in which the patient is located.'' Resp. Ex. 67, at 4; Resp. Ex. 69, at 4.

These two pharmacies further indicated, however, that they did ''not fill prescriptions where the patient has not had a face-to-face encounter with a physician.'' Resp. Ex. 67, at 5, Resp. Ex. 69, at 5 (emphasis added). Notably, the latter statement did not say that the patients had a face-to-face encounter with the prescribing physician.

I need not decide whether it was reasonable for Respondent to continue shipping controlled substances to Medipharm and Universal in light of the ambiguous statements they provided and the massive quantities of controlled substances they were ordering. Even if it was, Respondent ignores the numerous instances in which it continued to ship to other pharmacies which had provided ample information casting serious doubt as to the validity of their activities.[21]

For example, Respondent continued shipping hydrocodone to Grand Pharmacy deeming its response to be adequate. Yet Grand stated that ''[a]ll doctors Grand deal with have a physical *or extended phone dialogue with the patient to establish the diagnosis and need for the medication*.'' Resp. Ex. 63, at 2 (emphasis added). While this answer should have stood out like a swollen thumb, Mr. Goodrich deemed Grand's answers adequate and Respondent continued to ship large quantities of controlled substances to it.

The Medicine Shoppe's questionnaire indicated the name of a website used by the ''physicians who most commonly issue prescriptions filled by [the] pharmacy.'' Resp. Ex. 65, at 4. Moreover, the pharmacy answered the question of whether it verified that the physicians were ''authorized to practice medicine in the state where the patient is located,'' stating: ''No. The doctor makes the consult from the state in which they are licensed.'' Id. at 4.

Medicom—which apparently was owned by the same person who owned the Medicine Shoppe—stated that it was not an internet pharmacy. The pharmacy added, however, that it ''receive[d] Rx from doctors who have spoken [to] patients, discussed therapy, and also reviewed entire medical history.'' Resp. Ex. 66, at 2. Notably, Medicom did not maintain that the prescriptions were issued by the physicians pursuant to a face-to-face encounter with the patients. Moreover, the questionnaire indicated that the pharmacy received prescriptions ''via telemedicine'' and named three websites used by physicians whose prescriptions the pharmacy filled. Id., at 2 & 4. Finally, when asked whether it verified that the physicians were authorized to practice medicine in the states where the patients were located,

[20] Respondent also continued to ship large quantities of hydrocodone to Universal, another pharmacy which was identified as ''targeted.'' In August, it shipped 399,070 dosage units to Universal; in September, 340,500 dosage units; in October, 453,690 dosage units; and in November, 330,600 dosage units.

[21] Likewise, the answers submitted by Duane's appeared to be in order even if they were false.

Medicom answered: ''No. The doctor makes the consultation from the state they are licensed'' in. Id. at 4.

Here again, Mr. Goodrich deemed both the Medicine Shoppe and Medicom's responses to be adequate despite the obvious indications that they were not filling lawful prescriptions and Respondent continued to ship hydrocodone to both pharmacies. Most significantly, in September 2006, it shipped 164,000 dosage units to Medicom; in October, it shipped 375,690 dosage units to Medicom; and in November, it shipped 385,000 dosage units to the pharmacy.

Avee, another of the identified targets, sent its questionnaire in nearly a month late. On its questionnaire, Avee indicated that it was not an internet but rather a ''mail order pharmacy.'' Resp. Ex. 55, at 4. It also answered ''N/A'' to the questions which asked what percentage of the prescriptions it filled originated on the internet and to identify the websites used by the physicians who were commonly issuing the prescriptions it filled. Resp. Ex. 55, at 2 & 4.

I acknowledge that Mr. Goodrich then undertook further inquiry to determine whether Avee had changed its business model and requested additional information regarding its due diligence protocols. Resp. Ex. 56. Avee wrote back including a copy of a letter it claimed to have sent to the physicians who issued the prescriptions it filled. Resp. Ex. 57. As found above, while that letter correctly stated the four elements of a legitimate doctor/patient relationship, it also stated that ''[t]o these, Avee would add an opportunity for the prescribing practitioner and patient, *via some means, to confer.*'' Id. at 2 [22] (emphasis added). Moreover, the letter maintained that ''[i]t is not a requirement that the prescribing physician himself/herself took the history or performed the physical examination, as long as the prescribing practitioner had full and meaningful access to the medical history and physical examination, and *an opportunity to confer with the patient.*'' Id. (emphasis added).

In short, Avee had not changed its practices from the time of the February 2006 on-site visit, when Mr. Goodrich noted that the pharmacy filled ''prescriptions from various sources, *including internet-connected medical providers who provide patient assessments and diagnosis through unconventional practice models.''* GX 20 (emphasis added). Respondent nonetheless continued to ship large quantities of hydrocodone to Avee. Indeed, in September 2006, Respondent shipped 695,800 dosage units to Avee, in October, it shipped 537,900 dosage units to Avee, and in November, it shipped 2.11 million dosage units to the pharmacy.

Accumed, another of the ''targeted pharmacies,'' represented in its questionnaire that it was ''not an internet pharmacy,'' and that zero percent of the prescriptions it filled originated on the internet. Resp. Ex. 54, at 2–3. It also indicated ''N/A'' where asked to list the websites used by the ''physicians who most commonly issue prescriptions filled by your pharmacy.'' Id. at 4. Notwithstanding the inconsistency between Accumed's answers and Mr. Goodrich's finding during the February site visit that the pharmacy had ''ties to the internet,'' GX 17, there is no evidence that Mr. Goodrich undertook any additional investigation to determine whether it was filling legitimate prescriptions.

Here again, Respondent continued to sell extraordinary quantities of hydrocodone to the pharmacy. More specifically, in August 2006, Respondent sold Accumed 1.267 million dosage units; in September, it sold 503,020 dosage units; in October, it sold 393,610 dosage units; and in November, it sold more than 1.56 million dosage units.

Finally, Respondent produced no evidence that it ever received responses from Medcenter, Discount Mail Meds (a/k/a Liddy's), and Medichem. See Resp. Exs. 54–72; ALJ at 24–25 (Stipulated FOF 77–86). Moreover, Respondent's evidence suggests that it did not even send a questionnaire to Discount Mail Meds. See Resp. Ex. 52, at 2.

Respondent nonetheless continued to distribute large quantities of hydrocodone to Medcenter until November 16, 2006, when the pharmacy's registration was suspended. More specifically, Respondent sold Medcenter 378,000 dosage units in September, 608,000 dosage units in October, and approximately 314,000 dosage units in the first half of November.

Respondent also distributed large quantities of hydrocodone to Discount and Medichem until the immediate suspension of its registration on December 6, 2006. Between August and November 2006, Respondent sold Medichem at least 216,000 dosage units each month. During the same period, the lowest amount Respondent sold to Discount was 292,720 dosage units in August. Moreover, in October and November, Respondent sold to Discount more than 500,000 dosage units each month.

Accordingly, I conclude that even after being advised by agency officials that its internet pharmacy customers were likely engaged in illegal activity, Respondent failed miserably to conduct adequate due diligence. Notwithstanding the breadth of information provided during the conference call, Respondent did not stop selling to any of its internet pharmacy customers while it investigated the legitimacy of their businesses activities.

Moreover, even when some of the pharmacies provided information indicating that the prescriptions they filled were likely illegal, Respondent continued to distribute large quantities of hydrocodone to them. Indeed, the only instances in which Respondent stopped supplying a pharmacy pursuant its ''due diligence'' program was when one pharmacy (Bi-Wise) entirely failed to submit the questionnaire and when two other pharmacies (CRJ and YPM) answered nearly every question with a dash or ''N/A.'' Furthermore, Respondent failed to even send a questionnaire to one of the pharmacies and continued to ship to two pharmacies which apparently never submitted a completed questionnaire.

In short, the direct and foreseeable consequence of the manner in which Respondent conducted its due diligence program was the likely diversion of millions of dosage units of hydrocodone. Indeed, it is especially appalling that notwithstanding the information Respondent received from both this agency and the pharmacies, it did not immediately stop distributing hydrocodone to any of the pharmacies. Moreover, in several cases, Respondent actually distributed even larger quantities of the drug to them. As one of the DIs testified regarding Respondent's distribution of 2.1 million dosage units to Avee in November 2006, ''[t]his is an obscene amount of drugs.'' Tr. 617. The term ''obscene'' also fairly describes Respondent's experience in distributing hydrocodone to all of its internet pharmacy customers.[23]

[22] This is page 5 of the exhibit.

[23] Respondent attempts to excuse its conduct on the ground that it repeatedly asked DEA officials whether it should stop selling to the pharmacies only to be told by DEA officials that they could not tell them whether or not to sell because that was a business decision. Resp. Br. 33. Several courts have held, however, that DEA has no authority under the CSA to tell a distributor whether to sell or not. *See PDK Labs Inc.,* v. *Ashcroft,* 338 F.Supp.2d 1, 14 (D.D.C. 2004).

Respondent also faults the July 2006 presentation by agency personnel as ''[s]easoned with antiquated case law and dense, professional material,'' and asserts that it had ''little pedagogic value.'' Resp. Br.

Respondent's Failure to Report Suspicious Orders

The record further demonstrates that Respondent repeatedly failed to report any of its sales to the Florida-based internet pharmacies as suspicious orders even though, as the ALJ concluded, the purchases by these customers ''fell within the regulatory definition of suspicious orders.'' ALJ at 49. From its first distribution of hydrocodone products in December 2005 through its last in December 2006, not once did Respondent report a suspicious order.

Moreover, Respondent failed to report these distributions notwithstanding (1) that the Florida-based pharmacies were ordering massive quantities of hydrocodone, quantities which greatly exceeded what Respondent sold to traditional retail pharmacies, and (2) that controlled substances typically constituted all but a miniscule percentage of the prescriptions drugs being ordered by the Florida-based pharmacies. For example, between December 7 and December 31, 2005 (a three-and-a-half week period), Respondent distributed approximately 817,000 dosage units of hydrocodone to Medipharm. This amount was 109 times the amount of hydrocodone that Respondent typically sold in a month to its retail pharmacy customers. Moreover, controlled substances comprised 98 percent of Medipharm's purchases of prescriptions drugs from Respondent.

Notwithstanding this information, Respondent did not deem Medipharm's purchases to be suspicious. It did not report any of Medipharm's subsequent purchases as suspicious even though the pharmacy never purchased less than 703,000 dosage units of hydrocodone in a month and purchased more than a million dosage units of this drug in six different months. Moreover, even though between December 2005 and June 2006, controlled substances constituted 99% of Medipharm's prescription drug purchases from it and was specifically identified as a targeted pharmacy, Respondent never reported the purchases as suspicious.

As another example, between December 21st and 31st, 2005, Avee purchased approximately 346,000 dosage units of hydrocodone from Respondent. Just as in the case of Medipharm, this amount—which involved only ten days of purchases—greatly exceed Respondent's average monthly sale of hydrocodone to a traditional pharmacy. Moreover, while Avee was only a customer for ten days during the seven-month period of June through December 2005, Avee nonetheless made Respondent's list (ranking eighth) of its largest purchasers of controlled substances. See Resp. Ex. 46. Moreover, controlled substances constituted 100 percent of Avee's purchases of prescription drug products from Respondent. Id.

Here again, Respondent did not report any of Avee's purchases as suspicious. It did not do so after Mr. Goodrich acquired information during the February site visit indicating that Avee was engaged in the filling of illegitimate prescriptions. Nor did it do so even after the July 2006 conference call when DEA officials informed Respondent that it was a targeted pharmacy. It did not do so even in November 2006, when it distributed more than 2.1 million dosage units of hydrocodone to Avee.

Moreover, as it obtained additional Florida based customers, who proceeded to order excessive quantities of hydrocodone, Respondent never reported any of these pharmacies' orders as suspicious. To the contrary, on various occasions, it submitted e-mails to DEA field personnel affirmatively stating that it had reviewed its customer's purchases of controlled substances and had ''no suspicious activity to report.'' See GX 9 (Dec. 2005); GX 10 (Jan. 2006); GX 11 (Mar. 2006); GX 12 (April 2006).

Respondent contends that ''[t]he [G]overnment's focus on [its] failure to report orders as suspicious in early 2006 is a red herring.'' Resp. Br. 34. Respondent argues that its failure to file suspicious order reports was not the result of any intent to mislead and points to the fact that in February 2006, it submitted a report that identified Medipharm, Avee and Accumed as among its largest purchasers of controlled substances. Id. Respondent also argues that by filing reports with DEA's ARCOS unit ''it alerted the DEA to Southwood's commerce with internet pharmacies.'' Id.

Even if Mr. Goodrich had no intent to mislead by submitting these negative reports, Respondent still violated the regulation by failing to report suspicious orders. That some of the pharmacies were identified on the two reports Respondent submitted listing its largest purchasers of controlled substances (which Respondent submitted in February and July 2006), does not excuse its failure to comply with the regulation. Those reports did not comply with the regulation for several reasons.

First, they were not timely submitted. See 21 CFR 1301.74(b) (requiring reporting of ''suspicious orders when discovered by the registrant''). Indeed, many of the pharmacies had been purchasing extraordinary quantities of hydrocodone for months by the time Respondent submitted its July 2006 report. Second, the reports did not list several of the internet customers—even though they had purchased large quantities—either because they had only recently become customers (as in the case of Grand Pharmacy and the Medicine Shoppe), or because the pharmacy had only purchased hydrocodone from Respondent for a limited time (as in the case of Elite).

Nor does Respondent's filing of ARCOS reports excuse its failure to report suspicious orders. The ARCOS reporting requirement and the suspicious orders reporting requirement serve two different purposes. While ARCOS provides the Agency with information regarding trends in the diversion of controlled substances, the reports need not be submitted until fifteen days after the end of the reporting period. In contrast, as explained above, a suspicious order must be reported ''when discovered by the registrant.'' 21 CFR 1301.74(b). The suspicious orders reporting requirement exists to provide investigators in the field with information regarding potential illegal activity in an expeditious manner. Respondent's compliance with the ARCOS reporting requirement is thus not a substitute for its failure to report suspicious orders.[24]

Accordingly, I further conclude that Respondent repeatedly violated federal

at 34. The Supreme Court's decision in *United States* v. *Moore,* 423 U.S. 122 (1975), however, remains good law. As for the purportedly ''dense, professional materials,'' these documents were typically no more than a handful of pages in length and surely capable of being understood by a person of reasonable intelligence. See GX 61. Indeed, based on the questionnaire Mr. Goodrich prepared, it seems clear that he understood the requirements for a valid prescription and legitimate doctor/patient relationship even if he chose to ignore the information provided by many of the pharmacies. See Resp. Ex. 52.

I further note, however, that the Agency had no obligation to conduct the July 2006 briefing. In any event, in April 2001, the Agency published in the **Federal Register** a guidance document explaining the potential illegality under existing law of the activities engaged in by Respondent's internet pharmacy customers. *See Dispensing and Purchasing Controlled Substances over the Internet,* 66 FR 21181 (2001).

[24] Finally, Mr. Goodrich testified that the reason Respondent did not file the reports even after being told during the July 2006 conference call of the highly suspicious nature of the activities of the Florida-based pharmacies was that the pharmacies were already under investigation. Respondent's awareness of an ongoing investigation does not, however, excuse its failure to report its customers' continued suspicious orders. Indeed, such information might well enable the agency to complete its investigation.

regulations by failing to report suspicious orders. 21 CFR 1301.74(b). As explained above, the record also clearly establishes that Respondent's experience in distributing controlled substances is characterized by recurring distributions of extraordinary quantities of controlled substances to entities which then likely diverted the drugs by filling prescriptions which were unlawful. Moreover, Respondent's due diligence measures were wholly inadequate to protect against the diversion of the drugs. Respondent's failure to maintain effective controls against diversion and its experience in distributing controlled substances thus support the conclusion that its continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).

Factor Six—Other Factors Relevant to and Consistent With Public Health and Safety

Respondent ''concedes that the Government has established a prima facie case * * * that [its] continued registration may be inconsistent with the public interest.'' Resp. Br. 31. Respondent contends, however that there is sufficient evidence ''of mitigation and ongoing remediation by [it] to compel a conclusion that to revoke its registration would be inconsistent with the public interest.'' Id. (citations omitted).

More specifically, Respondent argues that its ''cooperation with and responsiveness to * * * DEA [should] also be considered in evaluating whether [its] continued registration is in keeping with the public interest.'' Id. at 37. Respondent maintains that it has undertaken several remedial measures ''to prevent the occurrence of further violations,'' and that therefore, a sanction less than revocation is warranted. These measures include: (1) The development of a new SOP ''to more rapidly detect suspicious orders''; (2) placing its new COO ''in charge of DEA compliance''; (3) retaining a consultant to audit its compliance efforts; and (4) working with the consultant ''to develop a means of interdicting suspicious orders of controlled substances before they are shipped.'' Resp. Br. 36.

The ALJ agreed with Respondent. According to the ALJ, ''Respondent has worked with * * * DEA throughout its registration,'' and had ''worked closely with local DEA diversion investigators to establish systems to control against the diversion of controlled substances.'' Id. at 54–55. The ALJ also noted that Respondent had ''consistently submitted'' ARCOS reports without any deficiencies noted. Id. at 54.

Addressing the issue of its responsiveness to the Agency, the ALJ noted that Respondent attempted to obtain information from the Florida Board, that it sent questionnaires to the pharmacies and developed a new customer profile to evaluate new accounts, and that it adopted a policy under which it stopped filling orders placed by pharmacies whose registrations had been continued on a day-to-day basis but not renewed. Id. at 59–60.

The ALJ also explained that ''Respondent continues to demonstrate a willingness to bring its business practices into compliance with DEA regulations,'' and noted that its new COO ''has a firmer grasp [of] these regulatory requirements.'' Id. at 61. Reasoning that Respondent had ''kept an open dialogue with the DEA and has attempted to come into compliance with the DEA's regulations,'' and had not previously been subject to enforcement action, the ALJ concluded that revocation of its ''entire * * * registration is too severe a remedy'' even though Respondent had ''irresponsibly sold'' what she described as ''egregious quantities'' of hydrocodone to the Florida internet pharmacies. Id. at 62.

I disagree with both Respondent and the ALJ. As for Respondent's view, its ''circumstances'' do not ''compare favorably with [those of] registrants'' whose registrations have not been revoked, but rather, subjected to lesser sanctions. See Resp. Br. 36. As for the ALJ's view that Respondent had kept ''an open dialogue,'' the record amply establishes that Respondent is not a good listener.

For support, Respondent cites my decision in Joy's Ideas, 70 FR 33195 (2005), where I noted that the registrant had taken ''aggressive actions to improve her'' accountability systems. Id. at 33198. Notwithstanding that the registrant ''may have been an unknowing and unintentional contributor'' to the methamphetamine problem, I still revoked her registration based on evidence that large amounts of the products she distributed were being diverted. Id. at 33198–99. The case thus does not support Respondent for two reasons: (1) I revoked the registration in Joy's Ideas notwithstanding the mitigating evidence, and (2) here, Respondent had reason to know that it was contributing to the diversion of hydrocodone through most, if not all, of the pharmacies it supplied.

Respondent also cites Service Pharmacy, Inc., 61 FR 10791 (1996), which noted that a registrant's adherence to the terms of a consent order it had entered into with state authorities supported its being allowed to maintain its DEA registration. Respondent argues by analogy that its ''cooperation with and responsiveness to * * * DEA [should] also be considered in evaluating whether [its] continued registration is [consistent] with the public interest.'' Resp. Br. 37.

I agree that Respondent's level of cooperation and responsiveness to DEA should be considered in determining the appropriate sanction. It is true that there is some evidence of Respondent's having been a cooperative registrant as to some issues involving its responsibilities under the CSA. In particular, Respondent worked with a diversion investigator to develop a suspicious orders reporting system (although it was developed for a different customer base). There was also no evidence of Respondent's non-compliance with the CSA prior to its decision to supply internet pharmacies.

On the other hand, even were I to completely ignore Respondent's conduct during the period between December 2005, when it started supplying the pharmacies, and the July 2006 conference call, the record further demonstrates that it did not adequately respond to the information DEA provided it in July 2006. As explained above, Respondent did not cut off any of the pharmacies until more than three months after being informed of the potential illegality of the pharmacies' activities. Indeed, it did not even enforce the deadline it set in its questionnaire.

Moreover, while some of the responses to the questionnaires were either false or were cleverly prepared by a wordsmith, in a number of other instances the responses contained information—which Respondent then ignored—that clearly suggested that the pharmacy was filling invalid prescriptions. Finally, Respondent continued to sell large quantities to many of the pharmacies—including those specifically identified as targeted—up until the suspension of either the pharmacy's registration or its own registration. Contrary to Respondent's view, the entire body of evidence regarding its cooperation and responsiveness does not support its continued registration.

While finding that ''Respondent continues to fail to adequately protect against diversion of hydrocodone products,'' ALJ at 59, the ALJ nonetheless concluded that to revoke its entire registration would be ''too severe a remedy,'' presumably because there was ''no evidence of [its] improper

handling of any other controlled substances.'' Id. at 62. The ALJ, however, offered no explanation as to why Respondent's procedures were nonetheless sufficient to entrust it with authority to distribute other controlled substances.

To the extent the ALJ's recommendation was based on the lack of evidence showing that Respondent improperly handled other controlled substances, the ALJ erred. The Government is not required to prove that multiple categories of the drugs Respondent distributed were diverted in order to sustain the revocation of its entire registration. Rather, proof that a single category of a drug it distributed was diverted is enough to support the revocation of Respondent's entire registration.[25]

The ALJ apparently was persuaded by the various measures undertaken by Respondent to bring itself into compliance. Among these was Respondent's hiring of its new COO. According to the ALJ, the new COO is ''an experienced officer who will be making the final decisions concerning * * * Respondent's compliance measures,'' and this hiring ''operates as an increased level of protection of the public interest and [its] compliance with DEA regulations in its business practices.'' ALJ at 62. The ALJ also noted that Respondent had voluntarily agreed ''to cease selling controlled substances to Internet pharmacies.'' Id. at 63. Relatedly, Respondent points to its retaining of a consultant to audit its DEA compliance efforts and to develop a means of interdicting suspicious orders before they are shipped.

As for Respondent's hiring of its new COO, the record establishes that Mr. Schwartz commenced his duties on September 26, 2006. Mr. Schwartz was thus the COO for more than two months before the immediate suspension order was served. Yet during this period, Respondent continued to distribute extraordinary quantities of hydrocodone to numerous internet pharmacies. Moreover, with respect to some of the pharmacies, it actually distributed increasing quantities culminating with the 2.1 million dosage units it sold to Avee in November 2006.

In his testimony, Mr. Schwartz claimed that he did not become aware of Respondent's sales to the internet pharmacies and DEA's interest in the matter until on or about November 2, 2006, when DEA investigators visited Respondent and again met with its employees including Mr. Goodrich.[26] Mr. Schwartz testified that it took ''a couple of days'' for him to be given the notebook which DEA investigators had provided to Respondent before the July conference call and review it, and that on December 5, 2007—approximately four weeks later—he and Mr. Sempre (Respondent's owner) came to the decision to cease doing business with the Florida pharmacies.

While the ALJ credited Mr. Schwartz's testimony, I decline to give any weight to Respondent's stroke-of-midnight decision in determining the appropriate sanction. See, e.g., *Vico Products Co., Inc.,* v. *NLRB,* 333 F.3d 198, 211 (D.C. Cir. 2003). As an initial matter, I note that it should not have taken five weeks for Mr. Schwartz to even become aware of Respondent's sales to the internet pharmacies. Moreover, given the information Mr. Schwartz claims to have reviewed and his extensive experience in the industry, it should not have taken another four weeks to decide to stop selling to these entities.

Most importantly, the decision must be considered in light of the evidence that for nearly a year prior to it, Respondent distributed millions of dosage units of hydrocodone products to entities which were likely diverting the drugs. Moreover, Respondent continued to distribute hydrocodone to the pharmacies following at least two meetings in which DEA investigators discussed the questionable practices of these pharmacies. As the Seventh Circuit has noted, ''[a]n agency rationally may conclude that past performance is the best predictor of future performance.'' *ALRA Laboratories, Inc.,* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995). In short, Respondent's decision is too little, too late, to persuade me that it can be entrusted with a registration.

Nor does the other evidence Respondent presented regarding its remedial efforts persuade me that a sanction less than revocation is warranted. Respondent's distribution of 44 million dosage units of hydrocodone which were likely diverted caused extraordinary harm to the public health and safety. Moreover, the record establishes that Respondent had reason to know that the hydrocodone it distributed was likely being diverted.

As the record demonstrates, for nearly a year, Respondent repeatedly supplied these drug pushers with large quantities of hydrocodone. Respondent commenced supplying the pharmacies showing little interest in determining whether they were engaged in lawful activity. Moreover, Respondent continued to supply the pharmacies even after being advised by this Agency of the likely illegality of their activities. Finally, while Respondent eventually undertook some inquiries, it then frequently ignored the information it obtained from the pharmacies themselves, which indicated that they were likely filling unlawful prescriptions, and continued to supply most of them.

Given the scope of Respondent's conduct and the harm it caused, I decline to accept its assertions of reform. I therefore conclude that this factor also supports the conclusion that Respondent's continued registration ''is inconsistent with the public interest.'' 21 U.S.C. 823(d). Finally, for the same reasons which led me to order the immediate suspension of Respondent's registration, I further hold that this order shall be effective immediately. See 21 CFR 1316.67.

* * * * *

My determination is based on the reasons set forth above, and those reasons are sufficient by themselves to support the revocation of Respondent's registration. There is, however, an additional consideration, which, while not necessary to decide this case, bears mentioning. Specifically, to allow Respondent to maintain its registration—even subject to the conditions as proposed by the ALJ and/or Respondent—would create a perverse incentive. A precedent which ignores how irresponsibly a registrant has acted and allows it to maintain its registration based on its claim of having reformed its business practices, could well prompt other registrants to ignore their obligations under the Act and sell massive quantities of controlled substances to diverters.

I acknowledge that proceedings under sections 303 and 304 of the CSA are non-punitive. *See Samuel S. Jackson* 72 FR 23848, 23853 (2007); *Leo R. Miller,* 53 FR 21931, 21932 (1988). Relatedly, DEA precedent holds that a proceeding under these provisions ' ''is a remedial measure, based upon the public interest and the necessity to protect the public

[25] As for the Government's exception, when a party intends to rely on evidence contained in a CD–ROM, it has the obligation to prepare a summary setting forth what the data contained therein show. That summary must be prepared and served on opposing counsel along with a copy of the CD–ROM in advance of the hearing. It is not the responsibility of the ALJ or this Office to plumb the depths of such an exhibit to determine what the data show. Moreover, such evidence should not be admitted into the record unless the proponent of the exhibit establishes an adequate foundation for its admission by identifying and authenticating the exhibit; this must be done even if opposing counsel do not object to its admission.

[26] As Mr. Schwartz testified, ''when a regulatory agency is on-site * * * everybody in the company knows about it. Word travels quickly.'' Tr. 937.

from those individuals who have misused * * * their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be [en]trusted with the responsibility carried by such a registration.'" *Jackson*, 72 FR at 23853 (quoting *Miller,* 53 FR at 21932).

Neither *Jackson* nor any other agency decision holds, however, that the Agency cannot consider the deterrent value of a sanction in deciding whether a registration should be revoked. Moreover, even when a proceeding serves a remedial purpose, an administrative agency can properly consider the need to deter others from engaging in similar acts. *Cf. Butz* v. *Glover Livestock Commission Co., Inc.,* 411 U.S. 182, 187 (1973). Consideration of the deterrent effect of a potential sanction is supported by the CSA's purpose of protecting the public interest, see 21 U.S.C. 801, and the broad grant of authority conveyed in the CSA's statutory text, which authorizes the revocation of a registration when a registrant has committed acts that render its ''registration * * * inconsistent with the public interest,'' id. 824(a)(4), and specifically directs the Attorney General to consider ''such other factors as may be relevant to and consistent with the public health and safety.'' Id. 823(d)(6).

As noted by a recent study of the National Center on Addiction and Substance Abuse (CASA), ''the abuse of controlled prescription drugs in America now eclipses abuse of all illicit drugs combined, except marijuana.'' GX 3 (Declaration of Joseph T. Rannazzisi). According to the CASA study, ''between 1992 and 2003, abuse of controlled prescription drugs grew at a rate twice that of marijuana abuse, five times greater than cocaine abuse, and 60 times greater than heroin abuse.'' Id. Relatedly, CASA has found that the number of ''controlled prescription drug-related visits to emergency rooms has increased three and a half times more than heroin-related visits and four times more than visits linked to cocaine abuse.'' Id. Moreover, ''between 1994 and 2002, emergency department reports of hydrocodone * * * overdoses increased by 170 percent.'' Id.

Equally alarming are the results of the National Institute of Drug Abuse (NIDA) 2004 survey of eighth, tenth and twelfth grade school children. According to the survey, ''9.3 percent of twelfth graders reported using Vicodin, a brand name Schedule III controlled substance containing hydrocodone, without a prescription in the previous year.'' Id.

Illegitimate internet sites play an increasingly large and disturbing role in facilitating the growth of prescription drug abuse. Id. at 1–2.; *see also William R. Lockridge,* 71 FR 77791 (2006). Because these websites allow a person to obtain a controlled substance based on a prescription which is issued outside of a legitimate doctor/patient relationship and the safeguards that relationship provides, ''[a]nyone—including children—can easily obtain highly addictive controlled substances online.'' GX 3, at 2.

As stated above, these websites and the pharmacies that fill the prescriptions issued by them, are nothing more than drug pushers operating under the patina of legitimate authority. Cutting off the supply sources of these pushers is of critical importance in protecting the American people from this extraordinary threat to public health and safety. In accomplishing this objective, this Agency cannot do it all itself. It must rely on registrants to fulfill their obligation under the Act to ensure that they do not supply controlled substances to entities which act as pushers. And to make clear, because of the threat to public safety posed by the diversion of controlled substances through the internet, the deterrent value of a sanction is an appropriate consideration in proceedings brought under sections 303 and 304 of the CSA.

Order

Pursuant to the authority vested in me by 21 U.S.C 823(d) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, RS0204898, issued to Southwood Pharmaceuticals, Inc., be, and it hereby is, revoked. I further order that the pending application of Southwood Pharmaceuticals, Inc., for renewal of its registration be, and it hereby is, denied. Moreover, for the same reasons which led me to conclude that Respondent's continued registration constituted an imminent danger to public health and safety, this order is effective immediately.

Dated: June 22, 2007.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF LABOR

Employment and Training Administration

Special Guidelines for Processing H–2B Temporary Labor Certification in Tree Planting and Related Reforestation Occupations

AGENCY: Employment & Training Administration, Department Of Labor.

ACTION: Notice.

SUMMARY: This notice updates procedures for State Workforce Agencies and ETA National Processing Centers to process H–2B labor certification applications in tree planting and related reforestation occupations.

SUPPLEMENTARY INFORMATION:

I. References

Immigration and Nationality Act (INA) section 101(a)(15)(H)(ii)(b); 20 Code of Federal Regulations (CFR) Parts 652 and 655; 8 CFR 214.2(h)(6); **Federal Register** Notice, Vol. 70, No. 137, pps. 41430–41438; Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801, *et seq.*; 29 CFR part 500; and Training and Employment Guidance Letter (TEGL) 21–06, Procedures for H–2B Temporary Labor Certification in Non-Agricultural Occupations.

II. Background

The H–2B nonimmigrant program permits employers to hire foreign workers to come to the United States (U.S.) and perform temporary non-agricultural services or labor on a one-time, seasonal, peakload, or intermittent basis. The H–2B visa classification requires the Secretary of Homeland Security to consult with appropriate agencies before admitting H–2B nonimmigrants. Homeland Security regulations require the intending employer first to apply for a temporary labor certification from the Secretary of Labor advising the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS) as to whether qualified U.S. workers are available and whether the alien's employment will adversely affect the wages and working conditions of similarly employed U.S. workers, or a notice that such certification cannot be made, prior to filing an H–2B visa petition with USCIS.

However, in December 2004, the Department opened two new National Processing Centers (NPCs), one each located in Atlanta and Chicago. These Centers have been designated to process

applications to employ foreign workers for temporary positions under the H–2B program. The Department published a notice in the **Federal Register** (Vol. 70, No. 137, pages 41430–41438) on July 19, 2005, clarifying that employers must file two (2) originals of the ETA Form 750, Part A, directly with the State Workforce Agency (SWA) serving the area of intended employment and, once reviewed, the SWA will send the complete application to the appropriate NPC. That process does not apply to employer applications for emergency boilermakers, entertainers, logging, and professional team sports, which were given special filing instructions in the notice. The guidelines outlined in this memorandum work in conjunction with this centralized filing process, and ensure greater consistency in the processing of these H–2B applications through the Centers.

III. Procedures for H–2B Applications in Tree Planting and Related Reforestation Occupations

Due to a number of complexities, special guidelines for processing H–2B applications for tree planting and related reforestation occupations are required. For example, although the occupations of Tree Planter, Forest Worker and Laborer, and Brush Clearer have many similarities to agriculture, they are not so classified under either the Internal Revenue Code or the Fair Labor Standards Act (FLSA). Therefore, under the Immigration and Nationality Act (INA) they are not authorized for the H–2A visa and must be processed as H–2B occupations. However, two court decisions (*Bresgal* v. *Brock,* 833 F. 2d 763 (9th Cir. 1987), and *Bracamantes* v. *Weyerhauser Co.,* 840 F.2d 271 (5th Cir. 1988)) directed the Department to cover migrant and seasonal forestry workers under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). In addition, because forestry occupations may have elements of both agricultural and non-agricultural occupations or involve multi-state itineraries, these applications cannot be solely processed according to the general procedures for H–2B in TEGL 21–06.

Attachment A outlines special guidelines for processing labor certification applications submitted by employers for occupations involved in tree planting and related reforestation activities under the H–2B program, subject to these special provisions. Unless otherwise specified in Attachment A, applications submitted for these occupations must comply with the requirements for H–2B applications contained in TEGL 21–06.

IV. Effective Date

This guidance applies to all temporary labor certification applications for occupations involved in tree planting and related reforestation activities received by the SWAs on or after July 1, 2007.

V. Action Required

NPC Directors and SWA Administrators are requested to provide Center and SWA staff involved in the processing of H–2B applications with a copy of these procedures.

VI. Inquiries

Questions from State Workforce Agency staff should be directed to the appropriate NPC Certifying Officer.

Signed at Washington, DC, this 27 day of June 2007.

Emily Stover DeRocco,

Assistant Secretary, Employment & Training Administration, Labor.

Attachment A: Special Guidelines for Occupations Involving Tree Planting and Related Reforestation Activities Under the H–2B Program

This section outlines special guidelines for employer applications involving tree planting and related reforestation occupations under the H–2B program. Unless otherwise specified in this attachment, applications submitted for these occupations must comply with the requirements for H–2B applications contained in TEGL 21–06.

I. Application of Temporary Need Standards Involving Tree Planting and Related Reforestation Occupations

A. The employer's need for temporary non-agricultural services or labor in tree planting and related reforestation occupations must be justified to the NPC Certifying Officer under one of the following standards: (1) A one-time occurrence, (2) a seasonal need, (3) a peakload need, or (4) an intermittent need.

B. Tree planting and reforestation are predominantly seasonal activities determined by climatic conditions occurring once, or in some locations, twice a year. Although some applications for relatively short itineraries can be justified under the peakload standard, the employer's need for the services or labor to be performed may be more appropriately justified under the seasonal standard.

Employers will typically bid on a sequence of work contracts linking each seasonal activity into an itinerary covering, in some instances, a major portion of the year. Since tree planting and related reforestation activities are covered by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the MSPA definition of ''on a seasonal or other temporary basis'' cited at 29 CFR 500.20 provides guidance for determining whether the job offer is for temporary employment. Under MSPA, ''seasonal'' basis means the following:

''Labor is performed on a seasonal basis, where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker, who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year.''

The term ''other temporary basis'' refers to employment where a worker is employed for a limited time only or where performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

C. Whether the work to be performed, as described in a tree planting application, is temporary or permanent in nature will be determined by examining the employer's need for such workers for the duration of the itinerary. As with every request for H–2B labor certification, an employer's seasonal need of longer than 10 months, which is of a recurring nature, must be supported by compelling evidence to the NPC Certifying Officer that the employer's need for such work and the job opportunity itself are not ongoing or otherwise permanent. A peakload need longer than 10 months will not be certified.

II. Special Application Filing Procedures

A. An employer requesting temporary labor certification who meets the MSPA definition of a Farm Labor Contractor (FLC) (see item II(C)(1) below) must register as a FLC with the Department of Labor's Employment Standards Administration (ESA) before filing a H–2B application for workers who will be performing predominantly manual work, which includes, but is not limited to, tree planting, brush clearing, and precommercial tree thinning. The employer must also provide proof of current registration, including proof of the registration of any Farm Labor Contractor Employees (FLCE—see item II(C)(1) below) at the time of filing.

The FLC and FLCE certificate(s) of registration must be valid for the entire

period of need. If the expiration date of the FLC or FLCE certificate(s) falls at any point during the period of need, the employer must submit a signed written assurance that an application for renewing FLC and FLCE certificate(s) will be submitted timely to ESA in order to attempt to ensure that the certificate(s) are valid during the entire period of need.

B. In situations where the employer is not properly registered as a FLC, the SWA must promptly return the application with a notification that the SWA cannot accept a job opportunity for a reforestation related occupation when the employer is not registered as a FLC.

C. Important FLC Terms and Information

1. A Farm Labor Contractor means any person, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity. Farm labor contracting activities include recruiting, soliciting, hiring, employing, furnishing, and/or transporting workers. ''Agricultural employer'' includes any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed, or nursery, or who produces or conditions seed. ''Agricultural association'' means any nonprofit or cooperative association of farmers, growers, or ranchers incorporated or qualified under applicable State law. A farm labor contractor employee is a person who performs a farm labor contracting activity solely on behalf of a farm labor contractor holding a valid Certificate of Registration and who is not an independent farm labor contractor who would be required to register under the Act in his own right.

2. For information on how to apply as a FLC or FLCE or to obtain a listing of persons and companies currently registered, please contact the nearest office of the Employment Standards Administration (ESA), Wage and Hour Division. A current listing of the ESA District Offices can be obtained at the following Web site: *http://www.dol.gov/esa/contacts/whd/america2.htm.*

3. For information on individuals or companies who are not eligible to register as a FLC and may not engage in any activity as a FLC or as a Farm Labor Contractor Employee (FLCE) as defined by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), please visit the ESA Web site at the following address: *http://www.dol.gov/esa/regs/statutes/whd/mspa_debar.htm.*

4. Each facility or real property used to house and each vehicle used to transport workers must be described in the application. Housing and transport vehicles for MSPA-covered workers must be authorized for use on the FLC's certificate of registration prior to use. Each driver of a vehicle transporting MSPA-covered workers must have an FLC or FLCE (Farm Labor Contractor Employee) certificate of registration that specifically authorizes driving (see II(A) above concerning expiration dates of FLC or FLCE certificates).

5. Prior to granting approval on a temporary labor certification application, the employer must submit a signed, written assurance that all registrations, permits, and/or other required licenses for vehicles, housing, or drivers will remain valid during the entire period of use.

D. Employers have the option of filing a single master application covering multiple itineraries or separate applications for each itinerary where the tree planting or related reforestation work will begin. Alaska, Hawaii, and the U.S. territories may not be included in multi-state itineraries.

1. Employers are permitted to develop and file an itinerary under the following conditions:

a. If the itinerary includes worksite locations covering multiple SWAs, the employer may submit a single application to the SWA where the itinerant employment will begin. In those instances where the start dates for each worksite location in the itinerary are exactly the same, the employer may submit a single application to any one of the SWAs covered by the itinerary. If the employment crosses NPC jurisdictions as well, the NPC that has jurisdiction over the SWA where the employment will begin shall process the application.

b. In situations where the worksite locations cover multiple SWAs, the states listed in the itinerary must be contiguous or located within close geographic proximity to one another. Itineraries where the worksite locations cover multiple states over widely separated geographic areas (*e.g.*, Texas, Arkansas, and Idaho, or Georgia, Alabama, and Maine) are not normal to reforestation occupations and will not be permitted. Such itineraries make it extremely difficult for the Department to satisfy its statutory mandate for determining the availability of domestic workers as a predicate to temporary labor certification. An employer who seeks H–2B workers for job opportunities in one or more remote ''downstream'' states must file separate applications and job orders for those locations.

c. The employer must submit a signed and dated itinerary to the SWA with its application and include the following information:

- The names, physical addresses, telephone numbers, and wages offered in each worksite location. If no physical address and/or telephone number is available, the employer must provide as much geographic detail as possible (*e.g.*, county/city/township/state corresponding to the itinerary time-frame) regarding the location of the crews performing the work;
- The total number of crews' and total number of workers in each crew; and
- The estimated start and end dates of work in each worksite location. Since the work of tree planting and related reforestation occupations are dependent on climatic conditions, the precise ending dates and subsequent contracts may not be defined at the time of placing a job order.

2. Employers are permitted to file a single master application for multiple itineraries under the following conditions:

a. When examining the starting locations of each itinerary, the master application must be filed with the SWA where the largest number of job opportunities is being requested on the itineraries included in the master application. If the employment crosses NPC jurisdictions as well, the NPC that has jurisdiction over the SWA where the employment will begin shall process the application.

b. The application must consist only of crews working for a single employer.

c. The total range of the crews start dates cannot be more than 14 calendar days apart.

III. Special SWA Processing Instructions

A. SWAs should accept agent designations on the ETA Form 750, which is similar to filing procedures under the H–2A program. The employer's application to the SWA must include a copy of the ''Agent Agreement'' or similar document to substantiate that specific authority has been granted to the agent. (Note: As under the H–2A program, an ''agent'' who meets the definition of an FLC under MSPA (see II(A) and II(C)(1) above) must be registered as an FLC with ESA prior to engaging in any farm labor contracting activity. ''Recruiting'' and ''soliciting'' are farm labor contracting activities. If the employer is represented by an attorney, the attorney

must file a Notice of Appearance (G–28) with the application package.

B. SWAs must review all itineraries to ensure each is normal to tree planting and related reforestation occupations (*i.e.*, it is prevailing practice to start in a particular area; what type of itineraries are normal for contracts and the H–2B program), and contact the appropriate NPC Certifying Officer when they receive an itinerary that may not reflect prevailing practice.

C. Employers can require tree planter workers to perform minor related reforestation job activities such as tree seedling pulling, thinning, seed cone gathering, and pine straw gathering. These activities must be stipulated in the application and job order to apprise workers of the full scope of possible job duties.

D. A job opportunity containing a wage offer below the prevailing wage will not be accepted. In accordance with TEGL 21–06, the SWA shall determine the prevailing wage, guided by the regulations at 20 CFR 656.40 and in accordance with Employment and Training Administration, Prevailing Wage Determination Policy Guidance, Non-Agricultural Immigration Programs, Revised May 9, 2005.

E. A job opportunity specifying that workers are to be paid on a piece rate basis must also guarantee the required hourly wage rate per pay period. The required hourly wage rate will be the prevailing wage rate determined by the SWA. If the piece rate does not result in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the hourly rate, the worker's pay must be supplemented to increase the earnings to the equivalent hourly level. In situations where workers will be paid on a piece rate basis, the job offer must identify the piece rate, the length of the pay period and the ending day of the week of the payroll period and date, and the minimum productivity required for job retention.

F. When commencing recruitment, the SWA shall prepare a job order, using the information on the application, and place it into the SWA job bank system for 10 calendar days. During this period, the SWA should refer qualified applicants who contact the local offices and those in its active job files. If the application indicates that work will be performed in other states in the itinerary, the SWA shall clear the job order for 10 calendar days with the appropriate State(s) where the work is to be performed and accept for referral to the employer qualified applicants from the State(s).

G. During the 10-day posting of the job order, the employer shall advertise the job opportunity in a newspaper of general circulation for 3 consecutive calendar days or in a readily available professional, trade or ethnic publication, whichever the SWA determines is most appropriate for the occupation and most likely to bring responses from U.S. workers. If the job opportunity is located in a rural area that does not have a newspaper with a daily edition, the employer shall use a daily edition with the widest circulation in the nearest urban area or such other publication as determined by the SWA.

H. The SWA intrastate and interstate job postings and employer advertisements must include the following information:

1. Identify the employer's name and direct applicants to report or send resumes to the SWA for referral to the employer.

2. Address of the SWA local office and job order number.

3. Description of the job opportunity with particularity, including a summary of the itinerary, duties to be performed, work hours and days, and, if applicable, benefits (*e.g.,* housing and free transportation) and incentive wages (e.g., piece rates).

4. Starting locations and wages at each crew's starting location.

5. Notice if employees must purchase or rent tools.

6. Offer wages, terms, and conditions of employment which are not less favorable than those offered to the alien and are prevailing for the occupation, activity, and industry.

7. State the total number of job openings the employer intends to fill.

8. Notice that the job opportunity is temporary.

I. SWAs should examine all deductions (including housing, transportation, meals, tools, safety equipment, etc.) to determine if they are allowable in accordance with the Fair Labor Standards Act. To obtain more information on the propriety of the deduction(s), SWAs should contact the appropriate office of the ESA Wage and Hour Division. Consultation with the Wage and Hour Division is extremely important for those deductions which are for tools of the trade and other materials and services incidental to carrying on the employer's business. SWAs should contact the appropriate NPC if deductions are not in accordance with the prevailing practice for the area. SWA and ETA decisions regarding allowable deductions are not binding on the ESA Wage and Hour Division.

IV. Special Instructions for Completing the ETA Form 750, Part A

A. To ensure consistency in completing applications, employers and SWAs should use the following annotations:

a. Item #7—Employers should write ''See Attached Itinerary'' and follow the instructions for itineraries under section II.D.

b. Item #10b—Employer should note the maximum number of hours required for overtime.

c. Item #12b—Employer should note ''rate of pay'' which shall be time and a half.

d. Item #13—Production standards must be disclosed, and the employer must provide documentation to the SWA substantiating any standard higher than the prevailing practice in the industry. Most reforestation employers have been in the reforestation business for a sufficient number of years so as to have records/documents on file. Such records/documents can include, but are not limited to, past production records, improved equipment, statement of how terrain will impact production rate. SWAs should use their best judgment, based on prevailing practice, to accept or deny the employer's justification.

e. Item #15—Specific requirements such as requiring employees to purchase tools or housing accommodations should be noted. In accordance with the MSPA, transportation, housing, and any other employee benefits to be provided and any costs to be charged for each of them must be disclosed to the workers. Further, if there is a relationship between the employer and the store to which employees are directed to purchase or rent tools, it must be disclosed to the employee. This information should also be stated in the job order.

B. In accordance with procedures established under TEGL 21–06, the SWA shall advise the employer to correct any deficiencies in the application before commencing recruitment. SWAs are authorized to close cases in circumstances where the employer fails to address all deficiencies in the application (correction letter) or respond in a timely manner to a recruitment letter.

[FR Doc. E7–12766 Filed 7–2–07; 8:45 am]

BILLING CODE 4510–FP–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standards: Staff Discussion Paper—Harmonization of Cost Accounting Standards 412 and 413 with the Pension Protection Act of 2006

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, invites public comments concerning a Staff Discussion Paper on the harmonization of Cost Accounting Standards 412 and 413 with the Pension Protection Act of 2006.

DATES: Comments must be in writing and must be received by September 4, 2007.

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to *casb2@omb.eop.gov.* Be sure to include your name, title, organization, and reference case ''CAS–2007–02S.'' Comments may also be submitted via facsimile to (202) 395–5105. If you must submit via regular mail, please do so at Office of Federal Procurement Policy, 725 17th Street, NW., Room 9013, Washington, DC 20503, ATTN: Laura Auletta. Please note that all public comments received will be posted in their entirety, including any personal and/or business confidential information provided, at *http://www.whitehouse.gov/omb/procurement/casb.html* after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Eric Shipley, Project Director, Cost Accounting Standards Board (telephone: 410–786–6381).

SUPPLEMENTARY INFORMATION

A. Regulatory Process

Rules, Regulations and Standards issued by the Cost Accounting Standards Board (Board) are codified at 48 CFR Chapter 99. The Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard (CAS or Standard), complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking.
3. Promulgate a Notice of Proposed Rulemaking.
4. Promulgate a Final Rule.

This proposal is step one of the four-step process.

B. Background and Summary

The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board, is today releasing a Staff Discussion Paper (SDP) on the harmonization of Cost Accounting Standards (CAS) 412 and 413 with the Pension Protection Act (PPA) of 2006 (Pub. L. 109–280, 120 Stat. 780). The Office of Procurement Policy Act, 41 U.S.C. 422(g)(1), requires the Board to consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard prior to the promulgation of any new or revised CAS.

The PPA amended the minimum funding requirements and tax-deductibility of pension plans under the Employee Retirement Income Security Act of 1974 (ERISA). The PPA requires the Board to revise Standards 412 and 413 of the CAS to harmonize with the amended ERISA minimum required contribution not later than January 1, 2010.

This SDP solicits public views with respect to the Board's statutory requirement to ''harmonize'' CAS 412 and 413 with the PPA. Differences between CAS 412 and 413 and the PPA, and issues associated with pension harmonization have been identified by the staff. Respondents are welcome to identify and comment on any issues related to pension harmonization that they feel are important. This SDP reflects research accomplished to date by the staff of the Board in the respective subject area, and is issued by the Board in accordance with the requirements of 41 U.S.C. 422(g). Accordingly, this SDP does not necessarily represent the position of the Board.

Basic conceptual differences exist between the CAS and the PPA that affect all contracts and awards subject to CAS 412 and 413. The PPA utilizes a settlement or liquidation approach to value pension plan assets and liabilities, including the use of accrued benefit obligations and interest rates based on current corporate bond rates. On the other hand, CAS utilizes the going concern approach to plan asset and liability valuation, *i.e.*, assumes the company (or in this case the pension plan) will continue in business, and follows accrual accounting principles that incorporate assumptions about future years of employees' service and salary increases that are absent from the settlement approach.

To comply with the Congressional mandate in Section 106 of the PPA (Section 106), the Board must complete its statutorily required 4-step promulgation process no later than January 1, 2010. Therefore, the Board has determined that this case must be limited to pension harmonization issues. As always, the public is invited to submit comments on other issues regarding contract cost accounting for pension cost that respondents believe the Board should consider. However, comments unrelated to pension harmonization will be separately considered by the Board in determining whether to open a separate case on pension costs in the future. The staff continues to be especially appreciative of comments and suggestions that attempt to consider the concerns of all parties to the contracting process.

C. Public Comments

Interested persons are invited to participate by providing input with respect to harmonization of CAS 412 and 413 with the PPA. All comments must be in writing, and submitted as instructed in the **ADDRESSES** section.

D. Staff Discussion Paper—Harmonization of Cost Accounting Standards 412 and 413 with the Pension Protection Act of 2006

I. Introduction

The PPA made substantial amendments to ERISA. In particular, the PPA's minimum required contribution provisions, which apply to single employer qualified defined-benefit plans, are very different from the basic minimum funding requirements of ERISA that have existed since 1974. The PPA minimum required contribution computation also differs from the measurement and assignment provisions of CAS 412 and 413.

The PPA is generally effective as of January 1, 2008. In Section 106, Congress instructs the Board to:

''* * * review and revise sections 412 and 413 of the Cost Accounting Standards * * * to harmonize the minimum required contribution * * * of eligible government

contractor plans and government reimbursable pension plan costs not later than January 1, 2010.''

The PPA requires that any revisions to the CAS be called the CAS ''Pension Harmonization Rule.'' Section 106 defines ''eligible government contractors'' as entities whose primary business is performing work under contracts subject to the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement (DFARS) with such revenues exceeding $5 billion annually. While the Board is considering what action, if any, is needed to harmonize the CAS with the PPA, these ''eligible government contractors'' have been granted relief from the minimum required contribution and ''at risk'' provisions of Title I of the PPA.

II. Scope of the SDP

The PPA addresses many aspects of the treatment of pension plans under ERISA. As part of Title I of the PPA, Section 106 applies to single employer defined benefit plans only. Therefore, this SDP requests public comment on what revisions to the provisions of CAS 412 and 413 regarding single employer defined benefit pension plans, if any, are required to ensure pension harmonization.

Section 106 instructs the Board to harmonize the CAS with the minimum required contribution for ''eligible government contractors.'' The Board has determined that the scope of this SDP will (1) Include discussions regarding all contractors with contracts, grants or awards subject to these Standards and (2) consider if and/or how the CAS should be revised to address both the PPA minimum required contribution and maximum tax-deductible amounts to achieve harmonization.

III. Background

The rules governing defined-benefit pension costs for financial accounting, ERISA and CAS were developed for different purposes. The purpose of financial accounting is to report the annual pension expense and pension liability for use by shareholders, lenders, and other users of the entity's financial reports. Financial accounting recognizes the benefit liability presuming the pension plan will be ongoing unless there is evidence to the contrary.

ERISA was passed in 1974 in response to widespread abusive practices that prevented retirees from receiving promised pension benefits. ERISA established a minimum funding requirement for benefit security purposes and imposed a funding limit for tax policy purposes, but did not establish accounting practices for pension costs. The minimum contribution requirement and the maximum tax-deductible limitation were measured on a projected benefit (going concern) basis. ERISA has been amended several times to implement tax policy and protect the benefits of plan participants.

In its 1992 Statement of Objectives, Policies, and Concepts (57 FR 31036, July 13, 1992), the Board stated that the primary purpose of the CAS is to ''achieve (1) An increased degree of uniformity in cost accounting practices among Government contractors in like circumstances, and (2) consistency in cost accounting practices in like circumstances by individual Government contractors over periods of time.'' The Board addresses the recognition of pension costs in CAS 412 and 413. CAS 412 provides ''guidance for determining and measuring the components of pension cost'' and ''the basis on which pension costs shall be assigned to cost accounting periods.'' CAS 413 provides ''guidance for adjusting pension cost by measuring actuarial gains and losses and assigning such gains and losses to cost accounting periods.'' CAS 413 also provides ''the bases on which pension cost shall be allocated to segments of an organization.''

The original CAS 412 and 413 were revised in 1995 in part to address a conflict introduced by the Tax Reform Act of 1986 (TRA 86) and the Omnibus Budget Reconciliation Act of 1987 (OBRA 87). TRA 86 imposed an excise tax on contributions that exceeded the tax-deductible limit. OBRA 87 lowered the ERISA funding limitations which put contractors in a ''catch-22'' situation. Contractors were faced with the dilemma of either funding the full pension cost determined under CAS while incurring a substantial excise tax which was not an allowable cost for Government contracting purposes, or limiting the pension contribution and losing current and future recognition of the costs which would have otherwise been measured and assigned as pension costs on Government contracts. On March 30, 1995, CAS 412 and 413 were amended and removed the conflict by limiting the assignable pension costs to a corridor measured by a zero dollar floor and ERISA's maximum contribution amounts. The measurement and assignment of pension cost under CAS 412 and 413 continued to be based on traditional accrual accounting and long-term assumptions, which matches activities to the cost of the long-term liability for pensions, and required funding to substantiate the compellable amount. The preamble to the 1995 amendments to CAS 412 and 413 (60 FR 16534, March 30, 1995) reiterated the relationship between the Standards and ERISA:

This final rule has not adopted ERISA as an accounting method, but has modified accrual accounting to fit within the confines of practicable funding.

IV. ERISA Contributions vs. CAS Cost

ERISA, as amended by OBRA 87, obligates plan sponsors, including Government contractors, to make minimum pension contributions towards their unfunded accrued benefit liabilities, which are measured on a settlement basis. However, in some cases Government contractors are not reimbursed immediately for the higher cash outlays in their government contract costs and prices. Instead, the extra contribution is accounted for as a prepayment credit which is deferred and reimbursed in later years. As a result, many contractors have expressed serious concerns about the detrimental impact on their current cash flow. The PPA may further exacerbate this cash flow issue by increasing the differences between required ERISA funding and the measurable and assignable cost under CAS.

V. Relationship of CAS 412 and 413 to ERISA and ''Harmonization''

Congress instructed the Board to ''harmonize'' the CAS with the minimum required contribution. However, neither the Act nor the Joint Committee on Taxation report on the PPA (Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006,'' as passed by the House on July 28, 2006, and as considered by the Senate on August 3, 2006, JCX–38–06, August 3, 2006) give any guidance or insight as to Congress' meaning of the word ''harmonize.'' Thus, the Board has the responsibility of interpreting the term ''harmonization,'' and in fact, under the OFPP Act, the Board has the exclusive authority to promulgate, amend, and interpret the Cost Accounting Standards.

This leads to the question of what it means to harmonize the two sets of rules.

VI. Questions

This SDP seeks public input on possible revisions to CAS 412 and/or 413 to ''harmonize'' the CAS and the PPA. Therefore, the Board requests input from interested parties on the following areas of concern. The Board

welcomes comments on any other concerns, issues or input related to harmonization of the CAS with the PPA.

1. *Scope.* Section 106 of the PPA instructs the Board to harmonize the CAS with the minimum required contribution for ''eligible government contractors.'' Contracts of ''eligible government contractors'' are a small subset of contracts subject to CAS 412 and 413, which include all cost-based contracts subject to full CAS–Coverage, contracts subject to Paragraph 31.205–6(j) of the Federal Acquisition Regulation, and recipients of financial assistance who have elected to use CAS 412 and 413 under OMB Circular A–87.

Question 1. Should the Board apply any revisions to all cost-based contracts and other Federal awards that are subject to full CAS coverage, or only to ''eligible government contractors'' as defined in Section 106?

2. *General Purpose.* CAS 413.50(c)(12) currently provides for an adjustment of previously determined pension cost in the event of a segment closing, a plan termination, or a curtailment of benefits. The adjustment is computed as the difference between the market value of the assets and the actuarial accrued liability for the segment. If there is a pension plan termination, the actuarial accrued benefit is measured as the amount paid to irrevocably settle all benefit obligations or paid to the PBGC. In this way, it could be argued that CAS 413–50(c)(12) already satisfies the purpose of the PPA to protect employee retirement security or to ensure the PBGC solvency, at least for the contractor's segments that perform Government contracts. This leads to the following question:

Question 2. Does the current CAS 412 and 413 substantially meet the Congressional intent of the PPA to protect retirement security, to strengthen funding and ensure PBGC solvency?

3. *Harmonization.* The PPA requires that the Board review and revise CAS 412 and 413 to harmonize with the minimum required contribution, but recognizing that the Board has exclusive authority concerning contract cost accounting, leaves the determination of what constitutes ''harmonization'' to the Board's deliberation and conclusion. The CAS pension harmonization rule could fall anywhere within the continuum from avoidance of conflict with ERISA to full adoption of the measurement and assignment concepts of the minimum required contribution. The rule might be accomplished by changing the current provisions of CAS 412 and 413, or possibly adding an adjustment mechanism to ensure differences between the minimum required contribution and the contract cost are reconciled within a reasonable period of time. There might be other means by which harmonization could be achieved.

Another issue is whether harmonization should examine the minimum required contribution with or without application of the plan's credit (carryover and prefunding) balances. The existence and application of credit balances are treated differently for eight separate PPA funding tests, such as ''at-risk'' status, benefit restrictions, and the variable PBGC premium. Separate from their concerns with contract costing, contractors will have to make complex decisions about whether to retain or waive (permanently forego) credit balances. If all or some of the credit balance is retained, the contractor must make decisions as to the amount of the credit balance to apply to reduce the minimum funding requirement and in which accounting period to apply the reduction.

Question 3. Should CAS harmonization be focused only on the relationship of the PPA minimum required contribution and the contract cost determined in accordance with CAS 412 and 413?

(a) Do the measurement and assignment provisions of the current CAS 412 and 413 result in a contractor incurring a penalty under ERISA in order to receive full reimbursement of CAS computed pension costs under Government contracts?

(b) To what extent, if any, should the Board revise CAS 412 and 413 to harmonize with the contribution range defined by the minimum required contribution and the tax-deductible maximum contribution?

(c) To what extent, if any, should ERISA credit balances (carryover and prefunding balances) be considered in revising CAS 412 and 413?

(d) To what extent, if any, should revisions to CAS be based on the measurement and assignment methods of the PPA?

(i) To what extent, if any, should the Board revise the CAS based on rules established to implement tax policy?

(ii) To what extent, if any, should the Board consider concerns with the solvency of either the pension plan, or the PBGC?

4. *Cost Measurement.* CAS measures the accrued pension liability and pension cost on the ''going concern'' basis of accounting that assumes the contractor and pension plan will continue lacking evidence to the contrary. Conversely, PPA measurements are made on liquidation or settlement cost basis.

Question 4. (a) Accounting Basis. For Government contract costing purposes, should the Board (i) Retain the current ''going concern'' basis for the measurement and assignment of the contract cost for the period, or (ii) revise CAS 412 and 413 to measure and assign the period cost on the liquidation or settlement cost basis of accounting?

(b) Actuarial Assumptions. For contract cost measurement, should the Board (i) Continue to utilize the current CAS requirements which incorporate the contractor's long-term best estimates of anticipated experience under the plan, or (ii) revise the CAS to include the PPA minimum required contribution criteria, which include interest rates based on current corporate bond yields, no recognition of future period salary growth, and use of a mortality table determined by the Secretary of the Treasury?

(c) Specific Assumptions. Please comment on the following specific assumptions:

(i) Interest Rate: (1) For measuring the pension obligation, what basis for setting interest rate assumptions would best achieve uniformity and/or the matching of costs to benefits earned over the working career of plan participants? (2) To what extent, if any, should the interest rate assumption reflect the contractor's investment policy and the investment mix of the pension fund?

(ii) Salary Increases: For measuring the pension obligation, should the CAS exclude, permit or require recognition of future period salary increases?

(iii) Mortality: For measuring the pension obligation, should the CAS exclude, permit, or require use of a (1) Standardized mortality table, (2) company-specific mortality table, or (3) mortality table that reflects plan-specific or segment-specific experience?

(d) Period Assignment (Amortization). For contract cost measurement, should the Board (i) Retain the current amortization provisions allowing amortization over 10 to 30 years (15 years for experience gains and losses), (ii) expand the range to 7 to 30 years for all sources including experience gains and losses, (iii) adopt a fixed 7 year period consistent with the PPA minimum required contribution computation, or (iv) adopt some other amortization provision?

(e) Asset Valuation. (i) For contract cost measurement, should the Board restrict the corridor of acceptable actuarial asset values to the range specified in the PPA (90% to 110% of the market value)?

(ii) For contract cost measurement, should the Board adopt the PPA's two year averaging period for asset smoothing?

5. *At Risk Plans.* For plans with a low level of funding, the PPA imposes certain provisions that may require higher ''at risk'' minimum required contributions than is required for plans that do not have this low level of funding. The ''at-risk'' provisions are intended to more rapidly fund plans that are likely to fail due to underfunding and be taken over by the PBGC.

Question 5. To what extent, if any, should the Board revise the CAS to include special funding rules for ''at risk'' plans?

6. Cash Flow Considerations. The PPA may create a disincentive for government contractors to continue their defined benefit plans if the pattern of cash outlays for pension contributions are not matched by the reimbursements for pension costs under Government contracts. The mismatching of cash flows might occur for two distinct reasons: (i) The pension costs assigned to a particular cost accounting period in accordance with CAS may be substantially less than the minimum contributions required by ERISA, or (ii) incurred pension costs may dramatically exceed previously forecast costs due to plans emerging from full funding and/or experiencing unexpected adverse asset or demographic results.

Question 6. (a) To what extent, if any, should the measurement and assignment provisions of CAS 412 and 413 be revised to address contractor cash flow issues?

(b) To what extent, if any, do the current prepayment provisions mitigate contractor cash flow concerns?

(c) To what extent, if any, should the prepayment credit provision be revised to address the issue of potential negative cash flow?

7. *Volatility in Contract Cost Projections.* The second potential source of cash flow mismatch is attributable not to the basic measurement and assignment provisions of the Standards, but to the volatility of contract costs for pensions and contribution requirements (see Question 5 above). The ''all or nothing'' effects of the CAS 412 assignable cost limitation and the ceiling on assigned cost for income tax purposes could significantly impact the volatility of contract cost forecasts.

Question 7. (a)(i) To what extent, if any, would adoption of some or all of the PPA provisions impact the volatility of cost projections? (ii) Are there ways to mitigate this impact? Please explain.

(b) To what extent, if any, should the CAS assignable cost limitation be revised as part of the efforts to harmonize the CAS with the PPA?

(c) To what extent, if any, should the CAS be revised to address negative pension costs in the context of cost volatility?

8. *Segment Closings, Plan Terminations, and Benefit Curtailments.* Under the PPA, if a plan is determined to be severely ''at-risk,'' the further accrual of benefits is prohibited. Under CAS 413, such a cessation of accrual would be a curtailment of benefits. Currently, if the contractor retains pension assets and liabilities subsequent to the curtailment of benefits, CAS 413–50(c)(12) requires that the actuarial liability be measured using the assumptions that have historically been used to fund the plan. If the liability is transferred to an insurance company or the PBGC, the insurance premium or PBGC valuation of the liability determines the segment closing liability. The cost of the insurance premium and the liability assumed by the PBGC may exceed the PPA target liability and the actuarial liability measured by CAS 413–50(c)(12) because of the addition of the ''risk premium'' against adverse experience assessed by insurers.

Question 8. (a) To what extent, if any, would adoption of some or all of the PPA provisions affect the measurement of a segment closing adjustment in accordance with CAS 413.50(c)(12)?

(b) To what extent, if any, should the CAS 413 criteria for a curtailment of benefits be modified to address the PPA mandatory cessation of benefit accruals for an ''at risk'' plan?

9. *Technical Issues.* The PPA changes the ERISA provisions for (a) Treatment of credit (carryover and prefunding) balances (analogous to ''prepayment credits'' under the CAS), (b) treatment of contributions made after the end of the plan year, and (c) recognition of collectively bargained benefits. CAS 412 requires prepayment credits to be adjusted at the valuation rate of interest (the CAS valuation rate) while the PPA requires credit balances to be adjusted based on the pension fund's actual rate of ''return on plan assets.'' CAS 412 and 413 do not contain specific language on the treatment of contributions made after the end of the plan year, while the PPA requires that such contributions to be discounted at the PPA ''effective interest rate.'' CAS 412 recognizes only the benefits specified in existing collective bargaining agreements, while the PPA recognizes anticipated changes in benefits based on established patterns.

Question 9. (a) Prepayment Credits. Should prepayment credits be adjusted based on the CAS valuation rate or the PPA requirement to use the pension fund's actual ''return on plan assets'' for the period?

(b) Contributions Made After End of Plan Year. Should the interest adjustment for contributions made after the end of the plan year be computed as if the deposit was made on the last day of the plan year or on the actual deposit as now required by the PPA?

(c) Collectively Bargained Benefits. (i) To what extent, if any, should the CAS be revised to address the PPA provision that allows the recognition of established patterns of collectively bargained benefits?

(ii) Are there criteria that should be considered in determining what constitutes an established pattern of such changes?

10. *Available Data on Costs under CAS vs. PPA.* To fully examine the relationship of the measurement and assignment of contract costs for pensions, the minimum required contribution, and the maximum tax-deductible contribution, the Board believes that data considering many different scenarios would be very informative and enhance its deliberations.

Question 10. The Board would be very interested in obtaining the results of any studies or surveys that examine the pension cost determined in accordance with the CAS and the PPA minimum required contributions and maximum tax-deductible contribution.

11. *Records and Visibility.* Beginning in 2008, actuarial valuation reports prepared for ERISA and financial accounting purposes will no longer be required to include the accrued actuarial liability and normal cost measured under cost methods and assumptions that comply with the provisions of CAS 412 and 413. Actuaries and valuation software could still produce such values, and such valuation results would still be subject to the Actuarial Standards of Practice.

Question 11. In light of the changes to the PPA, should the Board consider including specific requirements in CAS 412 and 413 regarding the records required to support the contractor's proposed and/or claimed pension cost?

Paul A. Denett,

Administrator, Office of Federal Procurement Policy.

[FR Doc. E7–12886 Filed 7–2–07; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda; Sunshine Meeting Act

Time and Date: 9:30 a.m., Tuesday, July 10, 2007.

Place: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

Status: The one item is open to the public.

Matter To Be Considered

7901 Highway Accident Report—Ceiling Collapse in the Interstate 90 Connector Tunnel, Boston, Massachusetts, July 10, 2006 (HWY–06–MH–024).

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, July 6, 2007.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: June 29, 2007.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 07–3263 Filed 6–29–07; 3:24 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 212, ''Qualifications Investigation, Professional, Technical, and Administrative Positions (other than clerical positions).'' NRC Form 212A, ''Qualifications Investigation, Secretarial/Clerical.''

3. *The form number if applicable:*

NRC Form 212
NRC Form 212A

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Current/former supervisors, co-workers of applicants for employment.

6. *An estimate of the number of annual responses:*

NRC Form 212: 1200
NRC Form 212A: 400.

7. *The estimated number of annual respondents:*

NRC Form 212: 1200
NRC Form 212A: 400

8. *An estimate of the total number of hours needed annually to complete the requirement or request:*

NRC Form 212: 300 hours (15 minutes per response).
*NRC Form 212A:*100 hours (15 minutes per response).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not Applicable.

10. *Abstract:* Information requested on NRC Form 212, ''Qualifications Investigation, Professional, Technical, and Administrative Positions (other than clerical positions)'' and NRC Form 212A, ''Qualification Investigation (Secretarial/Clerical)'' is used to determine the qualifications and suitability of external applicants for employment with NRC. The completed forms may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Human Resources, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 2, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Paul Balserak, Desk Officer, Office of Information and Regulatory Affairs (3150–0033 and 3150–0034), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Paul_Balserak@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 26th day of June 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–12769 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric And Power Company Surry Power Station, Unit Nos. 1 and 2; Exemption

1.0 Background

The Virginia Electric and Power Company (the licensee) is the holder of Renewed Facility Operating License Nos. DPR–32 and DPR–37 which authorize operation of the Surry Power Station, Unit Nos. 1 and 2 (Surry 1 and 2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Surry County, Virginia.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Appendix G requires that fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light water nuclear power reactors need to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime; and Section 50.61 provides fracture toughness

requirements for protection against pressurized thermal shock (PTS) events. By letter dated June 13, 2006 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML061650080), Virginia Electric and Power Company (Dominion) proposed exemptions from the requirements of 10 CFR Part 50, Appendix G and 10 CFR 50.61, to revise certain Surry 1 and 2 reactor pressure vessel (RPV) initial (unirradiated) properties using Framatome Advanced Nuclear Power Topical Report (TR) BAW–2308, Revision 1, ''Initial RT_{NDT} of Linde 80 Weld Materials.''

The licensee requested an exemption from Appendix G to 10 CFR Part 50 to replace the required use of the existing Charpy V-notch and drop weight-based methodology and allow the use of an alternate methodology to incorporate the use of fracture toughness test data for evaluating the integrity of the Surry 1 and 2 RPV circumferential beltline welds based on the use of the 1997 and 2002 editions of American Society for Testing and Materials (ASTM) Standard Test Method E 1921, ''Standard Test Method for Determination of Reference Temperature T_0, for Ferritic Steels in the Transition Range,'' and American Society for Mechanical Engineering (ASME), Boiler and Pressure Vessel Code (Code), Code Case N–629, ''Use of Fracture Toughness Test Data to establish Reference Temperature for Pressure Retaining materials of Section III, Division 1, Class 1.'' The exemption is required since Appendix G to 10 CFR Part 50, through reference to Appendix G to Section XI of the ASME Code pursuant to 10 CFR 50.55(a), requires the use of a methodology based on Charpy V-notch and drop weight data.

The licensee also requested an exemption from 10 CFR 50.61 to use an alternate methodology to allow the use of fracture toughness test data for evaluating the integrity of the Surry 1 and 2 RPV circumferential beltline welds based on the use of the 1997 and 2002 editions of ASTM E 1921 and ASME Code Case N–629. The exemption is required since the methodology for evaluating RPV material fracture toughness in 10 CFR 50.61 requires the use of the Charpy V-notch and drop weight data for establishing the PTS reference temperature (RT_{PTS}).

3.0 Discussion

Pursuant to 10 CFR 50.12(a), the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstances that allow the licensee an exemption from the use of the Charpy V-notch and drop weight-based methodology required by 10 CFR Part 50, Appendix G and 10 CFR 50.61. This exemption only modifies the methodology to be used by the licensee for demonstrating compliance with the requirements of 10 CFR Part 50, Appendix G and 10 CFR 50.61, and does not exempt the licensee from meeting any other requirement of 10 CFR Part 50, Appendix G and 10 CFR 50.61.

Authorized by Law

These exemptions would allow the licensee to use an alternate methodology to make use of fracture toughness test data for evaluating the integrity of the Surry 1 and 2 RPV circumferential beltline welds, and would not result in changes to operation of the plant. Section 50.60(b) of 10 CFR Part 50 allows the use of alternatives to 10 CFR Part 50, Appendix G, or portions thereof, when an exemption is granted by the Commission under 10 CFR 50.12. In addition, Section 50.60(b) of 10 CFR Part 50 permits different NRC-approved methods for use in determining the initial material properties. As stated above, 10 CFR 50.12(a) allows the NRC to grant exemptions from the requirements of 10 CFR Part 50, Appendix G and 10 CFR 50.61. The NRC staff has determined that granting of the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of Appendix G to 10 CFR Part 50 is to set forth fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light water nuclear power reactors to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. The methodology underlying the requirements of Appendix G to 10 CFR Part 50 is based on the use of Charpy V-notch and drop weight data. The licensee proposes to replace the use of the existing Charpy V-notch and drop weight-based methodology by a fracture toughness-based methodology to demonstrate compliance with Appendix G to 10 CFR Part 50. The NRC staff has concluded that the exemptions are justified based on the licensee utilizing the fracture toughness methodology specified in BAW–2308, Revision 1, within the conditions and limitations delineated in the NRC staff's safety evaluation (SE), dated August 4, 2005 (ADAMS Accession Number ML052070408). The use of the methodology specified in the NRC staff's SE will ensure that P–T limits developed for the Surry 1 and 2 RPVs will continue to be based on an adequately conservative estimate of RPV material properties and ensure that the pressure-retaining components of the reactor coolant pressure boundary retain adequate margins of safety during any condition of normal operation, including anticipated operational occurrences. This exemption only modifies the methodology to be used by the licensee for demonstrating compliance with the requirements of Appendix G to 10 CFR Part 50, and does not exempt the licensee from meeting any other requirement of Appendix G to 10 CFR Part 50.

The underlying purpose of 10 CFR 50.61 is to establish requirements which ensure that a licensee's RPV will be protected from failure during a PTS event by evaluating the fracture toughness of RPV materials. The licensee seeks an exemption from 10 CFR 50.61 to use a methodology for the ''determination of adjusted/indexing reference temperatures.'' The licensee proposes to use ASME Code Case N–629 and the methodology outlined in its submittal, which are based on the use of fracture toughness data, as an alternative to the Charpy V-notch and drop weight-based methodology required by 10 CFR 50.61 for establishing the initial, unirradiated properties when calculating RT_{PTS} values. The NRC staff has concluded that the exemption is justified based on the licensee utilizing the methodology specified in the NRC staff's SE regarding TR BAW–2308, Revision 1, dated August 4, 2005. This TR established an alternative method for determining initial (unirradiated) material reference temperatures for RPV welds manufactured using Linde 80 weld flux (i.e., ''Linde 80 welds'') and established weld wire heat-specific and Linde 80 weld generic values of this reference temperature. These weld wire heat-specific and Linde 80 weld generic values may be used in lieu of the nil-ductility reference temperature (RT_{NDT})

parameter, the determination of which is specified by paragraph NB–2331 of Section III of the ASME Code. Regulations associated with the determination of RPV material properties involving protection of the RPV from brittle failure or ductile rupture include Appendix G to 10 CFR Part 50 and 10 CFR 50.61, the PTS rule. These regulations require that the initial (unirradiated) material reference temperature, RT_{NDT}, be determined in accordance with the provisions of the ASME Code, and provide the process for determination of RT_{PTS}, the reference temperature RT_{NDT}, evaluated for the end of license fluence.

In TR BAW–2308, Revision 1, the Babcock and Wilcox Owners Group (B&WOG) proposed to perform fracture toughness testing based on the application of the ''Master Curve'' evaluation procedure, which permits data obtained from sample sets tested at different temperatures to be combined, as the basis for redefining the initial (unirradiated) material properties of Linde 80 welds. NRC staff evaluated this methodology for determining Linde 80 weld initial (unirradiated) material properties and uncertainty in those properties, as well as the overall method for combining unirradiated material property measurements based on T_0 values, property shifts from models in regulatory guide (RG) 1.99, Revision 2, which are based on Charpy V-notch testing and a defined margin term to account for uncertainties in the NRC staff SE. Table 3 in the SE contains the NRC staff-accepted IRT_{TO} and initial margin (denoted as σ_i) for specific Linde 80 weld wire heat numbers. In accordance with the conditions and limitations outlined in the NRC staff SE on TR BAW–2308, Revision 1, for utilizing the values in Table 3: the licensee has utilized the appropriate NRC staff-accepted IRT_{T0} and σ_i values for Linde 80 weld wire heat numbers; applied a chemistry factor of 167 °F (the weld wire heat-specific chemical composition, via the methodology of RG 1.99, Revision 2, did not indicate that a higher chemistry factor should apply); applied a value of 28 °F for σ_Δ in the margin term; and submitted values for ΔRT_{NDT} and the margin term for each Linde 80 weld in the RPV through the end of the current operating license. Therefore, all conditions and limitations outlined in the NRC staff SE on TR BAW–2308, Revision 1, have been met for Surry 1 and 2.

The use of the methodology in TR BAW–2308, Revision 1, will ensure the PTS evaluation developed for the Surry 1 and 2 RPVs will continue to be based on an adequately conservative estimate of RPV material properties and ensure the RPVs will be protected from failure during a PTS event. Also, when additional fracture toughness data relevant to the evaluation of the Surry 1 and 2 RPV circumferential welds is acquired as part of the surveillance program, this data must be incorporated into the evaluation of the Surry 1 and 2 RPV fracture toughness requirements.

Based on the above, no new accident precursors are created by allowing an exemption to use an alternate methodology to comply with the requirements of 10 CFR 50.61 in determining adjusted/indexing reference temperatures; thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent with Common Defense and Security

The proposed exemption would allow the licensee to use an alternate methodology to allow the use of fracture toughness test data for evaluating the integrity of the Surry 1 and 2 RPV circumferential beltline welds. This change to Surry 1 and 2 has no relation to security issues. Therefore, the common defense and security is not impacted by these exemptions.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR part 50, Appendix G and 10 CFR 50.61 is to protect the integrity of the reactor coolant pressure boundary by ensuring that each reactor vessel material has adequate fracture toughness. Therefore, since the underlying purpose of 10 CFR part 50, Appendix G and 10 CFR 50.61 is achieved by an alternative methodology for evaluating RPV material fracture toughness, the special circumstances required by 10 CFR 50(a)(2)(ii) for the granting of an exemption from portions of the requirements of 10 CFR Part 50, Appendix G and 10 CFR 50.61 exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the Virginia Electric and Power Company exemptions from the requirements of Appendix G to 10 CFR part 50 and 10 CFR 50.61, to allow an alternative methodology that is based on using fracture toughness test data to determine initial, unirradiated properties for evaluating the integrity of the Surry 1 and 2 RPV circumferential beltline welds with the following conditions:

(1) The licensee must utilize the data and methodology specified in the NRC staff's safety evaluation (SE), dated August 4, 2005, which was based on: (a) Information submitted by the B&WOG in TR BAW–2308, Revision 1; (b) the August 19, 2003, response to an NRC staff Request for Additional Information (ADAMS Accession Number ML032380449); and (c) B&WOG letter dated March 25, 2005 (ADAMS Accession Number ML051320232);

(2) When additional fracture toughness data relevant to the evaluation of the Surry 1 and 2 RPV circumferential welds is acquired as part of the ongoing plant RPV surveillance programs, the licensee must re-evaluate the fracture toughness of the units' RPV circumferential welds; and

(3) The exemptions are granted for the licensee to utilize the most recent staff-approved version of BAW–2308 (currently BAW–2308, Revision 1). Future revisions of BAW–2308 could affect fracture toughness data and analyses for Surry 1 and 2. Therefore, the licensee must review any future staff-approved revisions of BAW–2308 and update the units' fracture toughness assessments, based on the information in any staff-approved revision of BAW–2308.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (72 FR 35264).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of June 2007.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–12855 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

Notice of License Amendment Request of BWX Technologies, Inc., Lynchburg, VA, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment, and opportunity to request a hearing.

DATES: A request for a hearing must be filed by September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Joel Wiebe, Project Manager, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8F42, Washington, DC 20555. Telephone: (301) 415–6606, fax: (301) 415–5955; e-mail: *bcg@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) has received, by letter dated May 2, 2007, a license amendment application from BWX Technologies, Inc. (BWXT), requesting an exemption to the requirements of 10 CFR 70.24, Criticality Accident Requirements, in its materials license, at its Mt. Athos site located in Lynchburg, Virginia. Materials License SNM–42 authorizes the licensee to possess nuclear materials, manufacture nuclear fuel components, fabricate research and university reactor components, fabricate compact reactor fuel elements, perform research on spent fuel performance, and handle the resultant waste streams, including recovery of scrap uranium. Specifically, the exemption request would enable BWXT to implement a security upgrade for protecting special nuclear material (SNM), in particular storage locations, in times of storage. During the times that the SNM, are accessible in their storage locations, BWXT will be required to meet the requirements of 10 CFR 70.24 at those locations.

An NRC administrative review, documented in a communication to BWXT, May 16, 2007, found the application acceptable to begin a technical review. If the NRC grants the exemption request, the basis for doing so will be documented in a safety evaluation report approving an amendment to NRC Docket No. 70–27. The NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. Additionally, under the National Environmental Policy Act, if a finding of no significant impact can be made regarding the proposed exemption, such a finding will be documented in an environmental assessment.

II. Opportunity To Request a Hearing

In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by the proposed action and who desires to participate as a party in an NRC adjudicatory proceeding must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated.

In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, BWXT, Nuclear Products Division, P.O. Box 785, Lynchburg, VA 24505–0785, Attention: Leah Morrell; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304(b), (c), (d), and (e) must be met. In accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by September 4, 2007.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for a hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include

references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as BWXT's May 2, 2007 application. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

The application, and any information referenced in the application, may be made available pursuant to a protective order and subject to applicable security requirements upon a showing that the petitioner has an interest that may be affected by the proceeding.

Dated at Rockville, Maryland, this 21st day of June 2007.

For the Nuclear Regulatory Commission.

Gary S. Janosko,

Deputy Director, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7–12786 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400–LR, ASLBP No. 07–855–02–LR–BD01]

Atomic Safety and Licensing Board

Before Administrative Judges: Ann Marshall Young, Chair, Dr. Peter S. Lam, Dr. Alice Mignerey.

In the Matter of Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Unit 1); Notice (Notice of Opportunity to Make Oral or Written Limited Appearance Statements)

June 26, 2007.

This proceeding involves the application of Carolina Power & Light Company to renew the operating license for the Shearon Harris Nuclear Power Plant, Unit 1, for an additional twenty-year period commencing in 2026. In response to a March 20, 2007, notice of opportunity for hearing on the proposed license renewal (72 Fed. Reg. 13,139), Petitioners North Carolina Waste Awareness and Reduction Network and the Nuclear Information and Resource Service filed, on May 18, 2007, a request for hearing and petition to intervene in accordance with 10 CFR 2.309. On May 25, 2007, the Secretary of the Commission referred the hearing request and intervention petition to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for appropriate action in accordance with 10 CFR 2.346(i), and on May 31 this Licensing Board was established to preside over the proceeding.

This Atomic Safety and Licensing Board hereby gives notice that, in accordance with 10 CFR 2.315(a), the Board will entertain oral limited appearance statements from members of the public in connection with this proceeding at the date, time, and location specified below.

A. Date, Time, and Location of Oral Limited Appearance Statement Session

The session will be held on the following date at the specified location and time:

Date: July 17, 2007.

Time: 5:30–7:30 p.m. EDT.

Location: Holiday Inn Brownstone Hotel & Conference Center, Sessions Room, 1707 Hillsborough Street, Raleigh, NC 27605.

B. Participation Guidelines for Oral Limited Appearance Statements

Members of the public will be permitted in this session to make short oral statements of approximately five (5) minutes or less on their positions on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence in the proceeding, they nonetheless may assist the Board and/or the parties in their consideration of the issues.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as necessary to accommodate all speakers who are present.[1] If all scheduled and unscheduled speakers present at the session have spoken prior to the scheduled time to end the session, the Board may conclude the session before that time. In addition, if there is an unusually large group of persons wishing to speak, the time permitted for each speaker may be limited to a period of less than five (5) minutes, in order to allow all interested persons an opportunity to speak.

C. Submitting a Request to Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request as specified below and who are present when their names are called will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must be mailed, faxed, or sent by e-mail so as to be received by 5 p.m. EDT on *Friday, July 13, 2007.*

Written requests to make an oral statement should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

E-mail: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written request to make an oral statement must be sent to the Chair of this Licensing Board as follows:

Mail: Administrative Judge Ann Marshall Young, *c/o:* Debra Wolf, Esq., Law Clerk, Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–6094).

E-mail: daw1@nrc.gov.

[1] Members of the public who plan to attend the limited appearance session are advised that security measures may be employed at the entrance to the facility, including searches of hand-carried items such as briefcases, backpacks, packages, etc. In addition, although signs no larger than 18″ by 18″ will be permitted, they may not be waved, attached to sticks, held up, or moved about in the room. *See* Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001).

D. Submitted Written Limited Appearance Statements

A written limited appearance statement may be submitted to the Board regarding this proceeding at any time, either in lieu of or in addition to any oral statement. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board Chair.

E. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from either the Electronic Hearing Docket or the publicly available records component of the NRC's document system (ADAMS). Both ADAMS and the Electronic Hearing Docket are accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (Electronic Reading Room). Persons who do not have access to ADAMS or the Electronic Hearing Docket, or who encounter problems in accessing the documents located on the NRC Web site, should contact the NRC PDR reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

F. Scheduling Information Updates

To the extent updated or revised scheduling information exists regarding the limited appearance session, it can be found on the NRC Web site at *www.nrc.gov/public-involve/public-meetings/index.cfm* or by calling (800) 368–5642, extension 5036, or (301) 415–5036.

For the Atomic Safety and Licensing Board.

Rockville, Maryland

Dated: June 26, 2007 [2].

Ann Marshall Young,

Chair, Administrative Judge.

[FR Doc. 07–3224 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

[2] Copies of this Notice were sent this date by Internet e-mail to counsel for: (1) Petitioners; (2) Carolina Power & Light Company; and (3) the NRC Staff.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Firstenergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee), to withdraw its June 1, 2006, application for proposed amendment to Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

The proposed amendment would have modified the facility technical specifications (TS) pertaining to TS 3.4.10, ''Residual Heat Removal (RHR) Shutdown Cooling System—Cold Shutdown,'' by adding a default Condition to address situations when an RHR Shutdown Cooling subsystem becomes inoperable in MODE 4 and, within the Completion Time of 1 hour, an alternate method of decay heat removal cannot be verified to be available.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 15, 2006 (71 FR 46935). However, by letter dated June 19, 2007, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 1, 2006, and the licensee's letter dated June 19, 2007, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of June 2007.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–12774 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Firstenergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee), to withdraw its June 1, 2006, application for proposed amendment to Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

The proposed amendment would have revised the facility technical specifications (TS) pertaining to TS 3.4.9, ''Residual Heat Removal (RHR) Shutdown Cooling System—Hot Shutdown,'' by adding a Note which suspends actions to be in Mode 4 (Cold Shutdown) to existing Required Action A.3.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 15, 2006 (71 FR 46936). However, by letter dated June 19, 2007, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 1, 2006, and the licensee's letter dated June 19, 2007, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of June 2007.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–12785 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste and Materials; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold a Planning and Procedures meeting on July 17, 2007, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW&M, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, July 17, 2007—12:30 p.m.–1:30 p.m.

The Committee will discuss proposed ACNW&M activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Antonio F. Dias (Telephone: 301/415–6805) between 8:15 a.m. and 5 p.m. (ET) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least 2 working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: June 26, 2007.

Antonio F. Dias,

Branch Chief, ACNW&M.

[FR Doc. E7–12788 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste and Materials; Meeting Notice

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold its 181st meeting on July 17–19, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Tuesday, July 17, 2007

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.—10 a.m.: Semiannual Briefing by the Office of Nuclear Material Safety and Safeguards (NMSS) (Open)—The NMSS Office Director and Division Directors will brief the Committee on recent and future activities of interest within their respective programs.

2 p.m.–3:30 p.m.: Waste Incidental to Reprocessing (WIR) Monitoring Activities at the Idaho National Laboratory (INL) and Savannah River (SR) Sites (Open)—NRC staff representative from the Division of Waste Management and Environmental Protection (DWMEP), Office of Federal and State Materials and Environmental Management (FSME), will brief the Committee on WIR monitoring activities at the U.S. Department of Energy's INL and SR sites.

3:45 p.m.–4:45 p.m.: DOE Reexamination of Past U.S. Geological Survey (USGS) Infiltration Studies (Open)—NRC staff representative from NMSS will brief the Committee about the status of infiltration studies and modeling at Yucca Mountain, Nevada. The discussion will include NMSS plans for review of DOE's infiltration studies.

Wednesday, July 18, 2007

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: Annual Briefing by the Office of Nuclear Regulatory Research (RES) (Open)—RES Office Director and Branch Chiefs will brief the Committee on recent and future activities of interest within their respective programs.

9:30 a.m.–10:30 a.m.: Nuclear Energy Institute (NEI) Briefing on the Use of Burnup Credit for Spent Fuel Storage & Transportation Casks (Open)—NEI representatives will brief the Committee on their views for the use of burnup credit in support of licensing transportation and storage cask designs. Representatives from the Electric Power Research Institute may participate in the NEI presentation.

10:45 a.m.–11:15 a.m.: Transportation, Aging, and Disposal (TAD) Canister System Performance Specification, Revision 0, Recently Issued by DOE (Open)—ACNW&M Member Weiner will brief the Committee on the June 2007 release of the Final TAD Performance Specifications.

11:15 a.m.–12:15 p.m.: Vendor's Views on the TAD Performance Specification (Open)—A representative from Transnuclear, a commercial vendor, will brief the Committee on their views on the recently issued TAD Performance Specification, possible challenges the vendor may be facing, and suggestions for expediting NRC approval of a TAD license application.

1:30 p.m.–5 p.m.: ACNW&M White Paper on Spent Nuclear Fuel Recycle Facilities (Open)—The Committee will hold a roundtable discussion with NRC staff and external stakeholders, including industry representatives, on their draft White Paper entitled: ''Background, Status, and Issues Related to the Regulation of Advanced Spent Nuclear Fuel Recycle Facilities.''

Thursday, July 19, 2007

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: Regulatory Guides Scheduled for Revision by the Office of Nuclear Regulatory Research (RES) (Open)—ACNW&M Chairman Ryan will brief the Committee on his review of the proposed list of Regulatory Guides to be revised by RES.

9:30 a.m.—12 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will discuss potential and proposed ACNW&M letter reports.

1 p.m.–5 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW&M activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include content of future letters and scope of future Committee Meetings.

Procedures for the conduct of and participation in ACNW&M meetings were published in the **Federal Register** on October 12, 2006 (71 FR 60196). In accordance with those procedures, oral or written views may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Dr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the ACNW&M Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW&M office prior to the meeting. In view of the possibility that the schedule for ACNW&M meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Dias as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Dias.

ACNW&M meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video teleconferencing service is available for observing open sessions of ACNW&M meetings. Those wishing to use this service for observing ACNW&M meetings should contact Mr. Theron Brown, ACRS/ACNW&M Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: June 27,2007.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E7–12841 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Regulatory Policies and Practices; Revised

A portion of the ACRS Subcommittee meeting on Regulatory Policies and Practices scheduled to be held on Tuesday, July 10, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, may be closed to prevent disclosure of information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action pursuant to 5 U.S.C. 552b(c)(9)(B). All other items pertaining to this meeting remain the same as published previously in the **Federal Register** on Friday, June 22, 2007 (72 FR 34488).

For Further Information Contact: Dr. Hossein P. Nourbakhsh, Designated Federal Official (Telephone: 301–415–5622) between 7:30 a.m. and 4:15 p.m. (ET) or by e-mail *hpn@nrc.gov.*

Dated: June 27, 2007.

Cayetano Santos,

Branch Chief, ACRS.

[FR Doc. E7–12840 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of July 2, 9, 16, 23, 30, August 6, 2007.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Matters To Be Considered

Week of July 2, 2007

There are no meetings scheduled for the Week of July 2, 2007.

Week of July 9, 2007—Tentative

There are no meetings scheduled for the Week of July 9, 2007.

Week of July 16, 2007—Tentative

Wednesday, July 18, 2007

10 a.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

1 p.m. Briefing on Digital Instrumentation and Control (Public Meeting) (Contact: William Kemper, 301 415–7585).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of July 23, 2007—Tentative

Tuesday, July 24, 2007

2 p.m. Briefing on Palo Verde Nuclear Generating Station (Public Meeting) (Contact: Michael Markley, 301 415–5723).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, July 25, 2007

2 p.m. Discussion of Management Issues (Closed—Ex. 2).

Week of July 30, 2007

There are no meetings scheduled for the Week of July 30, 2007.

Week of August 6, 2007

There are no meetings scheduled for the Week of August 6, 2007.

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The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

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The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting

notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: June 28, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–3253 Filed 6–29–07; 11:05 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Section 189a(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 7, 2007 to June 20, 2007. The last biweekly notice was published on June 19, 2007 (72 FR 33779).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert

opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HearingDocket@nrc.gov; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: December 12, 2007, as supplemented by letter dated May 31, 2007.

Description of amendment request: The proposed changes would revise the TMI–1 Technical Specifications (TS) to relocate the reactor building refueling area and spent fuel storage area radiation monitor operability requirements from the TS to the Updated Final Safety Analysis Report (UFSAR) and plant procedures, since these radiation monitors do not meet the criteria for inclusion in the TS as presented in 10 CFR 50.36(c)(2)(ii). To further support the proposed change, the current TMI–1 Fuel Handling Accident in the Fuel Handling Building has been reanalyzed without credit for actuation of the Fuel Handling Building ventilation exhaust filtration system on a high radiation signal from these monitors. The proposed amendment would also establish compliance with criticality accident requirements in accordance with 10 CFR 50.68(b) versus those contained in 10 CFR 70.24.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed relocation is administrative in nature and does not involve the modification of any plant equipment or affect plant operation. The associated radiation monitors provide refueling and spent fuel pool area radiation monitoring for personnel protection during fuel loading and refueling operations. The associated instrumentation is not assumed to be an initiator of any analyzed event, nor are these functions assumed in the mitigation of consequences of accidents. Additionally, the associated required actions for inoperable components do not impact the initiation or mitigation of any accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The associated radiation monitors are designed to provide refueling and spent fuel pool area radiation monitoring for personnel protection during fuel loading and refueling operations. The proposed change is administrative in nature and does not require any physical alteration of plant equipment, and does not change the method by which any safety related system performs its function. As such, no new or different types of equipment will be installed, and the design function and basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change.

Margins of safety are unaffected by requirements that are retained, but relocated from the Technical Specifications to the UFSAR and plant procedures. Further, the proposed change to relocate current Technical Specification requirements to the UFSAR and plant procedures is consistent with regulatory guidance and previously approved changes for other stations, and is administrative in nature. Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Brad Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Harold K. Chernoff.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: April 26, 2007.

Description of amendment request: The proposed amendment would incorporate the administrative controls of a new Technical Specification (TS) 3.0.6, which has been approved for use as TS 3.0.5 in NUREG–1431, ''Standard Technical Specifications Westinghouse Plants,'' Revision 3.1, dated December 1, 2005. The proposed specification provides an exception of TSs 3.0.1 and 3.0.2 to allow the performance of required testing to demonstrate the operability of the equipment being returned to service or the operability of other equipment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The incorporation of Technical Specification 3.0.6 allows restoration of equipment to service under administrative controls when it has been removed from service or declared inoperable to comply with action requirements. The potential impact of temporarily returning the equipment to service is considered to be insignificant since the equipment has been restored to a condition which is expected to provide the required safety function. As stated in GL [Generic Letter] 87–09, ''It is overly conservative to assume that the systems or components are inoperable when a surveillance has not been performed because the vast majority of surveillances do in fact demonstrate that systems or components are operable.'' Therefore, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

Since the equipment to be restored is already out of service, the availability of the equipment has been previously considered in the evaluation of consequences of an accident. Temporarily returning the equipment to service in a state which is expected to function as required to mitigate the consequences of a previously analyzed accident will promote timely restoration of the equipment and restore the capabilities of the equipment to mitigate the consequences of any event previously analyzed. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the probability of a new or different accident from any accident previously evaluated?

Response: No. The proposed changes do not introduce a new mode of plant operation and do not involve physical modification to the plant. Operation with the inoperable equipment temporarily restored to service is not considered a new mode of operation since existing procedures and administrative controls prevent the restoration of equipment to service until it is considered capable of providing the required safety functions.

Performance of the testing is considered to be a confirmatory check of that capability which demonstrates that the equipment is indeed operable in the majority of the cases. For those times when equipment which may be temporarily returned to service under administrative controls is subsequently determined to be inoperable, the resulting condition is comparable to the equipment having been determined to remain inoperable during operation, with continued operation for a specified time allowed to complete required actions. Since this condition has been previously evaluated in the development of the current Technical Specifications, the proposed changes do not create the probability of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. Temporarily returning inoperable equipment to service for the purpose of confirming operability, places the plant in a condition which has been previously evaluated and determined to be acceptable for short periods. Additionally, the equipment has been determined to be in a condition which provides the margin of safety previously determined. The performance of the surveillance/testing simply confirms the expected result and capability of the equipment. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: May 4, 2007.

Description of amendment request: The proposed amendment would incorporate the administrative changes to Technical Specification 6.2.1.a, ''On and Offsite Organization'' and 6.8.1.a, ''Procedures and Programs,'' which are related to the common Quality Assurance Topical Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes are administrative in nature (1) correcting the reference of the Quality Assurance Topical Report in the Technical Specification (TS) Section 6.2.1.a; and (2) removing references to Regulatory Guide 1.33 and specific sections of the ANSI [American National Standards Institute] N 18.7 1972 from TS Section 6.8.1 .a and instead referencing the Quality Assurance Topical Report. These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical.

Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously evaluated.

2. Does the proposed change create the probability of a new or different accident from any accident previously evaluated?

No. The proposed changes are administrative in nature (1) correcting the reference of the Quality Assurance Topical Report in the Technical Specification (TS) Section 6.2.1.a; and (2) removing references to Regulatory Guide 1.33 and specific sections of the ANSI N18.7 1972 from TS Section 6.8.1.a and instead referencing the Quality Assurance Topical Report. These changes do not introduce a new mode of plant operation and do not involve physical modification to the plant. No new failure is

introduced since they do not involve the addition or modification of equipment nor do they alter the design or operation of plant systems, structures or components. Therefore, the proposed changes do not create the probability of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes are administrative in nature (1) correcting the reference of the Quality Assurance Topical Report in the Technical Specification (TS) Section 6.2.1.a; and (2) removing references to Regulatory Guide 1.33 and specific sections of the ANSI N18.7 1972 from TS Section 6.8.1.a and instead referencing the Quality Assurance Topical Report. The operating limits and functional capabilities of the systems, structures and components are unchanged. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: May 29, 2007

Description of amendment request: The proposed amendment would modify Technical Specification (TS) requirements related to control room envelope (CRE) habitability in accordance with Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–448, Revision 3, using the consolidated line-item improvement process (CLIIP), by changing the action and surveillance requirements associated with the limiting condition for operation operability requirements for the CRE emergency ventilation system, and by adding a new TS administrative controls program on CRE habitability.

The NRC staff issued a notice of availability of a model safety evaluation and model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on January 17, 2007 (72 FR 2022). The licensee affirmed the applicability of the model NSHC determination in its application dated May 29, 2007.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated. The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385

NRC Branch Chief: Evangelos C. Marinos

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: May 30, 2006, supplemented by letters dated February 27, and April 10, 2007.

Brief description of amendment: The amendment revises the Palisades Nuclear Plant Technical Specification (TS) Section 5.5.8. The change revises the repair criteria and essentially results in the licensee's not having to inspect the lower portion of the tube within the tubesheet (since all flaws in this region are acceptable).

Date of issuance: May 31, 2007

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 225.

Renewed Facility Operating License No. DPR–20. Amendment revised the TSs.

Date of initial notice in ***Federal Register***: October 24, 2006 (71 FR 62310).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 2007.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver ValleyPower Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania; and Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendments: January 11, 2007.

Brief description of amendments: The amendments modify technical specification requirements for inoperable snubbers by adding Limiting Condition for Operation (LCO) 3.0.8, which is consistent with Technical Specification Task Force Change Traveler No. 372, Revision 4, ''Addition of LCO 3.0.8, Inoperability of Snubbers.''

Date of issuance: June 14, 2007.

Effective date: As of the date of issuance and shall be implemented with 120 days of the date of issuance.

Amendment Nos.: 279/162, 144.

Facility Operating License Nos. DPR66, NPF–73, and NPF–58: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: March 13, 2007 (72 FR 11389) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 2007.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 12, 2006, as supplemented by letter dated March 14, 2007.

Brief description of amendment: The amendment revised the Technical Specification (TS) requirements for inoperable snubbers by adding Limiting Condition for Operation (LCO) 3.0.8. The amendment also makes an administrative change to LCO 3.0.1.

Date of issuance: June 15, 2007.

Effective date: Date of issuance, to be implemented within 90 days.

Amendment No.: 224.

Facility Operating License No. DPR–72: Amendment revised the TSs.

Date of initial notice in ***Federal Register***: April 10, 2007 (72 FR 17950). The supplement was included in the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 2007.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 30, 2006.

Brief description of amendments: The amendments relocate Technical Specification (TS) 3/4.3.3.2, ''Movable Incore Detectors'' and TS 3/4.3.3.9, ''Radioactive Gaseous Effluent Oxygen Monitoring Instrumentation'' to the Salem Updated Final Safety Analysis Report (UFSAR). The amendments also revise TS 3/4.11.2.5, ''Explosive Gas Mixture'' to reflect the relocation of TS 3.3–13 from the TSs to the UFSAR.

Date of issuance: June 6, 2007.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 282 and 265.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs and the License.

Date of initial notice in ***Federal Register***: November 7, 2006 (71 FR 65143).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 2007.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 11, 2006, as supplemented by letter dated May 7, 2007.

Brief description of amendments: The amendments relocate the instrument response time limits for the reactor trip system (RTS) and engineered safety features actuation system (ESFAS) from Technical Specification (TS) Tables 3.3–2 and 3.3–5 to the Salem Updated Final Safety Analysis Report (UFSAR).

Date of issuance: June 19, 2007.

Effective date: As of the date of issuance, to be implemented within 90 days. Implementation shall include the relocation of the RTS and ESFAS response times from TS Tables 3.3–2 and 3.3–5 to the Salem UFSAR as described in the licensee's application dated August 11, 2006.

Amendment Nos.: 283 and 266.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs and the License.

Date of initial notice in ***Federal Register***: September 12, 2006 (71 FR 53719).

The letter dated May 7, 2007, provided clarifying information that did not change the initial proposed no

significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 19, 2007.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to pdr@nrc.gov.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/

requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.
2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.
3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Duke Power Company LLC, Docket No. 50–369, McGuire Nuclear Station, Unit 1 Mecklenburg County, North Carolina

Date of amendment request: June 7, 2007 as supplemented June 8, 2007. The supplement provided additional clarifying information that clarified the application and did not expand the scope of the proposed no significant hazards consideration determination.

Description of amendment request: This amendment approved a one-time extension of the allowed outage time (AOT) for the 1A emergency diesel generator from 72 hours to a total of 10 days.

Date of issuance: June 8, 2007.

Effective date: As of date of issuance to be implemented within 30 days.

Amendment No.: 241

Renewed Facility Operating License No. NPF–9: Amendment revised the license and the technical specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated June 8, 2007.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: Evangelos C. Marinos.

Dated at Rockville, Maryland, this 25th day of June 2007.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–12635 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

NUCLEAR REGULATORY COMMISSION

NUREG–1556, Volume 13, Revision 1, "Consolidated Guidance About Materials Licenses Program-Specific Guidance About Commercial Radiopharmacy Licenses"; Draft Guidance Document for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has amended its regulations to include jurisdiction over certain radium sources, accelerator-produced radioactive materials, and certain naturally occurring radioactive material, as required by the Energy Policy Act of 2005 (EPAct), which was signed into law on August 8, 2005. The EPAct expanded the Atomic Energy Act of 1954 definition of byproduct material to include these radioactive materials.

Subsequently, these radioactive materials were placed under NRC's regulatory authority. NRC is revising its regulations to provide a regulatory framework that includes these newly added radioactive materials. See SECY–07–0062, ''Final Rule: Requirements for Expanded Definition of Byproduct Material,'' dated April 3, 2007, for information on that rulemaking.

Two licensing guidance documents in the NUREG–1556 series are being revised along with these new regulations to provide guidance related to the new requirements: (1) NUREG–1556, Volume 13, Revision 1, ''Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Commercial Radiopharmacy Licenses,'' and (2) NUREG–1556, Volume 9, Revision 2, ''Consolidated Guidance About Materials Licenses—Program Specific Guidance About Medical Use Licenses.'' A new volume in the NUREG–1556 series has also been developed to address the production of radioactive material using an accelerator. This NUREG is entitled NUREG–1556, Volume 21, ''Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Possession Licenses for Production of Radioactive Material Using an Accelerator.''

This notice is announcing the availability of one of these three licensing guidance documents for public comment: NUREG–1556, Volume 13, Revision 1. NUREG–1556, Volume 9, Revision 2, will be available for public comment in the near future. NUREG–1556, Volume 21, was previously noticed for public comment in the **Federal Register**, on May 29, 2007 (72 FR 29555).

DATES: Please submit comments on NUREG–1556, Volume 13, Revision 1, by August 2, 2007. Comments received after this date will be considered if practical to do so, but the NRC staff is able to ensure consideration only for those comments received on or before this date.

ADDRESSES: NUREG–1556, Volume 13, Revision 1, ''Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Commercial Radiopharmacy Licenses,'' Draft Report for Comment, is available for inspection and copying for a fee at the NRC's Public Document Room (PDR), Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. The ADAMS Accession Number for NUREG–1556, Volume 13, Revision 1, is ML071581047. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The document will also be posted on NRC's public Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/* on the ''Consolidated Guidance About Materials Licenses (NUREG–1556)'' Web site page, and on the Office of Federal and State Materials and Environmental Management Programs' NARM (Naturally-Occurring and Accelerator-Produced Radioactive Material) Toolbox Web site page at: *http://nrc-stp.ornl.gov/narmtoolbox.html* under the heading of ''Licensing Guidance.''

A free single copy, to the extent of supply, may be requested by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001; facsimile: 301–415–2289; e-mail: *Distribution@nrc.gov.*

Please submit comments to Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. You may also deliver comments to 11545 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:30 p.m. Federal workdays, or by e-mail to: *nrcrep@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7900, e-mail: *tmt@nrc.gov.*

SUPPLEMENTARY INFORMATION

Background

On August 8, 2005, the President signed into law the EPAct. Among other provisions, Section 651(e) of the EPAct expanded the definition of byproduct material as defined in Section 11e. of the Atomic Energy Act of 1954 (AEA), placing additional byproduct material under the NRC's jurisdiction, and required the Commission to provide a regulatory framework for licensing and regulating this additional byproduct material.

Specifically, Section 651(e) of the EPAct expanded the definition of byproduct material by: (1) Adding any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of the EPAct for use for a commercial, medical, or research activity; or any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction, before, on, or after the date of enactment of the EPAct for use for a commercial, medical, or research activity (Section 11e.(3) of the AEA); and (2) adding any discrete source of naturally occurring radioactive material, other than source material, that the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of the Department of Energy, the Secretary of the Department of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and is extracted or converted after extraction before, on, or after the date of enactment of the EPAct for use in a commercial, medical, or research activity (Section 11e.(4) of the AEA).

NRC is revising its regulations to provide a regulatory framework that includes these newly added radioactive materials. See SECY–07–0062, ''Final Rule: Requirements for Expanded Definition of Byproduct Material,'' dated April 3, 2007, for information on that rulemaking.

Discussion

As part of the rulemaking effort to address the mandate of the EPAct, the NRC also evaluated the need to revise certain licensing guidance documents to provide necessary guidance to applicants in preparing license applications to include the use of the newly added radioactive material as byproduct material. Two NUREG–1556 documents are being revised to provide additional guidance to licensees: (1) NUREG–1556, Volume 13, Revision 1, ''Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Commercial Radiopharmacy Licenses,'' and (2) NUREG–1556, Volume 9, Revision 2, ''Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Medical Use Licenses.'' Additionally, a new NUREG–1556

volume has been developed as Volume 21 to address production of radioactive material using an accelerator. This NUREG–1556, Volume 21, is entitled: ''Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Possession Licenses for Production of Radioactive Material Using an Accelerator.''

At this time, NRC is announcing the availability for public comment NUREG–1556, Volume 13, Revision 1, ''Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Commercial Radiopharmacy Licenses,'' Draft Report for Comment. Volume 9, Revision 2, ''Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Medical Use Licenses,'' will be available for public comment in the near future. NUREG–1556, Volume 21, ''Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Possession Licenses for Production of Radioactive Material Using an Accelerator,'' was previously noticed for public comment in the **Federal Register** on May 29, 2007 (72 FR 29555), for a 30-day comment period.

NUREG–1556, Volume 13, Revision 1, ''Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Commercial Radiopharmacy Licenses,'' provides guidance for applicants for commercial radiopharmacy licenses in preparing their license applications. Volume 13 is being revised primarily to provide additional guidance related to positron emission tomography (PET) radiopharmaceuticals for medical use. The guidance in Section 8.7.2, ''Authorized Nuclear Pharmacist,'' has been updated to reflect current 10 CFR Part 35 requirements. Additionally, other minor changes are being made that are administrative in nature, such as updating the Agreement State section and updating references. Also, information related to identifying and protecting sensitive information is being updated.

NRC is only requesting comments on the specific changes in this document related to the expanded definition of byproduct material and the NARM rule. The Abstract contains a brief summary of the nature of the changes that were made as well as a list of Sections in which substantial revisions were made or new guidance was provided. NRC will make corrections if any errors or editorial corrections are noted; however, any comments not related to these specific changes will be evaluated during the next routine review of the NUREG.

Dated at Rockville, Maryland, this 21st day of June, 2007.

For the Nuclear Regulatory Commission.

Dennis K. Rathbun,

Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–12856 Filed 7–2–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of the Results of the 2006 Annual Product and Country Practices Reviews

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the disposition of the product petitions accepted for review in the 2006 GSP Annual Product Review, the results of the 2006 Country Practices Review, the results of the 2006 *De Minimis* Waiver and Redesignation Reviews, the 2006 Competitive Need Limitation (CNL) Removals, and certain CNL Waiver Revocations. The disposition of the petitions and other results are available at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html* and as published in Presidential Proclamation 8157 in the June 29, 2007, **Federal Register**.

FOR FURTHER INFORMATION CONTACT: The GSP Subcommittee, Office of the United States Trade Representative (USTR), Room F–220, 1724 F Street, NW., Washington, DC 20508. The telephone number is (202) 395–6971 and the facsimile number is (202) 395–9481. The e-mail address is *FR0618@USTR.EOP.GOV.*

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of designated articles when imported from beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''Trade Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In the 2006 Annual Product Review, the Trade Policy Staff Committee reviewed petitions to change product coverage of the GSP. The disposition of those petitions is described in List I (Decisions on CNL Waiver Petitions in the 2006 GSP Annual Review) of the ''Results of the 2006 GSP Annual Review.''

The disposition of petitions considered in the 2006 Country Practices Review is described in List II (''Decisions on Country Practice Petitions in the 2006 GSP Annual Review'') of the ''Results of the 2006 GSP Annual Review.''

In the 2006 Product Review, the GSP Subcommittee evaluated the appraised import values of each GSP-eligible article in 2006 to determine whether an article from a GSP beneficiary developing country exceeded the GSP CNLs. *De minimis* waivers were granted to certain articles that exceeded the 50 percent import share CNL, but for which the aggregate value of the imports of that article was below the 2006 *de minimis* level of $18 million. List III of the ''Results of the 2006 GSP Annual Review'' (Products Receiving *De Minimis* Waivers) is the list of the articles and the associated countries granted *de minimis* waivers.

Additionally, certain articles from GSP-eligible countries that had previously exceeded the CNLs, but had fallen below the CNL for total annual trade in 2006 were redesignated for GSP eligibility pursuant to the 2006 review. These articles and countries are listed in List IV (Products Receiving GSP Redesignation) of the ''Results of the 2006 GSP Annual Review.'' Articles that exceeded one of the GSP CNLs in 2006, and that are newly excluded from GSP eligibility for a specific country, are listed in List V (Products Newly Subject to CNL Exclusions) of the ''Results of the 2006 GSP Annual Review.''

Certain articles for which a waiver of the application of Section 503(c)(2)(A) of the 1974 Act was issued at least five years ago, but which are revoked pursuant to Section 503(d)(5) are listed in List VI (Products for which a Waiver of the Application of Section 503(c)(2)(A) of the 1974 Act is Revoked) of the ''Results of the 2006 GSP Annual Review.''

Marideth J. Sandler,

Executive Director, Generalized System of Preferences (GSP) Program Chairman, GSP Subcommittee.

[FR Doc. E7–12887 Filed 7–2–07; 8:45 am]

BILLING CODE 3190–W7–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange

Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 206(4)–2; SEC File No. 270–217; OMB Control No. 3235–0241.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 206(4)–2 (17 CFR 275.206(4)–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) governs the custody of funds or securities of clients by Commission-registered investment advisers. Rule 206(4)–2 requires each investment adviser that has custody of client funds or securities to maintain those client funds or securities with a broker-dealer, bank or other ''qualified custodian.'' The rule also requires the adviser to promptly notify the clients as to the place and manner of custody, to send quarterly account statements to each client whose assets are in the adviser's custody, and to have an independent public accountant conduct an annual surprise examination of the custodied assets. If the qualified custodian sends monthly account statements directly to an adviser's clients, however, the adviser is relieved from sending its own account statements and undergoing an annual surprise examination. The rule exempts advisers from the rule with respect to clients that are registered investment companies. The rule also exempts advisers to limited partnerships and limited liability companies from the account statement delivery and annual surprise examination requirements if the limited partnerships or limited liability companies they advise are subject to annual audit by an independent public accountant.

Advisory clients use this information to confirm proper handling of their accounts. The Commission's staff uses the information obtained through this collection in its enforcement, regulatory and examination programs. Without the information collected under the rule, the Commission would be less efficient and effective in its programs and clients would not have information valuable for monitoring an adviser's handling of their accounts.

The respondents to this information collection are investment advisers registered with the Commission and have custody of clients' funds or securities. We estimate that 3352 advisers would be subject to the information collection burden under rule 206(4)–2. The number of responses under rule 206(4)–2 will vary considerably depending on the number of clients for which an adviser has custody of funds or securities. It is estimated that the average number of responses annually for each respondent would be 247.794, and the average time of .5 hour per response would remain the same. The annual aggregate burden for all respondents to the requirements of rule 206(4)–2 is estimated to be 415,303 hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

June 25, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12781 Filed 7–2–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Regulation A; OMB Control No. 3235–0286; SEC File No. 270–110 (Forms 1–A and 2–A).

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation A (17 CFR 230.251 through 230.263) provides an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain limited securities offerings by issuers who do not otherwise file reports with the Commission. Form 1–A is an offering statement filed under Regulation A. Form 2–A is used to report sales and used of proceeds in Regulation A offerings. We estimate that approximately 100 issuers file Forms 1–A and 2–A annually. We estimated that Form 1–A takes approximately 608 hours to prepare, Form 2–A takes approximately 12 hours to prepare, and Regulation A takes one administrative hour to review for a total of 621 hours per response. We estimate that 75% of the 621 hours per response (465.75 hours) is prepared by the company for a total annual burden of 46,575 hours (465.75 hours per response × 100 responses).

Written 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 the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

June 25, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12783 Filed 7–2–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Regulation S; OMB Control No. 3235–0357; SEC File No. 270–315.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S (17 CFR 230.901 through 230.905) includes rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of Regulation S is to provide clarification of the extent to which Section 5 of the Securities Act applies to sales and re-sales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: June 25, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12784 Filed 7–2–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55961; File No. SR–ISE–2007–46]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fee Changes

June 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on two Premium Products.[5] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.iseoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] ''Premium Products'' is defined in the Schedule of Fees as the products enumerated therein.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees to establish fees for transactions in options on the following two Premium Products: United States Natural Gas Fund (''UNG'') and United States Oil Fund (''USO'').[6] The Exchange represents that UNG and USO are eligible for options trading because they constitute ''Fund Shares,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on UNG and USO.[7] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders [8] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[9] Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be $0.37 and $0.03 per contract, respectively. Further, since options on UNG and USO are multiply-listed, the

[6] The United States Oil Fund, LP (''USO'') and the United States Natural Gas Fund (''UNG'') are distributed by ALPS Distributors, Inc. (''ALPS''), administered by Brown Brothers Harriman & Co. (''BBH'') and Victoria Bay Asset Management (''VBAM'') is the General Partner. ALPS, BBH and VBAM have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on USO and UNG or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on USO and UNG or with making disclosures concerning options on USO and UNG under any applicable federal or state laws, rules or regulations. ALPS, BBH and VBAM do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[7] These fees will be charged to Exchange members. Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900). *See* Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR–ISE–2006–38).

[8] ''Public Customer Order'' is defined in ISE Rule 100(a)(39) as an order for the account of a Public Customer. ''Public Customer'' is defined in ISE Rule 100(a)(38) as a person that is not a broker or dealer in securities.

[9] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

Payment for Order Flow fee shall also apply. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [10] in general, and Section 6(b)(4) of the Act [11] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal took effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2007–46 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–2007–46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–46 and should be submitted on or before July 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12777 Filed 7–2–07; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55960; File No. SR–ISE–2007–42]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PrecISE Fees

June 26, 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 June 1, 2007, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend the fees for its PrecISE Trade® order entry terminals and also to delete obsolete references to CLICK fees in its Schedule of Fees. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.iseoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 ISE's Schedule of Fees concerning fees for its proprietary PrecISE Trade® order entry terminals. ''PrecISE'' is the Exchange's internally-developed proprietary order-routing terminal used by Electronic Access Members (''EAMs'') to send order flow to ISE. The Exchange currently charges a monthly fee of $250 per terminal, with a $500 minimum and $1,500 maximum per EAM.[5] ISE recently updated PrecISE, enhancing it with certain new functionalities that permit, among other things, away market routing for non-ISE listed options. Certain other user-requested enhancements have also been built into the new version, including the facilitation of complex orders. In order for ISE to cover the costs of building out the enhanced version, the Exchange proposes to amend the current PrecISE fees as follows: for the first 10 users, the Exchange proposes a fee of $300 per user per month; for all subsequent users, the Exchange proposes to charge $50 per user per month.

Additionally, ISE recently decommissioned all the CLICK terminals that were at member sites. All EAMs now have PrecISE Trade terminals. In the PrecISE Fee Filing, the Exchange noted that upon completion of the phase-out of CLICK, ISE will submit a proposed rule change to the Commission pursuant to which it will remove CLICK fees from its Schedule of Fees. The Exchange thus proposes to remove all references to CLICK terminals from its Schedule of Fees.[6]

2. Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4)[7] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, these fees will enable the Exchange to cover its costs for providing an enhanced version of its front-end trading system.

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)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2007–42 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–2007–42. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–42 and should be submitted on or before July 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12778 Filed 7–2–07; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 53788 (May 11, 2006), 71 FR 28728 (May 17, 2006) (ISE–2006–19) (the ''PrecISE Fee Filing'').

[6] Regarding the Session/API fee, the Exchange's proposal to delete the reference to CLICK (referred to as the ''Options Trade Review Terminal'') in that item of the Schedule of Fees leaves untouched the existing flat $250 Session/API fee, which continues to be applicable to EAMs that use their own API to connect to the Exchange (*i.e.*, EAMs that do not use PrecISE to access the Exchange). *See* Telephone conference between Samir Patel, Assistant General Counsel, ISE, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, dated June 22, 2007.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55957; File No. SR–MSRB–2007–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change to MSRB Rule G–14, Reports of Sales or Purchases Relating to Reporting of Transactions in Certain Special Trading Situations

June 26, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2007, the Municipal Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the MSRB. 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 MSRB is filing with the Commission a proposed rule change consisting of an amendment to and interpretation of its Rule G–14, Reports of Sales or Purchases. The proposed rule change would: (i) Clarify transaction reporting requirements and require use of the existing M9c0 special condition indicator on trade reports of three types of transactions arising in certain special trading situations that do not represent typical arm's-length transactions negotiated in the secondary market; (ii) provide an end-of-day exception from real-time transaction reporting for trade reports containing the M2c0 or M9c0 special condition indicator; and (iii) create two new special condition indicators for purposes of reporting certain inter-dealer transactions ''late.'' The MSRB proposes an effective date for this proposed rule change of January 2, 2008. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB'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 MSRB 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 MSRB 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 MSRB Real-Time Transaction Reporting System (RTRS) serves the dual purposes of price transparency and market surveillance. Because a comprehensive database of transactions is needed for the surveillance function of RTRS, MSRB Rule G–14, with limited exceptions, requires dealers to report all of their purchase-sale transactions to RTRS. All reported transactions are entered into the RTRS surveillance database used by market regulators and enforcement agencies. However, not all of these reported transactions are equally useful for price transparency. To address this problem, RTRS was designed so that a dealer can code a specific transaction report with a ''special condition indicator'' to designate the transaction as being subject to a special condition. Depending on the special condition that is indicated, RTRS either can suppress dissemination of the transparency report to prevent publication of a potentially misleading price or take other action.

Transactions Executed With Special Pricing Conditions

The MSRB has identified three trading scenarios that have generated questions from dealers and users of the MSRB price transparency products. Each of the three trading scenarios described below represents a situation where the transaction executed is not a typical arm's-length transaction negotiated in the secondary market and thus may be a misleading indicator of the market value of the security. To clarify transaction reporting requirements and to prevent publication of potentially misleading prices, the proposed rule change would require dealers to report the transactions identified in the trading scenarios with the existing M9c0 [3] special condition indicator. Transactions reported with this special condition indicator would be entered into the surveillance database but suppressed from price dissemination to ensure that transparency products do not include prices that might be confusing or misleading.

Customer Repurchase Agreement Transactions

Some dealers have programs allowing customers to finance municipal securities positions with repurchase agreements (''repos''). Typically, a bona fide repo consists of two transactions whereby a dealer will sell securities to a customer and agree to repurchase the securities on a future date at a pre-determined price that will produce an agreed-upon rate of return. Since both the sale and purchase transactions resulting from a customer repo do not represent a typical arm's-length transaction negotiated in the secondary market, the proposed rule change would clarify that both the sale and purchase transactions resulting from a repo would be required to be reported with the M9c0 special condition indicator.

UIT-Related Transactions

Dealers sponsoring Unit Investment Trusts (''UIT'') or similar programs sometimes purchase securities through several transactions and deposit such securities into an ''accumulation'' account. After the accumulation account contains the necessary securities for the UIT, the dealer transfers the securities from the accumulation account into the UIT. Purchases of securities for an accumulation account are presumably done at market value and are required to be reported normally. The transfer of securities out of the accumulation account and into the UIT, however, does not represent a typical arm's-length transaction negotiated in the secondary market. The proposed rule change would clarify that dealers are required to report the subsequent transfer of securities from the accumulation account to the UIT with the M9c0 special condition indicator.

TOB Program-Related Transactions

Dealers sponsoring tender option bond programs (''TOB Programs'') for customers sometimes transfer securities previously sold to a customer into a derivative trust from which derivative products are created. If the customer sells the securities held in the derivative trust, the trust is liquidated, and the securities are reconstituted from the derivative products and transferred back to the customer. The transfer of securities into the derivative trust and the transfer of securities back to the customer upon liquidation of the trust do not represent typical arm's-length transactions negotiated in the secondary market. The proposed rule change would clarify that dealers are required to report the transfer of securities into the derivative trust and the transfer of securities back to the customer upon liquidation of the trust using the M9c0 special condition indicator.[4]

[3] In addition to the special trading situations identified in the proposed rule change, the existing M9c0 special condition indicator, ''away from market—other reason,'' is required to be included on a trade report if the transaction price differs substantially from the market price for multiple reasons or for a reason not covered by another special condition indicator.

[4] In some cases, the transfer of securities into the derivative trust and the transfer of securities back to the customer upon liquidation of the trust do not represent purchase-sale transactions due to the terms of the trust agreement. MSRB rules on transaction reporting do not require a dealer to report the transfer of securities to RTRS that does not represent a purchase-sale transaction.

Inter-Dealer Transactions Reported Late

Inter-dealer transaction reporting is accomplished by both the purchasing and selling dealers submitting the trade to the Depository Trust and Clearing Corporation's (DTCC) automated comparison system (RTTM) following DTCC's procedures. RTTM forwards information about the transaction to RTRS. The inter-dealer trade processing situations described below are the subject of dealer questions and currently result in dealers being charged with ''late'' reporting or reporting of a trade date and time that differs from the date and time of trade execution. The proposed rule change would create a new special condition indicator for each scenario, allowing dealers to report these types of transactions without receiving a late error and allowing enforcement agencies to identify these trades as reported under special circumstances.

Inter-Dealer Ineligible on Trade Date

Certain inter-dealer transactions are not able to be submitted to RTTM on trade date or with the accurate trade date either because all information necessary for comparison is not available or because the trade date is not a ''valid'' trade date in RTTM. The proposed rule change identifies two of these inter-dealer trading scenarios and prescribes a procedure for reporting such transactions using a new Mc40 special condition indicator.

VRDO Ineligible on Trade Date

On occasion, inter-dealer secondary market transactions are effected in variable rate demand obligations (VRDOs) in which the interest rate reset date occurs between trade date and the time of settlement. Since dealers in this scenario cannot calculate accrued interest or final money on trade date, they cannot process the trade through RTTM until the interest rate reset has occurred. Reporting the trade after the interest rate reset occurs would currently result in a late trade report. The proposed rule change would require both dealers that are party to the transaction to report the transaction by the end of the day that the interest rate reset occurs, including the trade date and time that the original trade was executed. Both dealers would be required to include a new Mc40 special condition indicator that would cause RTRS not to score either dealer late. RTRS would disseminate the trade reports without a special condition indicator and the trade report would reflect the original trade date and time.

Invalid RTTM Trade Dates

Dealers sometimes execute inter-dealer transactions on weekends and on certain holidays that are not valid RTTM trade dates. Such trades cannot be reported to RTRS using the actual trade date if they occur on a weekend or holiday. To accomplish automated comparison and transaction reporting of such transactions, dealers are required to submit these inter-dealer transactions to RTTM no later than fifteen minutes after the start of the next RTRS Business Day and to include a trade date and time that represents the next earliest ''valid'' values that can be submitted.[5] Dealers also would be required to include a new Mc40 special condition indicator that would allow RTRS to identify these transactions so that enforcement agencies would be alerted to the fact that the trade reports were made under special circumstances using a special trade date and time. RTRS would disseminate the trade reports without a special condition indicator and the trade report would include the trade date and time reflecting the next earliest ''valid'' values that can be submitted.

Resubmission of an RTTM Cancel

A dealer may submit an inter-dealer trade to RTTM and find that the contra-party fails to report its side of the trade. Such ''uncompared'' trades are not disseminated by RTRS on price transparency products. After two days, RTTM removes the uncompared trade report from its system and the dealer originally submitting the trade must resubmit the transaction in a second attempt to obtain a comparison with its contra-party, which currently results in RTRS scoring the resubmitted trade report ''late.''

The proposed rule change would require the dealer that originally submitted information to RTTM to resubmit identical information about the transaction in the second attempt to compare and report the trade by the end of the day after RTTM cancels the trade. The resubmitting dealer would include a new Mc50 special condition indicator that would cause RTRS not to score the resubmitting dealer late. The indicator may only be used by a dealer resubmitting the exact same trade information for the same trade.[6] For example, the contra-party that failed to submit its side to the trade accurately, thus preventing comparison of the transaction, would not be able to use the indicator. RTRS would disseminate the trade without an indicator once RTTM compares the trade and the trade report would reflect the original trade date and time.

End-of-Day Deadline for ''Away From Market'' Trade Reports

Currently, the two special condition indicators used to identify ''away from market'' trade reports, M2c0[7] and M9c0, do not provide dealers with an extension to the fifteen minute transaction reporting deadline. The purpose of fifteen minute reporting is to provide real-time price transparency. ''Away from market'' trade reports are not included on price transparency products and are not relevant to the transparency purpose of RTRS so there is not a need to have such transactions reported to RTRS in real-time. In addition, many special condition indicator situations require manual processing by dealers or use of different trade processing systems. Therefore, the proposed rule change includes an end-of-day exception from the fifteen minute transaction reporting deadline for any transaction that correctly includes the M2c0 or M9c0 special condition indicator.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,[8] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it will allow the municipal

[5] The MSRB previously provided an example of a trade date and time that would be included on a trade report using this procedure. *See* ''Reporting of Inter-Dealer Transactions That Occur Outside of RTRS Business Day Hours or on Invalid RTTM Trade Dates,'' MSRB Notice 2007–12 (March 23, 2007).

[6] The resubmitting dealer would not be required to resubmit the same reference number or preparation time on the resubmitted transaction; however, other information about the transaction, such as price, quantity, trade date and time, would be required to be identical to information included in the original trade submission.

[7] The M2c0 special condition indicator, ''away from market—extraordinary settlement,'' is used to identify transactions where the price differs from the market price because the settlement was (a) for regular way trades, other than T+3, or (b) for new issue trades, other than the initial settlement date of the issue. The indicator is not used for new issue, extended settlement or cash/next-day trades at the market price.

[8] 15 U.S.C. 78o–4(b)(2)(C).

securities industry to produce more accurate trade reporting and transparency and will enhance surveillance data used by enforcement agencies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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 since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

With the exception of the procedure for reporting inter-dealer transactions executed on invalid RTTM trade dates, on July 31, 2006 the MSRB published for comment an exposure draft of the proposed rule change [9] (''July 2006 draft procedures'').[10] While the MSRB did not request comment on use of the Mc40 special condition indicator on trade reports of inter-dealer transactions executed on invalid RTTM trade dates, this procedure was included in the proposed rule change to address a special trading situation that arose on April 6, 2007, Good Friday.[11]

The MSRB received comments on the July 2006 draft procedures from the following two commentators:

The Bond Market Association (''TBMA'').[12]

First Southwest Company (''First Southwest'')

Use of ''Away from Market—Other Reason'' Special Condition Indicator

TBMA urged that transactions identified as ''away from market'' not be reported to RTRS. The MSRB notes that RTRS serves the dual purposes of price transparency and market surveillance. The proposed rule change would ensure that such ''away from market'' transactions are entered into the surveillance database but suppressed from price dissemination. These transactions would be part of a database for the purpose of market surveillance for use by market regulators and enforcement agencies (NASD, SEC and other regulators).

The proposed rule change is consistent with TBMA's statement that reporting of these ''away from market'' trades with a special condition indicator provides no value to transparency. Such trades are not helpful for price transparency; in fact, if these ''away from market'' trades were reported without a special condition indicator, the trades could be detrimental to price transparency since they may contain potentially misleading prices.[13]

End-of-Day Exception for ''Away from Market'' Trade Reports

The July 2006 draft procedures proposed an end-of-day exception from real-time transaction reporting for transactions reported with an ''away from market'' special condition indicator. TBMA and First Southwest commented that requiring the reporting of the transactions with a special condition indicator would require special and possibly manual processing to add the indicator. The MSRB agrees with this statement and retained in the proposed rule change an end-of-day exception to the 15 minute reporting deadline for the special trading scenarios in the proposed rule change that was included in the July 2006 draft procedures.

Inter-Dealer Transactions Reported ''Late''

TBMA supported the proposal in the July 2006 draft procedures that both dealers that are party to a transaction in a variable rate security where the interest rate reset occurs between the trade date and settlement date identify the transaction with a special condition indicator so as to cause RTRS not to score either dealer late. TBMA recommended making this indicator available for customer trades as well as inter-dealer trades. The MSRB notes that dealers are required to only provide either a dollar price or yield on customer transactions in variable rate securities; therefore dealers are able to report customer transactions in variable rate securities even if final money is not able to be calculated at the time the trade report is made. First Southwest recognized that the proposed treatment of inter-dealer variable rate transactions would remedy the late trade issue and approves of this proposal. TBMA supported the MSRB proposal that the dealer originally submitting information to RTTM not be scored late on an uncompared trade in its second attempt to compare and report the trade using a special condition indicator.

Timing of Implementation

MSRB recommended in the July 2006 draft procedures, and TBMA supported, that multiple RTRS system changes be accomplished on a single implementation date because it is less costly and more efficient when changes are implemented collectively. The proposed rule change includes a proposed effective date of January 2, 2008 to coincide with changes many dealers already will need to make at the end of 2007 to prepare for the expiration of the three-hour exception from real-time transaction reporting that is currently available on certain transactions in when, as and if issued securities.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB proposes that the proposed rule change become effective January 2, 2008.

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–MSRB–2007–01 on the subject line.

[9] *See* MSRB Notice 2006–20 (July 31, 2006).

[10] The July 2006 draft procedures also covered use of the M9c0 special condition indicator on certain transfers of securities between program dealers of an auction rate security pursuant to the instructions of an auction agent. This procedure is not included in the proposed rule change as it is still under consideration by the MSRB.

[11] *See* ''Reporting of Inter-Dealer Transactions That Occur Outside of RTRS Business Day Hours or on Invalid RTTM Trade Dates,'' MSRB Notice 2007–12 (March 23, 2007).

[12] TBMA has since merged with the Securities Industry Association and is now the Securities Industry and Financial Markets Association (''SIFMA'').

[13] TBMA also stated that reporting certain ''away from market'' transactions would overstate the volume of transactions occurring in that particular security. However, by identifying the trade with the M9c0 special condition indicator, the trade would be suppressed from publication so there would be no over-reporting of volume in any published transparency product.

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–MSRB–2007–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2007–01 and should be submitted on or before July 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12779 Filed 7–2–07; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55962; File No. SR–NASD–2007–040]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Clearing Reports for Previously Executed Trades

June 26, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 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 II below, which Items have been substantially prepared by NASD. NASD has designated the proposed rule change as ''non-controversial'' under section 19(b)(3)(A)(iii)[3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rules 6130, 6130A, 6130C, 6130D, and 6130E to prohibit members from submitting to an NASD Facility (*i.e.*, the Alternative Display Facility (''ADF'') or a Trade Reporting Facility (''TRF'')) any report (including but not limited to a report of a step-out or a reversal) associated with a previously executed trade that was not reported to the NASD Facility, except where such report reflects the offsetting ''riskless'' portion of a riskless principal transaction. NASD is also proposing to amend NASD Rules 4632(d), 4632A(e), 4632C(d), 4632D(e), and 4632E(e) to clarify that, where the first leg of a riskless principal transaction is reported to NASD, the second leg must also be reported to NASD; however, in such circumstance, the member is not required to report both legs of the transaction to the same NASD Facility.

The text of the proposed rule change is available at NASD, from the Commission's Public Reference Room, and on the NASD's Web site (http://www.nasd.com).

[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)(6).

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

Proposed Changes Relating to Reports Associated With Previously Executed Trades

Currently, members can use the ADF and the NASD/Nasdaq TRF to submit non-tape reports (*i.e.*, the transaction is not reported to the tape for publication) and clearing-only reports (*i.e.*, the transaction is not reported to the tape but may be submitted for clearing purposes) for a variety of reasons, including to reallocate or cancel transactions previously executed and reported to the tape by an exchange. For example, Firm A buys 1000 shares of ABC security on the Nasdaq Exchange and then submits a clearing-only report to the ADF or NASD/Nasdaq TRF to allocate those shares to Firm B (referred to as a ''step-out'').[5] Similarly, a ''reversal'' is a clearing-only entry that allows a participant to cancel the effects of a prior submission to the National Securities Clearing Corporation.[6] Such functionality is not prescribed by rule, but rather has been offered as a service to members using the ADF and Nasdaq's Automated Confirmation Transaction Service (''ACT'').[7] Such functionality is

[5] A step-out allows a member to allocate all or part of a previously executed trade to another broker-dealer. In other words, a step-out functions as a position transfer, rather than a trade; the parties are not exchanging shares and funds. The step-out function was designed and implemented to facilitate the clearing process for members involved in these types of transactions. *See, e.g., NASD Notice to Members 05–11* (February 2005) and *NASD Notice to Members 98–40* (May 1998).

[6] If a participant wants to cancel a previously submitted sell trade, it would have to submit a reversal as a buy to effectively unwind the position at clearing.

[7] ACT has been licensed for use for trade reporting and clearing and comparison services

not supported by any other NASD Facility.

NASD believes that members' ability to submit non-tape reports should be limited across NASD Facilities for several reasons. First, where the previously executed transaction associated with a non-tape report is reported to an exchange, NASD's audit trail will not include the original transaction report. The inclusion of a non-tape report that is not related to an NASD transaction report can create confusion and impair NASD staff's ability to produce a complete and accurate audit trail.

Second, certain non-tape or clearing-only reports that provide for the re-allocation or cancellation of a previously reported transaction can make it more difficult for NASD to tabulate accurately the aggregate dollar amount of its covered sales for purposes of Section 31 fees.[8] Entry of such a transactions in an NASD Facility, when the original transaction was reported and assessed a Section 31 fee by an exchange, can result in the misalignment of Section 31 fees with the appropriate market and market participants.

Thus, NASD is proposing to amend NASD Rules 6130 (relating to the NASD/Nasdaq TRF), 6130A (relating to the ADF), 6130C (relating to the NASD/NSX TRF), 6130D (relating to the NASD/BSE TRF), and 6130E (relating to the NASD/NYSE TRF) to provide that a member shall not submit to an NASD Facility any report (including but not limited to a report of a step-out or reversal) associated with a previously executed trade that was not reported to that NASD Facility. For example, a clearing-only entry for a step-out relating to a trade reported to the Nasdaq Exchange may not be submitted to the NASD/Nasdaq TRF. This proposed rule language also clarifies that a member is not permitted to report a trade to an NASD Facility for submission to the National Securities Clearing Corporation for clearance and settlement purposes, if the trade was not reported to that same NASD Facility for public dissemination purposes. Thus, for example, a member may not tape report a trade to the NASD/NYSE TRF and use the NASD/Nasdaq TRF to clear that same trade.

However, NASD is proposing an exception to this prohibition for reports that reflect the offsetting ''riskless'' portion of a riskless principal transaction. For purposes of over-the-counter trade reporting requirements applicable to equity securities, a ''riskless principal'' transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and satisfies the original order by selling (buying) as principal at the same price (the offsetting, ''riskless'' leg). A riskless principal transaction can be submitted to NASD as a single trade report properly marked as riskless principal, or by submitting two separate reports: (1) A report that is submitted to the tape to reflect the initial leg of the transaction; and (2) a non-tape (or clearing-only) report to reflect the offsetting, ''riskless'' leg of the transaction. Where a member chooses to report a riskless principal transaction to NASD by submitting two separate reports, both the tape report and non-tape (or clearing-only) report must be submitted to an NASD Facility. Where the initial leg of the transaction is executed on and reported through an exchange, a tape report would not be submitted to an NASD Facility to reflect the initial leg; however, a member is permitted, but not required, to submit a non-tape (or clearing-only) report for the second leg of the transaction to an NASD Facility.

NASD believes it is appropriate to continue to permit a member to submit a non-tape (or clearing-only) report for the second leg of a riskless principal transaction to an NASD Facility, even where the first leg of the transaction has been reported to the tape by an exchange, in light of the unique nature of riskless principal transactions. A riskless principal transaction is the economic equivalent of a single agency trade and therefore the second riskless principal report is suppressed from the tape to avoid double reporting and overstatement of volume, notwithstanding that, technically, it is a separate trade. In addition, the second leg, if appropriately reported pursuant to NASD rules, is not subject to Section 31 fees. Accordingly, the proposed rule language includes an express carve-out to permit a report of an offsetting second leg of a riskless principal transaction submitted to an NASD Facility in connection with a first leg executed on and reported to an exchange.

The proposed rule change will ensure consistency across NASD Facilities, promote a more complete and accurate audit trail, and enable NASD to properly assess applicable transaction-related fees. As noted above, currently only the ADF and NASD/Nasdaq TRF offer the above-described functionality relating to step-outs and reversals and, thus, the proposed rule change would require a systems change only for certain members using those facilities. With respect to the other NASD Facilities, the proposed rule change would merely codify current functionality.

Clarifying Changes to Riskless Principal Reporting Requirements

Currently, the rules relating to NASD's TRFs require that, where the initial leg of a riskless principal transaction was reported to a TRF, the second leg must also be reported to that same TRF.[9] NASD is proposing to revise these rules to clarify that, where the first leg of a riskless principal transaction was reported to NASD, the second leg must also be reported to NASD; however, in that circumstance, the member is not required to report both legs to the same TRF. NASD believes that the current provisions are too restrictive and could have the unintended consequence of requiring members to be participants in all TRFs in order to comply with NASD rules.[10] NASD expects that, where possible, a member will report both legs of a riskless principal transaction to the same NASD Facility. NASD also is proposing conforming changes to NASD Rule 4632A(e)(1)(C)(ii) relating to the ADF.

NASD is filing the proposed rule change for immediate effectiveness. The proposed rule change will not become operative prior to the thirtieth day after the date of filing. NASD will announce the operative date on its Web site.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[11] which

through the NASD/Nasdaq TRF and also serves as the mechanism for reporting trades that are automatically executed through the Nasdaq Market Center. Nasdaq has advised NASD that it will submit a proposed rule change proposing to allow step-outs on ACT under Nasdaq rules with respect to any trade to which a Nasdaq member is a party, regardless of where it originated.

[8] For example, as explained in *NASD Notice to Members 05–11* (February 2005), as part of the step-out function, ACT provides the ability to move the obligation to pay the transaction fee associated with the trade to the ultimate seller of the security when the trade is allocated.

[9] *See* NASD Rules 4632(d)(3)(B), 4632C(d)(3)(B), 4632D(e)(3)(B), and 4632E(e)(3)(B).

[10] For example, assume Firm A is only a participant of TRF A and it executes the first leg of a riskless principal transaction otherwise than on exchange with Firm B, which is only a participant of TRF B. Assume further that Firm B has the reporting obligation under NASD rules. The initial leg of the riskless principal transaction will be reported by Firm B to TRF B. Firm A must report the second leg of the riskless principal transaction to NASD, but because it is not a participant of TRF B, it cannot report the second leg to TRF B. The proposed changes would allow Firm A to report the second leg of the transaction to TRF A.

[11] 15 U.S.C. 78*o*–3(b)(6).

requires, among other things, that NASD rules 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. NASD believes that the proposed rule change will promote a more complete and accurate audit trail and enable NASD to properly assess applicable transaction-related fees.

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 proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

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–NASD–2007–040 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–2007–040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2007–040 and should be submitted on or July 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12782 Filed 7–2–07; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55958; File No. SR–Phlx–2007–45]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc; Notice of Filing of Proposed Rule Change Relating To Establish New Procedures To Be Followed When Trading Halts on the Primary Market for the Underlying Security

June 26, 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 June 14, 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 prepared by Phlx. 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

Phlx proposes to amend Exchange Rules 1047, Trading Rotations, Halts and Suspensions concerning equity options, 1047A, Trading Rotations, Halts or Reopenings concerning index options, and OFPA G–2, Trading Rotations, Halts or Reopenings, to establish new procedures to be followed when trading halts on the primary market for the underlying security.

The text of the proposed rule change is available at Phlx, *http://www.phlx.com*, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to help Exchange options specialists and Registered Options Traders (''ROTs'') better manage risk following a trading halt on the primary market in the underlying security by permitting specialists to halt trading in the overlying option prior to receiving approval from an Options Exchange Official.

Under current Exchange rules, in order to halt trading in an option, the specialist in the option must seek out and obtain prior approval from an Options Exchange Official to do so. Typically, when trading in the underlying security halts on the primary market, a period of time passes before the specialist (a) learns of the halt on the primary market in the underlying security; and (b) is able to obtain the necessary approval to halt trading in the overlying option. During this time period, the specialist and ROTs continue to disseminate quotations in the option and are at significant market risk due to uncertainty in the pricing of the option.

The proposal would change the procedure for halting trading in equity options in the overlying option when trading is halted on the primary market in the underlying security, and in index options when trading on the primary market in underlying securities representing more than 10% of the current index value is halted. Specifically, the proposal would permit the specialist to halt trading in the option in these circumstances prior to receiving approval from an Options Exchange Official, provided that such approval is granted within five minutes following the halt of trading in the option.

The Exchange believes that this should reduce the time period following a trading halt on the primary market in the underlying security before trading the overlying option is halted, thus enabling specialists to halt trading in the overlying option more expeditiously.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) of the Act [4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by enabling Exchange options specialists and ROTs to better manage their market risk.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2007–45 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–2007–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2007–45 and should be submitted on or before July 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12780 Filed 7–2–07; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2007–0006]

Early Identification and Intervention Demonstration Request for Applications; Program: Cooperative Agreements for Early Identification and Intervention Demonstrations (EIID); Program Announcement No. SSA–OPDR–07–01; Cancellation of Notice

AGENCY: Social Security Administration.

ACTION: Cancellation of notice.

SUMMARY: This notice cancels a notice that the Social Security Administration published in the **Federal Register** on January 29, 2007, requesting applications for cooperative agreement

funding to support projects that will design and implement effective, replicable, and sustainable models which will increase the number of children (birth to age 5) who receive developmental screening and improve the early identification of children with developmental delays and/or disabilities.

DATES: This notice is effective July 3, 2007.

FOR FURTHER INFORMATION CONTACT: Leola Brooks, Office of Program Development and Research, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024, *leola.brooks@ssa.gov*, phone: 202–358–6294. When sending a question, use the program announcement number (SSA–OPDR–07–01) and the date of this announcement.

SUPPLEMENTARY INFORMATION: In the **Federal Register** notice of January 29, 2007 (72 FR 4049), we announced a funding opportunity, as follows: Early Identification and Intervention Demonstration Request for Applications; Program: Cooperative Agreements for Early Identification and Intervention Demonstrations (EIID); Program Announcement No. SSA–OPDR–07–01. We are canceling that announcement now because the goals of the cooperative agreement to design and implement developmental screening models and improve the early identification of children with delays and/or disabilities are no longer feasible due to Agency budget limitations.

Dated: June 27, 2007.

Manuel J. Vaz,

Acting Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. E7–12773 Filed 7–2–07; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2007–0046]

Protecting the Integrity of Social Security Numbers (SSNs)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of enhancing the efficiency of SSA's SSN Assignment Process.

SUMMARY: SSA is proposing to change the way that we assign SSNs. We intend to eliminate the geographical significance of the first three digits of the SSN (the ''area number'') by no longer allocating entire area numbers for assignment to individuals in specific States. Instead, the SSN will be randomly assigned from the remaining pool of available SSNs, and the first three digits of the SSN will no longer have any geographical significance. We believe that by changing the way we assign the SSN we will ensure that there will be a reliable supply of SSNs for years to come. Additionally, we believe that this will also help reduce opportunities for identity theft and SSN fraud and misuse.

We specifically invite comments to help us determine whether this change would have any unanticipated effects on the public.

DATES: The agency must receive comments on or before August 2, 2007.

ADDRESSES: You may give us your comments: By Internet through the Federal eRulemaking Portal at *http://www.regulations.gov*; by e-mail to *regulations@ssa.gov*; by telfax to (410) 966–2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on the Federal eRulemaking Portal. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Arthur L. LaVeck, Social Insurance Specialist, at (410) 966–5665.

SUPPLEMENTARY INFORMATION:

A. Background

SSA began assigning the nine-digit SSN in 1936 for the purpose of tracking workers' earnings over the course of their lifetime and to pay benefits. To date, we have assigned about 443 million of the almost one billion possible nine-digit combinations. For administrative reasons, certain number combinations will never be assigned.

Since its inception in 1936, the SSN has always been comprised of the three-digit area number, followed by the two-digit group number, and ending with the four-digit serial number. SSNs assigned before 1972 were issued by local SSA field offices and the area numbers reflected the State where the application for the number was made. Since 1972, SSA has issued Social Security cards centrally, and the area number reflects the State, as determined by the ZIP code in the mailing address of the application.

Over time, because of demographic shifts in the relative populations of the States, there have been more SSNs assigned in some States than originally projected, and fewer in other States.

B. Replacing Geographically Based Area Numbers by Randomly Assigning the SSN from Remaining Pool of Available SSNs

SSA currently has many years' worth of potential SSNs available for future assignment. However, because area numbers in the past were allocated for assignment in States based on then current demographic trends, the allocations of SSNs in some States will be exhausted more quickly than in others. As a result, given present rates of assignment and existing geographic allocations, there are fewer than 10 years' worth of SSNs currently available for assignment in several States.

We believe that by randomizing the assignment of SSNs and no longer allocating them by State, SSA will promote a more efficient distribution of SSNs, and it will ensure that all States have a sufficient supply of SSNs available for assignment for many years to come.

C. Randomizing the Area Number Will Help Protect Against Identity Theft

As the SSN has increasingly become an identifier used by both public and private entities, instances of SSN fraud/misuse and identity theft have also increased. We believe that another benefit of ending the geographic significance associated with the SSN area number is that opportunities for SSN fraud/misuse and identity theft will be reduced. By eliminating the geographical significance of the first three digits of the SSN, we can help prevent someone from learning an individual's SSN by acquiring the area number of a potential victim's SSN through knowledge of the date and/or location of the SSN application, and combining it with the correct group and serial number (i.e. the last four digits of the SSN), and being able to use that SSN for illegal purposes.

Dated: June 27, 2007.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E7–12831 Filed 7–2–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 5855]

30-Day Notice of Proposed Information Collection: Form DS–156K, Nonimmigrant Fiance(e) Visa Application, OMB Control Number 1405–0096

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Nonimmigrant Fiance(e) Visa Application.
- *OMB Control Number:* 1405–0096.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–156K.
- *Respondents:* Aliens applying for a nonimmigrant visa to enter the U.S. as the fiancé(e) of a U.S. citizen.
- *Estimated Number of Respondents:* 35,000.
- *Estimated Number of Responses:* 35,000.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 35,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from July 3, 2007.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of proposed collection: Form DS–156K is used by consular officers to determine the eligibility of an alien applicant for a non-immigrant fiancé(e) visa.

Methodology: The DS–156K is submitted to consular posts abroad.

Dated: June 7, 2007.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E7–12861 Filed 7–2–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 5856]

30-Day Notice of Proposed Information Collection: DS–156E Nonimmigrant Treaty Trader/Investor Application, OMB Control Number 1405–0101

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Nonimmigrant Treaty Trader/Investor Application.
- *OMB Control Number:* 1405–0101.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–156E.
- *Respondents:* Nonimmigrant treaty trader/investor visa applicants.
- *Estimated Number of Respondents:* 17,000.
- *Estimated Number of Responses:* 17,000.
- *Average Hours per Response:* 4 hours.
- *Total Estimated Burden:* 68,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from July 3, 2007.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of proposed collection: Form DS–156E is completed by aliens seeking nonimmigrant treaty trader/investor visas to the US. The Department will use the DS–156E to elicit information necessary to determine an applicant's visa eligibility.

Methodology: The DS–156E is submitted to consular posts abroad.

Dated: June 7, 2007.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E7–12863 Filed 7–2–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 5858]

Bureau of Consular Affairs, Passport Services; Notice of Information Collection Under Emergency Review: U.S. Passport Demand Study Phase II; SV–2007–0021; OMB Control Number 1405–xxxx

AGENCY: Department of State.

ACTION: Notice of Request for Emergency OMB approval.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Title of Information Collection: U.S. Passport Demand Study Phase II.

Type of Request: Emergency Review.

Originating Office: Bureau of Consular Affairs, CA/PPT.

Form Number: SV–2007–0021.

Respondents: Current and potential future Canadian and Mexican land border crossers.

Estimated Number of Respondents: Approximately 4,000 respondents.

Average Hours per Response: 10 minutes per response.

Total Estimated Burden: 667 hours.

Frequency: One time.

Obligation to Respond: Voluntary.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by July 6, 2007. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530. Fax: 202–395–6974.

During the first 60 days of this emergency approval period, a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

Abstract: The purpose of this telephone survey of a representative sample of U.S. households selected from areas with the largest numbers of land border crossers, is to establish an accurate estimate of U.S. citizens who will apply for a new passport for cross-border travel (land travel between Mexico and the U.S. as well as Canada and the U.S.) over the next several years, and especially within the next six to 12 months.

Methodology: All interviews will be collected using a state-of-the-art Computer Assisted Telephone Interviewing (CATI) system. This system allows interviewers to enter responses directly into a computer, which instantaneously feeds the information from each station to a mainframe computer.

For Additional Information: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Alan J. Swygert, Bureau of Consular Affairs, Passport Services, U.S. Department of State, Washington, DC 20520, who may be reached on 202–663–2647, or at *SwygertAJ@state.gov.*

Dated: June 27, 2007.

Ann Barrett,

Deputy Assistant Secretary, Bureau of Consular Affairs, Office of Passport Services, Department of State.

[FR Doc. E7–12897 Filed 7–2–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5857]

Culturally Significant Objects Imported for Exhibition Determinations: ''J.M.W. Turner''

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 to be included in the exhibition ''J.M.W. Turner'', 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 the exhibit objects at the National Gallery of Art, Washington, DC, from on or about October 1, 2007, until on or about January 6, 2008, the Dallas Museum of Art, Dallas, Texas, from on or about February 10, 2008, until on or about May 18, 2008, and The Metropolitan Museum of Art, New York, New York, from on or about June 25, 2008, until on or about September 21, 2008, 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 Paul Manning, 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: June 20, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–12864 Filed 7–2–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Approval From the Office of Management and Budget of a New Information Collection Activity, Request for Comments; Reporting of Information Using Special Airworthiness Information Bulletins

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a new information collection. The FAA issues Special Airworthiness Information Bulletins (SAIBs) to alert, educate, and make recommendations to the aviation community and individual aircraft owners and operators about ways to improve the safety of a product.

DATES: Please submit comments by September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Reporting of Information Using Special Airworthiness Information Bulletins.

Type of Request: New collection.

OMB Control Number: 2120–XXXX.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 1,120 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 933 hours annually.

Abstract: The FAA issues Special Airworthiness Information Bulletins (SAIBs) to alert, educate, and make recommendations to the aviation community and individual aircraft owners and operators about ways to improve the safety of a product. It contains non-regulatory information and guidance that is advisory; recommended actions or inspections; and may include a request for voluntary reporting of results from those actions/inspections. This reported information is used to help the FAA assess whether a potential unsafe condition warrants issuance of an airworthiness directive (AD).

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 26, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 07–3222 Filed 7–2–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28055]

Demonstration Project on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; extension of public comment period.

SUMMARY: The FMCSA announces an extension of the comment period for its June 8 notice concerning a project to demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the commercial zones. On May 1, 2007, FMCSA published a notice in the **Federal Register** announcing the demonstration project as part of the Agency's implementation of the North American Free Trade Agreement (NAFTA) cross-border trucking provisions. On June 8, 2007, FMCSA published a second notice adding certain details concerning the demonstration project. The FMCSA extends the comment period on the June 8 notice in order to give the public more time to review supplemental information the Agency added to the docket; and because of technical problems associated with the relocation of the computers that host the electronic docket, which interfered with access to the Docket Management System (DMS).

DATES: Comments must be received on or before July 9, 2007.

ADDRESSES: You may submit comments identified by U.S. Department of Transportation (DOT) DMS Docket Number FMCSA–2007–28055 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC, 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Instructions:* All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information, see the Public Participation heading below. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the DMS to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC, 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The DMS is available electronically 24 hours each day, 365 days each year, except as noted above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Public Participation: The DMS is available 24 hours each day, 365 days each year, except during the relocation period noted above. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the DMS Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Milt Schmidt. Telephone (202) 366–4049; e-mail *milt.schmidt@dot.gov.*

Request for Comments

All comments received before the close of business on July 9, 2007, will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: June 28, 2007,

John H. Hill,

Administrator.

[FR Doc. 07–3250 Filed 6–29–07; 9:27 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 16, 2007. No comments were received.

DATES: Comments must be submitted on or before August 2, 2007.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Telephone: 202–366–5737, FAX: 202–366–5123; or E-Mail: *jean.mckeever@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: MARAD Maritime Operator Survey Concerning Mariner Availability.

OMB Control Number: 2133–NEW.

Type of Request: New collection.

Affected Public: Vessel operating companies representing different sectors of the U.S. maritime industry.

Form(s): MA–1048.

Abstract: Part of the stated statutory policy of the Merchant Marine Act, 1936, is to foster the development and maintenance of an adequate U.S.-flag merchant marine manned with trained and efficient citizen personnel. In order to successfully meet this mandate, MARAD must determine whether a current or projected shortage of mariners exists and if there is an operational or business impact on the merchant marine. MARAD believes that a brief preliminary survey is necessary at this time because it has received an abundance of anecdotal information indicating that there is a serious existing and projected mariner shortage in different market sectors. If the preliminary survey indicates that there is a projected shortage that appears to be more than short-term, MARAD will follow-up with a more detailed survey to analyze the shortage and ascertain the best means to address it.

Annual Estimated Burden Hours: 33.34 hours (20 minutes per respondent).

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: (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 the agency's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

(Authority: 49 CFR 1.66.)

Issued in Washington, DC on June 25, 2007.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–12791 Filed 7–2–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–297 (Sub-No. 103X)]

Columbus and Greenville Railway Company—Discontinuance of Service Exemption—in Greenwood, MS

Columbus and Greenville Railway Company (CAGY) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an out-of-service line of railroad between milepost 21.2 in West Point, MS, and milepost 110.7 in Greenwood, MS, a distance of approximately 89.5 miles in Clay, Oktibbeha, Webster, Montgomery, Carroll, and Leflore Counties, MS. The line traverses United States Postal Service Zip Codes 39773, 39741, 39755, 39750, 39752, 39744, 39767, 39747, 38967, 38943, 38947, and 38930.

CAGY has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 3, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[1] must be filed by July 13, 2007.[2] Petitions to reopen must

[1] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise,

be filed by July 23, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CAGY's representative: John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Dated: June 26, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–12678 Filed 7–2–07; 8:45 am]

BILLING CODE 4915–01–P

no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On April 6, 2007, the agencies published a notice requesting public comment for sixty days on the extension, with revision, of the Transfer Agent Registration and Amendment Form (TA–1). In addition, OTS seeks to implement an amendment to section 3(a)(34) of the Securities Exchange Act of 1934 (the Act), pursuant to a provision of the Financial Services Regulatory Relief Act of 2006 (FSRRA), enacted on October 13, 2006. This implementation would institute the use of the TA–1 for savings associations intending to engage in transfer agent activities. Currently, the OCC, FDIC, and OTS are soliciting comment concerning the extension, with revision, of the Transfer Agent Registration and Amendment Form. The Board has approved this information collection under its delegated authority from OMB.

DATES: Comments must be submitted on or before August 2, 2007.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0124, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect comments by calling (202) 874–5043.

Board: You may submit comments, which should refer to FR TA–1, 7100–0099, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the OMB control number for this information collection in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Transfer Agent Registration and Amendment Form, 3064–0026'' by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@FDIC.gov.* Include ''Transfer Agent Registration and Amendment Form, 3064–0026'' in the subject line of the message.
- *Mail:* Steven F. Hanft (202–898–3907), Clearance Officer, Attn: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by ''1550–NEW (Form TA–1),'' by any of the following methods:

- *E-mail address: infocollection.comments@ots.treas.gov.* Please include ''1550–NEW (Form TA–1)'' in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ''1550–NEW (Form TA–1)''
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: ''1550–NEW (Form TA–1)''

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS

Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the Agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed information collection discussed in this notice, please contact any of the agency clearance officers listed below.

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Clearance Officer, at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies, other than the Federal Reserve, are proposing to extend for three years, with revision, the uniform interagency Transfer Agent Registration and Amendment Form. The Securities Exchange Act of 1934 (the Act) requires any person acting as a transfer agent to register as such and to amend registration information when it changes. The Federal Reserve, under its delegated authority from OMB, has approved the extension for three years, with revision, of this information collection.

Report Title: Transfer Agent Registration and Amendment Form.

Form Number: TA–1.

Frequency of Response: On occasion.

Affected Public: Business or other for-profit.

Estimated Time per Response: 1.25 hours: registration, 10 minutes: amendment.

OCC

OMB Number: 1557–0124.

Estimated Number of Respondents: 3 registrations, 10 amendments.

Estimated Total Annual Burden: 5 hours.

Board

OMB Number: 7100–0099.

Estimated Number of Respondents: 5 registrations, 10 amendments.

Estimated Total Annual Burden: 8 hours.

FDIC

OMB Number: 3064–0026.

Estimated Number of Respondents: 2 registrations, 13 amendments.

Estimated Total Annual Burden: 5 hours.

OTS

On October 13, 2006, the President signed the FSRRA into law. One of the provisions of the FSRRA contains an amendment to section 3(a)(34) of the Securities Exchange Act of 1934. Section 3(a)(34) of the Act defines ''appropriate regulatory agency'' and includes OTS as an appropriate regulatory agency for certain activities, thus authorizing OTS to collect certain information. Therefore, OTS is seeking OMB approval for this new collection of information.

OMB Number: 1550–NEW.

Estimated Number of Respondents: 5 registrations, 10 amendments.

Estimated Total Annual Burden: 8 hours.

General Description of Reports

This information collection is mandatory: Sections 17A(c), 17(a)(3), and 23(a) of the Act, as amended (15 U.S.C. 78q–1(c), 78q(a)(3), and 78w(a)) (OCC, Board, FDIC, and OTS). Additionally, the Federal Reserve's Regulation H (section 208.31(a)) and Regulation Y (section 225.4(d)), as well as § 341.3 of the FDIC's Rules and Regulations implement the provisions of the Act. The registrations are public filings and are not considered confidential.

Abstract

Section 17A(c) of the Act requires all transfer agents for securities registered under section 12 of the Act to register ''by filing with the appropriate regulatory agency * * * an application for registration in such form and containing such information and documents * * * as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section.'' In general, an entity performing transfer agent functions for a security is required to register if the security is registered on a national securities exchange and if the issuer has total assets of $10 million or more and a class of equity security held of record by 500 or more persons.

Current Actions

Currently, the TA–1 instructions direct respondents who are submitting amended data to complete the entire reporting form. The agencies propose to revise the instructions to state that respondents who are filing amended data would be required to complete questions 1, 2, and 3 (appropriate regulatory agency, filing status, and full name of registrant organization, respectively) and, additionally, only those data items that are inaccurate, incomplete, or misleading. This would make filing an amended TA–1 easier for respondents and better highlight the data that has been changed.

OTS seeks OMB approval to institute use of the TA–1 for savings associations intending to engage in transfer agent activities.

On April 6, 2007, the agencies published a notice in the **Federal Register** (72 FR 17222) requesting public comment for sixty days; the comment period for this notice expired on June 5, 2007. The agencies received no comments.

Request for Comment

The Agencies invite comment on:

(a) Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the Agencies. Unless otherwise afforded confidential treatment pursuant to Federal law, all comments will become a matter of public record.

Dated: June 20, 2007.

Karen Solomon,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, June 27, 2007.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC., this 25th day of June, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: June 22, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

[FR Doc. 07–3226 Filed 7–2–07; 8:45 am]

BILLING CODE 4810–33–P (¼); 6210–01–P (¼); 6714–01–P (¼); 6720–01–P (1/4)

Federal Register

Tuesday,
July 3, 2007

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 1, 2, et al.
Regulatory Review Amendments; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 16, 19, 21, 22, 23, 24, 26, 27, 28, 31, 32, 34, 37, and 40

[Docket ID OCC–2007–0008]

RIN 1557–AC79

Regulatory Review Amendments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise its rules in order to reduce unnecessary regulatory burden, to update certain rules, and to make certain technical, clarifying, and conforming changes to its regulations. This proposal results from the OCC's most recent review of its regulations to ensure that they effectively advance our mission to promote the safety and soundness of the national banking system, ensure that national banks can compete effectively in the financial services marketplace, and foster fairness and integrity in national banks' dealings with their customers, without imposing regulatory burden unnecessary to the achievement of those objectives. The proposal also furthers the purposes of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which, among other provisions, directs the OCC, to identify and, if appropriate, eliminate regulations that are outdated, unnecessary, or unduly burdensome.

DATES: Comments must be received by September 4, 2007.

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

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov*, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2007–0008'' to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The ''User Tips'' link at the top of the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *E-mail: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2007–0008'' in your comment. In general, OCC will enter all comments received into the docket and publish them on Regulations.gov without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov*, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2007–0008'' to view public comments for this notice of proposed rulemaking.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874–5090 and Heidi Thomas, Special Counsel, Legislative and Regulatory Activities, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219. In addition, you may also contact the following OCC staff for further information regarding specific amendments: licensing/corporate applications-related amendments: Colleen Coughlin, Senior Licensing Analyst, Licensing Activities Division, (202) 874–4465, Jan Kalmus, NBE-Senior Licensing Analyst, 202–874–4608, and Yoo Jin Na, Licensing Analyst, Licensing Activities Division, 202–874–4604; electronic banking-related amendments: Aida Plaza Carter, Director, Bank Information Technology, (202) 874–4593, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Introduction

The OCC seeks to ensure that our regulations effectively advance our mission to promote the safety and soundness of the national banking system, ensure that national banks can compete effectively in the financial services marketplace, and foster fairness and integrity in national banks' dealings with their customers, without imposing regulatory burden unnecessary to the achievement of those objectives. Unnecessary regulatory burden not only imposes costs on banks that may translate into higher prices for consumers, but also can hamper competition and lead to inefficient use of resources.

The OCC regularly reviews its regulations to identify opportunities to streamline regulations or regulatory processes. This proposal results from our most recent review. Moreover, the proposal furthers the purposes of section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[1] which directs the OCC, along with the other agencies that are members of the Federal Financial Institutions Examination Council, to identify regulations that are outdated, unnecessary, or unduly burdensome, and to eliminate them if appropriate.[2] Finally, the proposal revises certain of our regulations to conform with the statutory changes made by the Financial Services Regulatory Relief Act of 2006 (FSRRA), which was enacted on October 13, 2006.[3]

To reduce or eliminate unnecessary regulatory burden, the OCC is proposing amendments to a variety of regulations that would: (1) Provide additional flexibility with respect to certain aspects of national banks' structure and activities; (2) streamline procedures required in connection with particular types of changes in structure and the

[1] *See* EGRPRA, Pub. L. 104–208, § 2222, 110 Stat. 3009–394, 3009–314–315 (Sept. 30, 1996), *codified at* 12 U.S.C. 3311.

[2] Pursuant to EGRPRA's regulatory review requirement, the OCC, together with the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS), has published six notices seeking comment on ways to reduce unnecessary regulatory burden and has conducted outreach meetings with bankers and consumer groups. For additional information about the agencies' EGRPRA review, see *http://www.EGRPRA.gov.*

[3] Pub. L. 109–351, 120 Stat. 1966 (Oct. 13, 2006).

conduct of certain activities; (3) incorporate into our rules interpretive opinions that the OCC has previously published; (4) harmonize the OCC's rules with rules issued by other Federal agencies that apply to national banks; (5) eliminate inconsistencies in certain of our rules; (6) update our rules to reflect recent statutory changes; and (7) make technical and conforming amendments to our rules to improve their clarity and consistency.

The most significant of these amendments include the following:

- Amendments to part 1, which pertain to investment securities, to provide the OCC with additional flexibility in administering part 1 as investment products evolve, codify existing precedent, and clarify applicable standards.
- Amendments to part 5, which governs national banks' corporate activities, to:
  - Codify prior OCC interpretive opinions recognizing that national bank operating subsidiaries may take the form of limited partnerships;
  - Update the standards the OCC uses to determine that a national bank exercises control over its operating subsidiary to address changes in relevant accounting principles;
  - Clarify when a national bank may file an after-the-fact notice to establish or acquire an operating subsidiary and when the bank must file an application; and
  - Expand the list of operating subsidiary activities eligible for after-the-fact notice.
- Amendments to part 5 to eliminate multiple, repetitive applications when a national bank opens an intermittent branch to provide branch banking services for one or more limited periods of time each year at a specified site during a specified recurring event, such as during a college registration period or a State fair.
- Amendments to part 7, which pertains to national banks' activities and operations, to provide national banks greater flexibility to facilitate customers' financial transactions by issuing financial guarantees, provided the guarantees are reasonably ascertainable in amount and comply with applicable law.
- Amendments to part 7, to codify OCC electronic banking precedent and adapt the OCC's rules to certain current developments.
- Amendments to part 16, the OCC's securities offering disclosure rules, to eliminate unnecessary filing requirements and clarify the exemptions to the OCC's registration requirements for certain transactions.
- Amendments to part 34, which pertains to real estate lending and appraisals, to provide national banks with additional flexibility in selecting indices from which adjustments to interest rates in adjustable rate mortgages (ARMs) are derived.

We also propose to make certain technical and conforming amendments to our rules, including:

- Changes to part 4 (the OCC's organizational rules) and part 5 (corporate application requirements for national banks) to reflect the OCC's most current organizational structure.
- Changes to conform the OCC's regulations—at parts 5 (corporate activities), 23 (leasing), 31 (extensions of credit to insiders and transactions with affiliates), and 32 (lending limits)—to Regulation W issued by the Board of Governors of the Federal Reserve System (Federal Reserve Board),[4] which governs transactions between Federal Reserve member banks and their affiliates and implements sections 23A and 23B of the Federal Reserve Act.[5]
- Amendments to part 9 (fiduciary activities of national banks) and part 12 (Securities Exchange Act disclosure rules) to reflect changes in certain regulations adopted by the Securities and Exchange Commission (SEC).
- Amendments to part 31 to remove an obsolete interpretation relating to loans to third parties secured by both affiliate-issued securities and nonaffiliate collateral.
- Amendments to parts 1, 2, 3, 5, 10, 11, 16, 19, 21, 22, 26, 27, 28, and 40 to implement section 8 of the 2004 District of Columbia Omnibus Authorization Act,[6] which removed the OCC as the appropriate Federal banking agency for financial institutions established under the Code of Law for the District of Columbia (DC banks) and substituted the FDIC or the Federal Reserve Board, as appropriate to the bank's charter type.[7]
- Amendments to conform our regulations to the changes made by the FSRRA, including:
  - Amendments to part 5 that simplify a national bank's authority to pay a dividend and that remove the geographic limits with respect to bank service companies;
  - Amendments to the OCC's Change in Bank Control Act (CBCA) regulation, § 5.50, that (1) Provide that a CBCA notice must include information on the future prospects of the national bank to be acquired, (2) permit the OCC to consider the future prospects of the bank as a basis to issue a notice of disapproval, and (3) permit the OCC to impose conditions on its action not to disapprove a CBCA notice;
  - Amendments to part 7 that permit national banks to choose whether to provide for cumulative voting in the election of their directors;
  - Amendments to part 19 that reflect changes to the OCC's enforcement authority with respect to institution-affiliated parties; and
  - Amendments to part 24 (community development investments) that implement section 305 of the FSRRA.

Set forth below is a detailed section-by-section description of the proposed changes. For ease of reference, the changes are presented in the numerical order of the parts of the OCC's rules that we propose to amend.

Section-by-Section Description of Proposed Changes

Part 1—Investment Securities

Part 1 of our regulations (12 CFR part 1) prescribes the standards under which national banks may purchase, sell, deal in, underwrite, and hold securities, consistent with the National Bank Act (12 U.S.C. 24 (Seventh)) and safe and sound banking practices. The proposed amendments to this part clarify the applicable standards by codifying existing precedent and provide the OCC with additional flexibility to administer part 1 as investment products evolve.

Authority, Purpose, and Scope (§ 1.1)

National banking law explicitly authorizes the OCC to determine the types of investment securities a national bank may purchase.[8] Part 1 currently provides a general definition of the term ''investment security,'' describes several categories, or types, of permissible investment securities, and prescribes such limitations as apply to a national bank's investment in each type. The proposal complements these specifics by adding a provision recognizing that the OCC also may determine, on a case-by-case basis, that a national bank may

[4] 12 CFR part 223.

[5] 12 U.S.C. 371c and 371c–1.

[6] Pub. L. 108–386, 118 Stat. 2228 (2004) (the DC Bank Act). The DC Bank Act took effect on October 30, 2004.

[7] Under the DC Bank Act, the FDIC is the appropriate Federal banking agency for an insured bank chartered under District of Columbia law that is not a member of the Federal Reserve System, and the Federal Reserve Board is the appropriate Federal banking agency for a bank chartered under District of Columbia law that is a member of the Federal Reserve System, whether or not insured. Thus, while DC banks are no longer covered by these OCC regulations, they are subject to comparable regulatory regimes administered by the FDIC or the Federal Reserve Board.

[8] 12 U.S.C. 24 (Seventh).

acquire an investment security that is not set out as one of the generic types of securities listed in the regulation, provided the bank's investment is consistent with section 24 (Seventh) and with safe and sound banking practices. In making that determination, the OCC will consider all relevant factors, including an evaluation of the risk characteristics of the particular instrument in comparison with the risk characteristics of investments that the OCC has previously authorized, as well as the bank's ability effectively to manage such risks. In approving such an investment, the OCC may impose limits or conditions as appropriate under the circumstances for safety and soundness considerations.

In addition, this proposal removes the now-obsolete reference to DC banks from the scope of part 1 (§ 1.1(c)), thus eliminating the applicability of part 1 to DC banks.

Pooled Investments (§ 1.3(h))

Current § 1.3(h) allows a national bank to purchase and sell shares in an investment company provided that the portfolio of the investment company is limited to investment securities authorized in part 1. However, markets increasingly are offering securitized, pooled investment vehicles that hold bank-permissible assets not limited to investment securities. For example, a bank may seek to purchase investment grade shares in an investment company where the underlying assets are loans. In that case, the bank's risk exposure is comparable to, or lower than, its exposure when it purchases shares of identically rated and marketable pooled vehicles composed of part 1 investment securities.

Recent OCC precedents permit a national bank to purchase shares in investment vehicles where the underlying assets are not limited to permissible investment securities so long as the underlying assets otherwise are bank permissible.[9] This proposal codifies the precedents by amending § 1.3(h) to clarify that banks have the authority to invest in entities holding pooled assets, provided that the underlying assets are those that a national bank may purchase and sell for its own account. Specifically, this proposal deletes the phrase ''under this part'' both times it appears in § 1.3(h) and revises the heading to read ''Pooled investments.'' Investments made under the proposed § 1.3(h) must meet certain credit quality and marketability standards generally applicable to investment securities.

Securities Held Based on Estimates of Obligor's Performance (§ 1.3(i))

Part 1 defines an investment security in terms of both asset quality and marketability.[10] Section 1.2(f) further defines a ''marketable'' security as one that is: (1) Registered under the Securities Act of 1933 (Securities Act),[11] (2) a municipal revenue bond exempt from registration under the Securities Act, (3) offered or sold pursuant to Securities and Exchange Commission (SEC) Rule 144A [12] and rated investment grade or the credit equivalent, or (4) ''can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.'' [13]

Section 1.3(i), in contrast, articulates different asset quality and marketability standards. That section permits a national bank to treat a debt security as an investment security ''if the bank concludes, on the basis of estimates that the bank reasonably believes are reliable, that the obligor will be able to satisfy its obligations under that security,'' and the bank believes that the security may be sold with reasonable promptness at a price that corresponds reasonably to its fair value.[14] The standard of marketability in the ''reliable estimates'' provision differs from, and is more restrictive than, the marketability definition in § 1.2(f), in that it does not contain all of the elements of the definition in § 1.2(f). This proposal harmonizes these marketability standards by amending § 1.3 to reflect the same standard as in § 1.2.

Part 2—Sales of Credit Life Insurance

Part 2 sets forth the principles and standards that apply to a national bank's provision of credit life insurance and the limitations that apply to the receipt of income from those sales by certain individuals and entities associated with the bank. This proposed rule removes DC banks from the definition of ''bank'' set forth in § 2.2(a).

Part 3—Minimum Capital Ratios; Issuance of Directives

Part 3 establishes the minimum capital ratios that apply to national banks, sets out in appendices the rules governing the computation of those ratios, and provides procedures for the issuance of individual minimum capital requirements and capital directives. The current rule provides that local currency claims on, or unconditionally guaranteed by, non-OECD central governments receive a zero percent risk weight to the extent the bank has local currency liabilities in that country. We propose to remove the current restriction on the location of the offsetting liability. Thus, the proposal would provide a zero percent risk weight to the extent the bank has liabilities in that currency. This would align the rule more closely with foreign exchange risk.

This proposal also removes DC banks from the definition of ''bank'' in § 3.2(b). Pursuant to the DC Bank Act, DC banks will be subject to the regulatory capital requirements prescribed either by the FDIC or the Federal Reserve Board, depending on whether the bank is a member of the Federal Reserve System.

Part 4—Organization and Functions, Availability and Release of Information, Contracting Outreach Program, Post-Employment Restrictions for Senior Examiners

The proposal updates § 4.4 to reflect the fact that, under the OCC's current organizational structure, the Large Bank Supervision Department supervises the largest national banks. It also amends § 4.5 by updating OCC district office addresses and the geographical coverage of those offices resulting from the OCC's district office reorganization.

Part 5—Rules, Policies, and Procedures for Corporate Activities

Part 5 establishes rules, policies, and procedures for national banks' corporate activities and corporate structure. It also contains procedural requirements for the filing of corporate applications, including the circumstances under which applications or notices are required, and the required content of the filing. A description of our amendments to part 5 is set forth below, with substantive amendments presented first, followed by technical or conforming amendments.

Fiduciary Powers (§ 5.26)

The OCC's current rule requires a national bank filing an application for approval to offer fiduciary services to provide an opinion of counsel that the proposed fiduciary activities do not violate applicable Federal or State law. Our experience has been, however, that an opinion of counsel often is not necessary to enable the OCC to conclude that the proposed fiduciary activities are permissible. Moreover, an opinion of counsel currently is not required for

[9] *See, e.g.*, Interpretive Letter No. 911 (June 4, 2001) (national bank may purchase interests in loan fund either pursuant to lending authority or as securities on the basis of reliable estimates of the issuer).

[10] 12 CFR 1.2(e).

[11] 15 U.S.C. 77a, *et seq.*

[12] 17 CFR 230.144A.

[13] 12 CFR 1.2(f).

[14] *See* 12 CFR 1.3(i)(1).

expedited applications filed by ''eligible banks.''[15] Accordingly, the proposal eliminates the requirement for an opinion of counsel with respect to all applications to exercise fiduciary activities, unless the OCC specifically requests an opinion. We note that the removal of the requirement to provide the OCC with an opinion of counsel does not relieve the bank of its responsibility to ensure that its fiduciary activities comport with applicable Federal and State law.

Establishment, Acquisition, and Relocation of a Branch—Intermittent Branches (§ 5.30)

Section 5.30 describes the procedures and standards governing OCC review and approval of a national bank's application to establish a new branch or to relocate a branch. It is unclear under the current regulation whether a bank must refile an application under § 5.30 each year to operate branches on a recurring basis at the same location or event (such as an annual State fair or at a specific college campus during registration periods) even where all of the facts relevant to the branch application remain the same as those previously approved. As a result, some banks have filed for approval of such branches each time the bank seeks to operate the branch.

We therefore propose to eliminate these subsequent applications for recurring, temporary branches that serve the same site at regular intervals.[16] Accordingly, the proposal adds to § 5.30 the new term, ''intermittent branch,'' which is defined to mean a branch that provides branch banking services, where legally permissible under the national bank branching statute,[17] for one or more limited periods of time each year at a specified site during a specified recurring event. Under the proposal, if the OCC grants a national bank approval to operate an intermittent branch, no further application or notice to the OCC is required. This proposal does not affect the legal requirements prescribing the conditions under which a national bank may establish or retain branches pursuant to the national bank branching statute at 12 U.S.C. 36.

Operating Subsidiaries (§ 5.34)

Section 5.34 of the OCC's rules authorizes national banks to establish or acquire operating subsidiaries as a vehicle to exercise their powers to conduct the business of banking.[18]

We propose to make several changes to § 5.34 to update the standards for determining whether a subsidiary is controlled by the parent bank in light of changes in accounting standards, to clarify the type of entity that may qualify as an operating subsidiary, and to modify the standards under which transactions to establish or acquire operating subsidiaries qualify for after-the-fact notice procedures rather than the filing of an application. None of the proposed revisions alters the fundamental characteristics of an operating subsidiary, that is, that an operating subsidiary may conduct only bank-permissible activities and conducts those activities pursuant to the same ''authorization, terms and conditions'' as apply to the parent bank. Moreover, while the proposal revises the standards applicable to the use of after-the-fact notice procedures, it does not materially alter the licensing framework currently in place for operating subsidiaries. These changes will enhance OCC's ability to conduct appropriate review of proposed operating subsidiaries.

Qualifying standards. Under current § 5.34(e)(2), an entity qualifies as an operating subsidiary only if the parent bank ''controls'' the subsidiary. The rule provides for two alternative means of establishing control. First, a national bank controls an operating subsidiary if the bank owns more than 50 percent of the voting interest (or similar type of controlling interest) in the subsidiary. Second, control may be established if the parent bank ''otherwise controls'' the operating subsidiary and no other party controls more than 50 percent of the voting interest (or similar type of controlling interest) in the subsidiary.

The proposal revises the current standard to provide that a national bank may invest in an operating subsidiary if it satisfies the following two requirements: (1) The bank has the ability to *control* the management and operations of the subsidiary by owning more than 50 percent of the voting interest in the subsidiary, or otherwise; *and* (2) the operating subsidiary is consolidated with the bank under Generally Accepted Accounting Principles (GAAP).

The first requirement relating to the ability to *control* the subsidiary refines the current standard by tying qualification as an operating subsidiary more closely to the bank's control of the business activities of the subsidiary, a factor that better reflects the status of the operating subsidiary as a vehicle used by the bank to exercise its powers to engage in the business of banking. The proposed revision would not affect a national bank's ability to control a subsidiary by holding a majority of voting interests in the subsidiary.

The second element of the proposed qualification standard would reflect recent changes to GAAP that change the test for determining whether consolidation is appropriate as an accounting matter. The OCC historically has considered whether an entity is consolidated with the parent bank for accounting and other purposes as an element in determining whether that entity is an operating subsidiary under OCC regulations and has long provided for that result in the application of regulatory standards. Since as early as 1971, the OCC has directed national banks to consolidate their book figures with those of the operating subsidiary for the ''purpose of applying applicable statutory or regulatory limitations * * *''[19] In addition, at the time we adopted current § 5.34(e)(2), GAAP generally required a parent company to consolidate the financial statements of a subsidiary entity (that is, the parent company was deemed under GAAP to have a ''controlling financial interest'' in the subsidiary) if the parent held a majority of the voting interests in the subsidiary entity. This GAAP standard for consolidation influenced the OCC's adoption of the majority of voting (or similar controlling) interests standard as one of the measures of control in the current rule. The control standard

[15] An ''eligible bank'' is a national bank that is well capitalized, has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System, has a CRA rating of ''Outstanding'' or ''Satisfactory,'' and is not subject to a cease and desist order, consent order, formal written agreement, or prompt corrective action directive. 12 CFR 5.3(g).

[16] The definition of ''mobile branch'' in current § 5.30 specifies that such a branch may provide services at irregular times and locations, such as at county fairs, sporting events or during school registration periods. However, a mobile branch may not have a single permanent site and travels to various public locations. Therefore, this type of branch differs from the intermittent branch recognized in this proposal, which would have only one recurring temporary location.

[17] 12 U.S.C. 36.

[18] The statutory authority underlying § 5.34 is 12 U.S.C. 24(Seventh), which authorizes national banks to exercise ''all such incidental powers as shall be necessary to carry on the business of banking.'' *See NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Insurance Co.*, 513 U.S. 251, 258 n.2 (1995) (*VALIC*) (the Comptroller may exercise reasonable discretion to determine what activities are part of the ''business of banking'' authorized pursuant to 12 U.S.C. 24 (Seventh)). Congress has recognized the operating subsidiary as a means through which national banks conduct the business of banking. *See* 12 U.S.C. 24a(g); *see also Watters* v. *Wachovia Bank, N.A.*, No. 05–13542 at 11–13, 15n.12, 2007 WL 1119539 at *11 and 12, 13n.12 (U.S. Apr. 17, 2007) (discussing national banks' authority to conduct their banking business through operating subsidiaries and noting ''Congress' formal recognition that national banks have the incidental power to do business through operating subsidiaries.'').

[19] 36 FR 17015 (August 26, 1971).

assured consolidation under the prior GAAP standard.

Since our adoption of the regulatory control standards in § 5.34(e)(2), the GAAP standard for consolidation has changed. In December 2003, the Financial Accounting Standards Board (FASB) issued an accounting interpretation that revised the criteria for determining when an entity must consolidate another entity for financial reporting purposes.[20] In issuing FIN 46R, FASB recognized that the application of the voting interest requirement to certain types of entities may not identify the party with a controlling financial interest because the controlling financial interest may be achieved through arrangements that do not involve voting interests. FIN 46R addresses this issue by providing, generally, that the party that holds the majority of the entity's risks or rewards, rather than voting interests, is the primary beneficiary and must consolidate the entity. FIN 46R became effective at different times, ranging from December, 2003 to January 1, 2005, depending on the type of entity and the date it was created. To assure conformance with these new GAAP standards, the OCC proposes to preclude a national bank from treating as an operating subsidiary an entity that it controls through majority ownership, but which is held under an arrangement where another party reaps most of the financial rewards from the subsidiary's operations.

Form of operating subsidiary. Current § 5.34(e)(2) permits national banks to conduct activities through operating subsidiaries organized in a variety of forms, including as a corporation or limited liability company. In recent years, national banks have sought to hold limited partnerships as operating subsidiaries as states have amended their limited liability company and limited partnership laws to provide more structural flexibility. The OCC has recognized this and previously permitted a limited partnership to qualify as an operating subsidiary where the parent bank exercised ''all economic and management control over the activities'' of the partnership.[21]

Nothing about the limited partnership structure should necessarily disqualify such an entity as an operating subsidiary, provided the other requirements of the rule are satisfied. These requirements include the limitation of the subsidiary's activities to those that are bank-permissible, the application to the subsidiary of the same substantive standards and requirements as apply to the parent bank, and the requirement that the bank ''control'' the subsidiary.

In order to clarify that a limited partnership is a permissible form of operating subsidiary, the proposal expressly recognizes that a bank may invest in an operating subsidiary organized as a limited partnership, provided it satisfies the other requirements of § 5.34.

After-the-fact notice procedures. Current § 5.34(e)(5) provides that a well capitalized and well managed national bank may establish or acquire an operating subsidiary, or conduct a new activity in an existing operating subsidiary, by providing the OCC written notice within 10 days after doing so if the activity to be conducted in the subsidiary is specified in the rule as eligible for notice processing. The proposal revises this after-the-fact notice procedure to take account of the proposed changes to § 5.34(e)(2) discussed above. Thus, a national bank seeking to hold a limited partnership as an operating subsidiary would qualify for the after-the-fact notice procedure only in the limited circumstance where the bank controls, directly or indirectly, all of the ownership interests in the limited partnership (and the other requirements of § 5.34 are satisfied). This change would allow the OCC to review through the full application process more complex arrangements involving limited partnerships.

The proposal also would revise the notice procedure criteria for control when the subsidiary is a corporation or a limited liability company. In those cases, the proposal would permit the bank to use the after-the-fact notice procedure when it meets all the requirements for a notice not relevant to control, the financial statements of the bank and subsidiary are consolidated under GAAP, and the bank has the ability to control the management and operations of the subsidiary by holding: (i) More than 50% of the voting interests in the subsidiary; or (ii) voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management. These control arrangements are the most suitable for the after-the-fact notice procedures because the OCC generally is familiar with these structural arrangements and they do not ordinarily present unusual safety and soundness concerns. Other arrangements will be reviewed under the full application process.

The proposal also adds to the list of activities eligible for after-the-fact notice activities that the OCC has approved since part 5 was comprehensively revised in 1996. These activities are:

- Providing data processing, and data transmission services, facilities (including equipment, technology, and personnel), data bases, advice and access to such services, facilities, data bases and advice, for the parent bank and for others, pursuant to 12 CFR 7.5006, to the extent permitted by published OCC precedent. Currently, only data processing activity provided to the bank itself or its affiliates qualifies for after-the-fact notice treatment under § 5.34(e)(5)(v)(H).
- Providing bill presentment, billing, collection, and claims-processing services.[22]
- Providing safekeeping for personal information or valuable confidential trade or business information, such as encryption keys, to the extent permitted by published OCC precedent.[23]
- Payroll processing.[24]
- Branch management services.[25]
- Merchant processing except when the activity involves the use of third parties to solicit or underwrite merchants.[26]
- Administrative tasks involved in benefits administration.[27]

Because the OCC has previously found these activities to be permissible for a national bank and its subsidiaries, and that they generally pose low safety and soundness risks, we are proposing that after-the-fact notices be permissible when operating subsidiaries undertake to engage in these activities.

In addition to these activities, the proposal provides that an activity is eligible for the after-the-fact notice if it has been approved for a non-controlling investment by a national bank or its operating subsidiary pursuant to 12 CFR 5.36(e)(2). The after-the-fact procedure is only available if the activity will be conducted in accordance with the same terms and conditions applicable to the activity covered by the precedent as well as with any other restrictions that would be imposed due to its status as an operating subsidiary.

[20] FASB Interpretation No. 46 (revised), *Consolidation of Variable Interest Entities* (December 2003) (FIN 46R).

[21] *See* Corporate Decision No. 2004–16 (Sept. 10, 2004).

[22] *See* OCC Interpretive Letter No. 712 (Feb. 29, 1996).

[23] *See* 12 CFR 7.5002(a)(4).

[24] *See* Conditional Approval No. 384 (April 25, 2000) and Corporate Decision No. 2002–2 (Jan. 9, 2002).

[25] *See* Conditional Approval No. 612 (Dec. 21, 2003).

[26] *See* Conditional Approvals Nos. 582 (March 12, 2003) and 583 (March 12, 2003).

[27] *See* Corporate Decision No. 98–13 (Feb. 9, 1998).

Application procedures. Current § 5.34(e)(5)(i) sets forth the rules for when a national bank must file an operating subsidiary application. The OCC is proposing to modify these rules to make them consistent with the proposed changes to the qualifying subsidiary and after-the-fact notice provisions of § 5.34 discussed previously. In particular, the proposal would require the bank to describe in full detail structural arrangements where control is based on a factor other than bank ownership of more than 50 percent of the voting interest of the subsidiary. Finally, the proposal makes conforming changes to § 5.34(e)(5)(vi), which sets forth the circumstances under which an application or notice is waived, to reflect the changes discussed above. The OCC specifically requests comment on how it should treat operating subsidiaries that were lawfully established prior to the date of the proposal.

Bank Service Companies (§ 5.35)

Section 602 of the FSRRA amends the Bank Service Company Act [28] to repeal the geographic limits that prohibited a bank service company from performing services for persons other than depository institutions in any State except the State where its shareholders and members are located. Section 602 retains the requirements that the services and the location at which these services are provided must be otherwise permissible for all depository institution shareholders or members and that Federal Reserve Board approval be obtained before a bank service company engages in activities that are only authorized under the Bank Holding Company Act. Section 602 also permits savings associations to invest in bank service companies under the same rules that apply to banks.

The proposal amends 12 CFR 5.35 to reflect this change in the statutory geographic restrictions on the operations of bank service companies. It also changes ''insured bank'' to ''insured institution'' throughout the section, where relevant, to reflect the fact that savings associations now may invest in bank service companies.

Other Equity Investments (§ 5.36)

Section 5.36(e) provides an expedited process for OCC review of a non-controlling investment by a national bank. Under this section, a national bank may make, directly or through an operating subsidiary, certain non-controlling investments in entities by filing an after-the-fact written notice in which the bank certifies, among other things, that it is well capitalized and well managed and will account for its investment under the equity or cost method of accounting.[29] This section currently does not, however, provide a procedure for a national bank to follow when it cannot provide the certifications needed for after-the-fact notice.

Representations concerning accounting treatment. Current § 5.36(e)(5) requires a national bank to certify in its notice that it will account for its non-controlling investment under the equity or cost method of accounting. The OCC had adopted this requirement because an investment accounted for in this manner was not previously considered under then current GAAP standards to be controlled by the parent bank and, accordingly, the parent bank did not consolidate the investment on its books. Thus, the unconsolidated entity could be considered a non-controlling investment and not an operating subsidiary. However, as we have noted, under FIN 46R this assumption is no longer valid in all cases, and an investment previously accounted for using the equity or cost method today may in some instances result in consolidation of the investment with the bank, depending on which party holds the majority of risks or rewards.

To address this issue, the proposal removes the requirement that a bank certify in its notice that it will account for its non-controlling investment under the equity or cost method of accounting. The proposal also removes as unnecessary the requirement in current § 5.36(e)(7) that a bank certify that its loss exposure related to the non-controlling investment is limited as an accounting matter. The proposal retains the requirement in paragraph (e)(7) that the bank certify that as a legal matter its loss exposure is limited and that it does not have open-ended liability for the obligations of the enterprise.

Application procedure. Current § 5.36 permits use of the after-the-fact notice procedure only when the bank can make the representations and certifications required by that section.[30] The rule provides no procedure for a national bank to follow when it cannot provide all of the required representations and certifications. We propose to revise § 5.36(f) to establish an application procedure that a national bank may use to seek approval for non-controlling investments that do not qualify for after-the-fact notice either because the bank is not well capitalized or well managed or because the proposed activity does not qualify for after-the-fact notice under the standards set forth in the rule. However, a national bank would not be required to file either an application or notice under this section if the investment is authorized by a separate provision of the OCC regulations, such as 12 CFR part 1 (investment securities) or part 24 (public welfare investments). In these cases, a national bank would follow the procedures required by these provisions.

If the bank is unable to make the representation in paragraph (e)(2), the bank's application must explain why the activity is a permissible activity for a national bank and why the bank should be permitted to hold a non-controlling investment in an enterprise engaged in that activity. In addition, the application must provide the representations and certifications required pursuant to the after-the-fact notice procedure, to the extent possible. A bank may not make a non-controlling investment in an entity if the bank cannot provide the representations or information that the rule requires (other than those in paragraphs (e)(2) or (e)(3) pertaining to the bank's level of capital, its rating for management, or to the OCC's prior determination that the investment is permissible).

This application requirement would fill the gap in the current rule for investments where a national bank cannot meet all of the after-the-fact notice requirements. The use of an application procedure provides certainty to the applicant and also permits the OCC to ensure that all non-controlling investments comport with appropriate supervisory requirements.

[28] 12 U.S.C. 1861 *et seq.*

[29] Under the equity method, the carrying value of the bank's investment is originally recorded at cost but subsequently adjusted periodically to reflect the bank's proportionate share of the entity's earnings and losses and decreased by the amount of any cash dividends or similar distributions received from the entity.

[30] Section 5.36(e) currently requires that a written after-the-fact notice contain the following 8 elements, set out in numbered paragraphs, as follows: (1) A description of the proposed investment; (2) identification of the regulatory provision or prior precedent that has authorized an activity that is substantively the same as the proposed activity; (3) certification that the bank is well capitalized and well managed; (4) a statement of how the bank can control the activities of the enterprise in which it is investing or ensure its ability to withdraw its investment; (5) the accounting certification, described in text, that this rule proposes to remove; (6) a description of how the investment relates to the bank's business; (7) certification that the bank's loss exposure is limited as a legal and accounting matter (the certification pertaining to accounting is proposed to be removed); and (8) certification that the enterprise in which the bank is investing agrees to be subject to OCC examination and supervision, subject to limits provided elsewhere in Federal law.

This proposal also makes two conforming changes to § 5.36(b), scope. First, it amends the scope section to provide that § 5.36 governs the procedures for applications in addition to notices. Currently, the scope section only applies to notices. Second, it removes the last sentence of § 5.36(b), which currently states that other investments authorized under § 5.36 may be reviewed on a case-by-case basis. Because the proposal amends § 5.36 to include an application process, this sentence is unnecessary and could create confusion once the proposal is finalized.

DPC assets. The proposal also makes two changes to expedite non-controlling investments involving assets acquired through foreclosure or otherwise in good faith to compromise a doubtful claim or in the ordinary course of collecting a debt previously contracted (DPC assets). Under the current rule, a national bank making a non-controlling investment in an entity that holds or manages DPC assets for the bank must meet all of the requirements in § 5.36, including the required certifications. However, under the current operating subsidiary rules, a national bank investing in an operating subsidiary engaged in the same activity need only file a written notice within 10 days after acquiring or establishing the subsidiary or commencing the activity. These procedural differences can be disruptive in workouts involving a jointly-held entity to resolve loans with multiple lenders where each lender will hold minority interests in the joint venture. The proposal harmonizes these provisions by providing that a national bank making a non-controlling investment in an entity that holds or manages DPC assets for the bank need only file a simplified written notice with the appropriate district office [31] no later than 10 days after making the non-controlling investment. The notice must contain a complete description of the bank's investment in the enterprise and the activities conducted, a description of how the bank plans to divest the non-controlling investment or the DPC assets within the statutory time frames, and a representation and undertaking that the bank will conduct the activities in accordance with OCC policies contained in guidance issued by the OCC regarding the activities.

The proposal also would amend § 5.36 to clarify that an application or notice is not required when a national bank acquires a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted. This change would conform this section with § 5.34, which provides that a subsidiary in which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted is not an operating subsidiary for purposes of § 5.34 and, therefore, no application or notice is required.

Changes in Permanent Capital (§ 5.46)

The proposal streamlines the application process for a national bank seeking OCC approval of a change in its permanent capital. The OCC's rules at § 5.46(i)(1) and (2) currently require a national bank to submit an application and obtain prior approval for a change in permanent capital. Under the expedited review procedures in § 5.46(i)(2), the application of an eligible bank is deemed approved within 30 days of receipt, unless the OCC notifies the applicant otherwise. The proposal amends § 5.46(i)(2) to change the expedited review period from 30 days to 15 days.

The proposal also simplifies the certification process for a national bank that increases its permanent capital. Section 5.46 currently requires a national bank that increases permanent capital to submit a letter of notification to the OCC in order to receive a certification of the increase as required by 12 U.S.C. 57.[32] Under the proposal, a national bank seeking to increase permanent capital continues to be required to send a notice to the OCC, but the bank would no longer receive a paper certification from the OCC. The OCC would deem the transaction approved and certified by operation of law seven days after our receipt of the bank's notice. If this proposal is adopted in final form, the OCC will provide updated notification and certification procedures for increases in permanent capital in the Capital and Dividends Booklet of the *Comptroller's Licensing Manual* and on E-Corp (the OCC's electronic filing system).

Change in Bank Control (§ 5.50)

Section 5.50 sets forth the OCC's procedures for change in bank control transactions. Under this rule, any person seeking to acquire control of a national bank, *i.e.*, acquire the power, directly or indirectly, to direct the management or policies, or to vote 25 percent or more of a class of voting securities of a national bank, must provide 60 days prior written notice of the proposed acquisition to the OCC, with certain exceptions. Currently, the OCC has the burden of proof in establishing that a group of persons are acting in concert and will control, as a group, the bank after the acquisition of shares. When a member of a family acquires stock in a national bank in which other family members own or control substantial interests, the OCC frequently will review potential control issues by requesting additional documentation from, and making additional inquiries of, the family members. These additional steps can delay the notice process and increase the burden associated with the transaction for these individuals.

The proposal amends § 5.50(f)(2) to establish a rebuttable presumption that immediate family members are acting in concert when acquiring shares of a bank. The proposal also amends § 5.50(d) to define immediate family as a person's spouse, father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, children, stepchildren, grandparent, grandchildren, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and the spouse of any of the foregoing. Establishing a clear, but rebuttable, presumption provides notice to prospective investors of their filing obligations and reduces delays in processing the notice associated with repeat requests for information. In addition, this amendment would conform our regulations to the procedures regarding control by family members in these transactions set forth in OTS and Federal Reserve Board regulations. If the proposal is adopted in final form, we would amend the *Comptroller's Licensing Manual* to address the process by which an applicant can rebut this presumption.[33]

[31] Part 5 defines ''appropriate district office'' as the Licensing Department for all national bank subsidiaries of those holding companies assigned to the Washington, DC, licensing unit; the appropriate OCC district office for all national bank subsidiaries of certain holding companies assigned to a district office licensing unit; the OCC's district office where the national bank's supervisory office is located for all other banks; or the licensing unit in the Northeastern District Office for Federal branches and agencies of foreign banks. 12 CFR 5.3.

[32] Section 57 provides that increases to permanent capital are not effective until the bank provides notice to the OCC and the OCC certifies the amount of the increase and approves it. The precise terms of the bank's notification and the OCC's approval vary slightly depending on whether the increase to permanent capital occurs through the declaration of a stock dividend or otherwise. *See* 12 U.S.C. 57.

[33] *See* 12 CFR 574.4 (OTS) and 12 CFR 225.41(b)(3) and 225.41(d) (Federal Reserve Board).

Section 705 of the FSRRA amends the CBCA to allow the OCC, and the other Federal banking agencies, to extend the time period for considering a CBCA notice so that the agency may consider the acquiring party's business plans and the future prospects of the institution and use that information in determining whether to disapprove the notice. The proposal amends § 5.50(f) of our regulations to implement this amendment by providing that the CBCA notice must include information on the future prospects of the institution and that the OCC may consider the future prospects of the institution as a basis to issue a notice of disapproval.

Sections 702 and 716 of the FSRRA amend the Federal Deposit Insurance Act (FDI Act) to provide that the OCC, and the other Federal banking agencies, may enforce under 12 U.S.C. 1818 the terms of: (1) Conditions imposed in writing by the agency on a depository institution, including a national bank, or an institution-affiliated party in connection with an application, notice, or other request, and (2) written agreements between the agency and the institution or the institution-affiliated party. The amendment also clarifies that a condition imposed by a banking agency in connection with the nondisapproval of a notice, *e.g.*, a notice under the CBCA, can be enforced under the FDI Act. Accordingly, the proposal amends § 5.50(f) to provide that the OCC may impose conditions on its nondisapproval of a CBCA notice to assure satisfaction of the relevant statutory criteria for nondisapproval of the notice.

Technical and Conforming Amendments to Part 5

The proposal makes the following conforming and technical changes to part 5.

Definition of national bank (§ 5.3(j)). This proposed change removes the reference to DC banks from the definition of ''national bank'' found in § 5.3(j). DC banks are no longer subject to the OCC's rules, policies, and procedures for corporate activities and transactions, including the OCC's filing requirements.

Filing required (§ 5.4). The proposal replaces the terms ''Licensing Manager'' with ''Director for District Licensing'' and replaces ''Bank Organization and Structure'' with the term ''Licensing Department.'' This reflects the OCC's current organizational structure.

Decisions (§ 5.13). Section 5.13 sets forth the procedures for OCC decisions on corporate filings. Paragraph (c) of § 5.13 requires a filing with the OCC to contain all required information. The OCC may require additional information if necessary to evaluate the application, and may deem a filing abandoned if the information required or requested is not furnished within the time period specified by the OCC. The OCC also may return an application that it deems materially deficient when filed, and the proposal amends § 5.13(c) to specifically define ''materially deficient'' to mean filings that lack sufficient information for the OCC to make a determination under the applicable statutory or regulatory criteria. Examples of material deficiencies that could cause the OCC to return a filing include failure to provide answers to all questions or failure to provide required financial information.

Paragraph (f) of this section provides that an applicant may appeal an OCC decision to the Deputy Comptroller for Licensing or to the OCC Ombudsman. In some cases, however, the Deputy Comptroller for Licensing is the deciding official for OCC licensing decisions or has personal and substantial involvement in the decision-making process. Accordingly, we are amending this paragraph to provide that an appeal may be referred instead to the Chief Counsel when the Deputy Comptroller for Licensing was the deciding official of the matter appealed, or was involved personally and substantially in the matter.

In addition, the proposal replaces the title ''Deputy Comptroller for Bank Organization and Structure'' with the title ''Deputy Comptroller for Licensing.'' This reflects the OCC's current organizational structure.

Organizing a bank (§ 5.20). Section 5.20 sets forth the procedures and requirements governing OCC review and approval of an application to establish a national bank. Paragraph (i)(5) of this section requires a proposed national bank to be established as a legal entity before the OCC grants final approval. As currently drafted, our regulations may be read to imply that organizers must receive OCC preliminary approval before they may raise capital, which is not OCC policy.[34]

Therefore, this proposal amends § 5.20(i)(5) to make clear that OCC preliminary approval is not required prior to a securities offering by a proposed national bank, provided that the proposed national bank has filed articles of association, an organization certificate and a charter application that is completed and the bank complies with the OCC's securities offering regulations set forth in Part 16. These requirements are explained in greater detail in the *Comptroller's Licensing Manual.*

This proposal also makes a change to paragraph (i)(3) of section 5.20, which requires the organizing group to designate a spokesperson to represent the group in its contacts with the OCC. The proposal would amend this section by replacing the term ''spokesperson'' with the term ''contact person'' each time that term appears in order to align the wording of this section with the terminology used on the Interagency Charter and Deposit Application and in the ''Charters'' booklet of the *Comptroller's Licensing Manual.*

Business combinations (§ 5.33). Section 5.33 contains the provisions governing business combinations involving national banks. Section 5.33(e)(1) sets forth factors used by the OCC in evaluating applications for ''business combinations,'' including factors required pursuant to the Bank Merger Act (BMA)[35] and the Community Reinvestment Act of 1977 (CRA).[36] As currently worded, this section could be read incorrectly to imply that the BMA and CRA apply to all business combinations even though these laws do not apply to certain business combinations, such as the merger of two uninsured national banks. The proposal revises the wording of § 5.33(e)(1) to make it clear that the OCC considers the factors under the BMA and the CRA for transactions that are subject to those laws. The factors as set out in the current rule are substantively unchanged.

Section 5.33 also requires a national bank with one or more classes of securities subject to the registration provisions of sections 12(b) or 12(g) of the Securities Exchange Act of 1934 (the Exchange Act)[37] to file preliminary proxy materials or information statements with both the OCC's Director of Securities and Corporate Practices Division in Washington, DC and the appropriate district office. The proposal streamlines the OCC's filing process by eliminating the requirement in § 5.33(e)(8)(ii) that a registered national bank also file proxy materials with the district office. This change is consistent with the instructions in the OCC's Business Combinations Booklet of the *Comptroller's Licensing Manual.*

Section 5.33(g)(2)(ii) provides the rules for a national bank consolidation and merger with a Federal savings association when the resulting

[34] The Comptroller's Licensing Manual permits organizers of a national bank to raise capital prior to preliminary OCC approval. *See Comptroller's Licensing Manual,* Charters, pgs. 20–21, March 2007.

[35] 12 U.S.C. 1828(c).

[36] 12 U.S.C. 2901 *et seq.*

[37] 15 U.S.C. 78l(b) or 78l(g).

institution is a national bank. This proposal removes the reference to merger transactions in paragraph (g)(2)(ii), which provides for appraisal or reappraisal of dissenters' shares, because there are no dissenters' rights for national bank shareholders in a merger between a national bank and a Federal savings association when the resulting institution is a national bank. In addition, the proposal corrects a statutory citation in paragraph (g)(3)(i).

The proposal also makes clarifying changes to § 5.33(h), which sets forth the standards, requirements, and procedures that apply to mergers between insured banks with different home States pursuant to 12 U.S.C. 1831u. Although this paragraph references the standards, requirements, and procedures applicable to transactions that result in a national bank, it currently does not do so for transactions that result in a State bank. The proposal adds a reference in this paragraph to 12 U.S.C. 214a, 214b, and 214c to cover these transactions. The proposal also amends § 5.33(h) to include a reference to 12 U.S.C. 1831u to clarify that an interstate, single-branch acquisition is treated as the acquisition of a bank only for purposes of determining compliance with the Riegle-Neal Act.[38] This change would eliminate any implication in this paragraph that the procedures of 12 U.S.C. 215 or 215a were intended to apply to branch acquisitions.

Finally the proposal specifies that the definitions set forth in § 5.33(d) are only applicable to § 5.33, and revises the headings of paragraphs (g), (g)(1) and (g)(3) to conform to the heading format used in other paragraphs in the regulation.

Financial subsidiaries (§ 5.39). Section 5.39 sets forth authorized activities, approval procedures, and conditions for a national bank engaging in activities through a financial subsidiary. The proposal would make a number of technical changes to § 5.39 to conform this section to the Federal Reserve Board's Regulation W, which governs transactions between Federal Reserve member banks and their affiliates and implements sections 23A and 23B of the Federal Reserve Act.[39]

In general, under sections 23A and 23B and Regulation W, a financial subsidiary of a national bank is treated as an affiliate of the bank. Regulation W, however, excepts from its definition of a financial subsidiary a subsidiary that would be a financial subsidiary only because it is engaged in insurance sales as agent or broker in a manner not permitted to a national bank. Such a financial subsidiary is not an affiliate for Regulation W purposes (unless it falls into another category of affiliate). This proposal would add a cross-reference to Regulation W in the definition of ''affiliate'' at § 5.39(d)(1) and amend § 5.39(h)(5) to reflect this exception in Regulation W's definition of financial subsidiary.

In addition, this proposal updates § 5.39(h)(5), which describes how sections 23A and 23B apply to financial subsidiaries, by conforming these provisions to Regulation W. Specifically, in addition to adding a cross-reference to Regulation W in § 5.39(h)(5), the proposal amends § 5.39(h)(5)(iii) to state that a bank's purchase of, or investment in, a security issued by a financial subsidiary of the bank must be valued at the greater of: (a) The total amount of consideration given (including liabilities assumed) by the bank, reduced to reflect amortization of the security to the extent consistent with GAAP, or (b) the carrying value of the security (adjusted so as not to reflect the bank's *pro rata* portion of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the security). This proposal also adds a new reference to the requirement in Regulation W that any extension of credit to a financial subsidiary of a bank by an affiliate of the bank is treated as an extension of credit by the bank to the financial subsidiary if the extension of credit is treated as capital of the financial subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

Change in bank control (§ 5.50). Twelve U.S.C. 1817(j) provides the standards and procedures for a change in control of insured depository institutions. As we have discussed, § 5.50 of our rules implements section 1817(j) in the case of a change in control of a national bank.[40] Section 5.50, however, does not include one of the procedures required by section 1817(j) relating to changes in management officials following a change in control. This omission may be misleading to banks that consult our rule to ascertain what change in control procedures apply. Specifically, section 1817(j)(12) provides that whenever a change in control occurs, the bank will promptly report to the appropriate Federal banking agency any changes or replacements of its chief executive officer or of any director occurring in the next 12-month period, including in this report a statement of the past and current business and professional affiliations of the new chief executive officer or director. This proposal would add a new paragraph to § 5.50(h) to codify this statutory requirement in order to provide clearer notice for national banks of their reporting obligation under section 1817(j)(12).

Earnings limitations under 12 U.S.C. 60 (§ 5.64). Section 302 of the FSRRA amends 12 U.S.C. 60 to simplify dividend calculations and provide a national bank more flexibility to pay dividends as deemed appropriate by its board of directors. The proposal amends § 5.46 (governing changes in permanent capital) and § 5.64 (governing dividend earnings limitations) to conform to the new language of section 60. In addition, the OCC is codifying and clarifying the interpretation of 12 U.S.C. 60 contained in Interpretive Letter No. 816, issued December 22, 1997.

Prior to its amendment by FSRRA, section 60 provided that a national bank could only declare a dividend if its surplus fund was at least equal to its common capital or, in accordance with a computation prescribed by the statute, it transferred 10 percent of its net income to surplus. Historically, stock was assigned a par value equivalent to its estimated market value and the purpose of the transfer requirement was to provide an additional cushion. This requirement is obsolete under modern securities underwriting practices because stock is issued with a nominal par value and most of the proceeds received are credited to the issuer's surplus account. Section 302 of the FSRRA eliminates this requirement and makes other minor changes to clarify and simplify dividend calculations.

The proposal makes conforming changes to § 5.64 (earnings limitation under 12 U.S.C. 60) and § 5.46 (changes in permanent capital) by eliminating references to the surplus fund requirement. The proposal also reorganizes and renumbers § 5.64 and adds new paragraphs (a) and (c)(2). New paragraph (a) adds several defined terms to make the description of the national bank dividend calculation clearer. The terms are: current year, current year minus one, current year minus two, current year minus three, and current year minus four. New paragraph (c)(2) codifies Interpretive Letter No. 816, which discussed the treatment of dividends in excess of a single year's current net income and concluded that a national bank may offset certain excess dividends against retained net income from each of the prior two years.

[38] Pub. L. 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[39] 12 U.S.C. 371c and 371c–1.

[40] Section 5.50 covers uninsured national banks as well as insured national banks.

The proposal also clarifies how to calculate permissible dividends applying the carry-back interpretation described in Interpretive Letter No. 816. The proposal is intended to eliminate confusion by providing that excess dividends may be offset by retained net income in the two years immediately preceding the year in which the excess occurred.

Specifically, paragraph (c)(2)(i) describes how to calculate permissible dividends for the current year if a bank has declared a dividend in excess of net income in the first or second years immediately preceding the current year. For example, when the excess dividend occurs in current year minus one, the excess is offset by retained net income first in current year minus three and then in current year minus two. When the excess dividend occurs in current year minus two, the excess is offset by retained net income first in current year minus four and then in current year minus three. This paragraph limits the availability of offsets to a maximum of four years prior to the current year, consistent with the carry-back concept in Interpretive Letter No. 816. The Interpretive Letter was not intended to permit a bank to restate retroactively its dividend paying capacity beyond the four-year period prior to the current year.

Paragraph (c)(2)(ii) clarifies that if a bank still has excess dividends remaining even after permissible offsets have been applied in accordance with paragraph (c)(2)(i), the bank must use the remaining excess dividend amount in calculating its dividend paying capacity. Paragraph (c)(2)(iii) also clarifies that the carry-back applies only to retained net loss that results from dividends declared in excess of a single year's net income, not any other type of current earnings deficit. As part of the reorganization of § 5.64, information on how to request a waiver of the dividend limitation was moved to new paragraph (c)(3) to make it easier to locate.

The proposal also makes a technical amendment to 12 CFR 5.46, governing changes in permanent capital, to reflect that, as amended by the FSRRA, section 60 no longer requires transfers to the surplus fund as a condition of declaring a dividend.

Part 7—Bank Activities and Operations

National Bank as Guarantor or Surety (§ 7.1017)

Section 7.1017 of the OCC's rules currently provides that a national bank may act as guarantor or surety when it has a substantial interest in the performance of the transaction *or* when the transaction is for the benefit of a customer and the bank obtains from that customer a segregated deposit account sufficient to cover the amount of the bank's potential liability. The proposed rule adds a new subsection authorizing national banks to issue guarantees under additional circumstances, provided the guaranty is financial in nature, reasonably ascertainable in amount, and complies with applicable law.

A financial guaranty or suretyship is essentially a promise to pay if the primary obligor defaults on its obligation. A guarantor or surety that makes good on its promise is entitled to reimbursement by the primary obligor. National banks have authority to ''promise to pay'' or ''guarantee'' the obligations of their customers through bankers' acceptances and letters of credit. In these transactions, the bank substitutes its credit for that of its customer and participates in exchanges of payments as a financial intermediary. These activities involve the core banking powers of both lending and acting as financial intermediary.[41]

In approving various types of guarantees in the past, and in approving a number of arrangements that are functionally similar to guarantees, the OCC has emphasized that banks must be able to respond to the evolving needs of their customers, provided always that such guarantees be issued and managed in a safe and sound manner.[42] Most recently, the OCC approved a national bank's membership in a Group Self Insurance Plan (GSIP) organized by a consortium of banks to provide workers' compensation insurance in which each member was required to become joint and severally liable for the group's obligations.[43] Permitting national banks to exercise their broad authority to act as guarantor or surety benefits customers by giving banks greater ability to facilitate customers' financial transactions and by providing banks with greater flexibility to provide financial services in evolving markets.[44]

For all of these reasons, the OCC concludes that acting as a guarantor or surety is permissible for a national bank, provided the customer's obligation, and the guaranty or surety are financial in nature, reasonably ascertainable in amount, and otherwise consistent with applicable law.

The proposed requirement that the guaranty or surety be ''reasonably ascertainable'' is intended to ensure that the issuing bank can determine the extent of its exposure and engage in the activity in a safe and sound manner. Similarly, the statement that the guaranty or surety must be ''consistent with applicable law'' simply recognizes that other provisions of law may be applicable to particular transactions. These other provisions of law include, among others, limitations on the amount of loans and extensions of credit a national bank may lend to a borrower (12 CFR part 32), limitations on transactions between a bank and its affiliates (sections 23A and 23B of the Federal Reserve Act), and limitations on transactions that would constitute ''insurance'' as principal pursuant to section 302 of Gramm-Leach-Bliley Act.[45]

The OCC is considering whether to provide guidance on risks and risk management in connection with the issuance of guarantees by national banks. For example, one of the primary distinctions between guarantees and letters of credit is that letters of credit are structured in such a way that the bank does not face any uncertainty on its obligation to pay on the letter of credit despite the possibility of defenses and disputes between the primary parties to the underlying transaction. Guarantees, on the other hand, may be subject to different transactional and legal risks than letters of credit. We invite comment on the nature and extent of those differences.

Cumulative Voting in Election of Directors

Prior to FSRRA, national banking law imposed mandatory cumulative voting requirements on all national banks. Section 301 of the FSRRA amends section 5144 of the Revised Statutes of the United States (12 U.S.C. 61) to provide that a national bank may state in its articles of association whether to provide for cumulative voting in the election of its directors. Section 301 is consistent with the Model Business

[41] *See* OCC Interpretive Letter No. 937 (June 27, 2002).

[42] *See*, *e.g.*, OCC Interpretive Letter No. 177 (Jan. 14, 1981) (national bank guaranty/reimbursement of third-party payors in connection with direct deposit pension fund program was permissible; a contrary holding ''would directly inhibit the growth and development of direct deposit programs.''); OCC Interpretive Letter No. 1010 (Sept. 7, 2004) (national bank may issue financial warranties on the investment advice and asset allocation services provided by the bank in the creation and operation of a mutual fund).

[43] The OCC determined that the GSIP's cross-liability aspect could be viewed as a guaranty. Noting that membership in the GSIP would benefit the bank, the OCC determined the guaranty was not solely for another party's benefit. Therefore, the bank had a substantial interest of its own in the transaction. OCC Interpretive Letter No. 1022 (Feb. 15, 2005).

[44] *See* VALIC, 513 U.S. 251 (1995).

[45] Pub. L. 106–102, 113 Stat. 1338, 1407 (Nov. 12, 1999), codified at 15 U.S.C. 6712.

Corporation Act and most States' corporate codes, which provide that cumulative voting is optional. Our proposal amends 12 CFR 7.2006 to incorporate this change.

Electronic Banking-Related Amendments

Twelve CFR part 7, Subpart E contains OCC regulations relating to various electronic activities. In 2002, the OCC undertook revisions to part 7 to address the ways in which technological developments were affecting the business of banking. The proposal includes several additions to this regulation.

Electronic Letters of Credit. Section 7.1016 permits national banks to issue letters of credit within the scope of applicable laws or rules of practice recognized by law, and includes an illustrative footnote that cites examples of these laws and practices. Section 7.5002 permits a national bank to perform, provide or deliver through electronic means and facilities any activity, function, product, or service that a bank is otherwise authorized to perform, provide, or deliver, if the electronic activity is subject to standards or conditions designed to provide that the activity functions as intended, is conducted safely and soundly, and accords with other applicable statutes, regulations, or supervisory policies and guidance of the OCC. Section 7.5002 includes a list of permissible electronic activities that currently does not include electronic letters of credit. Because the OCC has determined that a national bank may issue an electronic letter of credit in a safe and sound manner in accordance with applicable laws and OCC guidance and policies, the OCC is proposing to amend § 7.5002 by adding the issuance of electronic letters of credit within the scope of § 7.1016 to the list of banking activities that a national bank can conduct by electronic means and facilities. The OCC also is proposing to amend the footnote in § 7.1016 to include a reference to the International Chamber of Commerce supplement to UCP 500 for Electronic Presentation (eUCP) (the uniform customs and practices for documentary credits for electronic presentations) as a law that supports electronic letters of credits.

Incidental Electronic Activities. Currently, 12 CFR 7.5001(d) sets forth the standards that the OCC uses to determine whether an electronic activity is incidental to, though not part of, the business of banking because the activity is convenient or useful to the conduct of the business of banking. The OCC has already codified in its regulations two incidental electronic activities: the sale of excess electronic capacity and by-products (§ 7.5004) and incidental non-financial data processing (§ 7.5006). We propose to amend § 7.5001(d) to add other examples of electronic incidental activities that we have since approved for national banks. These activities are: web site development where incidental to other electronic banking services;[46] Internet access and e-mail provided on a non-profit basis as a promotional activity;[47] advisory and consulting services on electronic activities where the services are incidental to customer use of electronic banking services;[48] and the sale of equipment that is convenient or useful to customers' use of related electronic banking services, such as specialized terminals for scanning checks that will be deposited electronically by wholesale customers of banks under the Check Clearing for the 21st Century Act, Pub. L. 108–100 (12 U.S.C. 5001–5018).[49] This list is illustrative and not exclusive, and the OCC may determine in the future that activities not on this list are permissible pursuant to this authority.

Software That Is Part of the Business of Banking. Currently, OCC regulations list software acquired or developed by the bank for banking purposes or to support its banking business as an example of an electronic by-product that a national bank can sell to others as a permissible ''incidental'' activity.[50] This proposal also expands § 7.5006 to address, as ''part of the business of banking,'' the sale of software that performs services or functions that a national bank can perform directly, thereby codifying previous OCC interpretations.[51] We note that software that is part of the business of banking can be sold without regard to any other banking product or service, whereas software that is incidental must be shown to be convenient or useful to another activity that is authorized for national banks.[52]

The OCC also recognizes that national banks' use of technology is constantly evolving and therefore we regularly review our regulations with the goal of revising them in ways that facilitate the use of that technology consistent with safety and soundness. Commenters are invited to identify any other areas of subpart E that should be revised to recognize the evolving role of technology.

Part 9—Fiduciary Activities of National Banks

In response to recent amendments made by the SEC to its rules and forms under section 17A of the Exchange Act, the OCC is proposing to amend its transfer agent rule at § 9.20 to clarify the procedures applicable to national bank transfer agents. Under the SEC's amended rules, all transfer agents, including national bank transfer agents, are required to file annual reports electronically with the SEC through the SEC's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. In addition, nonbank transfer agents now must file registration and withdrawal forms electronically with the SEC through the EDGAR system. The SEC's amended rules do not require national bank transfer agents to file registration or withdrawal forms with the SEC electronically or otherwise. The OCC is revising its transfer agent rules to make this clear.

Currently, § 9.20(a) of the OCC's rules cross-references to the SEC's rules with respect to registration. This cross-reference may make it appear that national bank transfer agents also are subject to the requirement to file registration and withdrawal forms through the SEC's EDGAR system. To avoid confusion regarding electronic filing, the proposal replaces the cross-reference in § 9.20(a) to the SEC's transfer agent registration and withdrawal rules with specific procedures for filing applications for registration, amending registrations, and withdrawals from registration. This amendment will not result in any substantive changes for national bank transfer agents. National bank transfer agents will continue to file applications for registration, amendments to registration and withdrawals from registration as previously required.

The proposed rule also would make conforming changes to § 9.20(b) to reflect the SEC's revision and renumbering of its transfer agent rules. Specifically, we are removing the specific citations to the SEC's rules in favor of a more general reference. The proposed amendment makes no substantive changes to § 9.20(b). This change will, however, avoid the need for the OCC to revise our regulation each time the SEC makes changes to its transfer agent rules.

[46] *See* OCC Corporate Decision No. 2002–13, July 31, 2002.

[47] *See* OCC Conditional Approval No. 612, Nov. 21, 2003.

[48] *See* OCC Corporate Decision No. 2002–11, June 28, 2002.

[49] *See* OCC Interpretive Letter No. 1036, Aug. 10, 2005.

[50] 12 CFR 7.5004.

[51] *See, e.g.*, Corporate Decision 2003–6, March 17, 2003.

[52] *See* 12 CFR 7.5001(c) and 7.5001(d).

Part 10—Municipal Securities Dealers

This proposal amends § 10.1(a) to eliminate the application of part 10 to DC banks.

Part 11—Securities Exchange Act Disclosure Rules

Part 11 addresses the rules, regulations, and filing requirements that apply to national banks with one or more classes of securities subject to the registration provisions of sections 12(b) and (g) of the Exchange Act (15 U.S.C. 78l(b) & (g)). This proposal amends § 11.1(a) to remove DC banks from the scope of part 11, consistent with the DC Bank Act.

Part 12—Recordkeeping and Confirmation Requirements for Securities Transactions

Section 12.7(a)(4) requires bank officers and employees who make investment recommendations or decisions for customers to report their personal transactions in securities to the bank within *ten business days* after the end of the calendar quarter. The OCC modeled this reporting requirement on SEC Rule 17j–1 (17 CFR 270.17j–1), issued pursuant to the Investment Company Act of 1940, which, at the time of the most recent revision to this OCC requirement in 1996, required ''access persons'' to report their personal transactions in securities within ten days after the end of the calendar quarter.[53] However, in July 2004 the SEC amended Rule 17j–1 to expand this ten-day deadline to 30 days.[54]

To conform part 12 with the current SEC filing deadline in SEC Rule 17j–1, this proposal amends § 12.7(a)(4) by replacing the 10-business day filing deadline for reporting personal transactions in securities with the deadline specified in SEC rule 17j–1. This will enable bank employees that are subject to SEC Rule 17j–1 and to the OCC's securities recordkeeping and confirmation regulation to file by the same deadline, thereby eliminating employee confusion as well as the regulatory burden associated with complying with two separate filing deadlines.

Part 16—Securities Offering Disclosure Rules

Part 16 governs offers and sales of bank securities by issuers, underwriters, and dealers.

Definitions (§ 16.2)

The proposal eliminates DC banks from the definition of ''bank'' in § 16.2(b).

Sales of Nonconvertible Debt (§ 16.6)

Section 16.6(a)(3) requires bank debt issued under § 16.6 to be in a minimum denomination of $250,000 and requires that each note or debenture to show on its face that it cannot be exchanged for notes or debentures in smaller denominations. However, this legend requirement cannot be satisfied '' and would serve no purpose '' if the bank is using a paperless book entry form, which has become the more current form of issuance used by banks and other securities issuers. This proposal would amend § 16.6(a)(3) to provide that this legend requirement only applies to debt issued in certificate form. All other requirements of § 16.6, including the requirement of minimum denominations of $250,000, will continue to apply to all bank sales of nonconvertible debt, whether issued in certificate or book entry form.

Nonpublic Offerings (§ 16.7)

Part 16 provides that, absent an available exemption, no person may offer and sell a security issued by a national bank without meeting the registration and prospectus delivery requirements of part 16. Part 16 generally incorporates by reference the definitions, registration and prospectus delivery requirements of the Securities Act and SEC implementing rules, including Regulation D under the Securities Act.[55] Section 16.7(a) of the OCC's nonpublic offering regulation provides that the OCC will deem offers and sales of bank-issued securities to be exempt from the registration and prospectus requirements of part 16 if they meet certain requirements, including filing with the OCC a notice on Form D that meets the requirements of Regulation D.[56]

Form D requires the issuer to disclose basic information concerning the identity of the issuer and the offering, including the exemption being claimed and information regarding the offering price, number of investors, expenses, and use of proceeds. However, the OCC does not use the information in the Form D for any supervisory or other particular purpose, and the OCC does not treat the requirement to file a Form D as a condition to the availability of an exemption under part 16. Furthermore, the SEC adopted Form D for reasons that do not directly apply to the OCC.[57] Therefore, we propose to eliminate the requirement to file a Form D.

Securities Offered and Sold in Bank Holding Company Dissolution (New § 16.9)

The OCC's current securities offering disclosure rules, at part 16, have resulted in some confusion as to whether offers and sales of bank-issued securities in connection with the dissolution of the bank's holding company are exempt from the § 16.3 registration statement and prospectus requirements. The proposal would resolve the uncertainty by codifying specific requirements that apply in order for the offer and sale of bank securities in a bank holding company dissolution to be exempt from the § 16.3 registration statement and prospectus requirements.

Specifically, the proposal adds a new § 16.9 that would expressly exempt from the § 16.3 registration statement and prospectus requirements offers and sales of bank-issued securities in connection with the dissolution of the holding company of the bank if those transactions satisfy the following requirements: (1) The offer and sale of bank-issued securities occurs solely as part of a dissolution in which the security holders exchange their shares of stock in a holding company that had no significant assets other than securities of the bank, for bank stock; (2) the security holders receive, after the dissolution, substantially the same proportional share of interests in the bank as they held in the holding company; (3) the rights and interests of the security holders in the bank are substantially the same as those in the holding company prior to the transaction; and (4) the bank has substantially the same assets and liabilities as the holding company had on a consolidated basis prior to the transaction.

These proposed requirements parallel the conditions that must be satisfied in order for securities issued in connection with an acquisition by a holding

[53] *See* 61 FR 63958 (Dec. 2, 1996). The OCC's reporting requirement under 12 CFR 12.7(a)(4) is a separate requirement from any applicable requirements under SEC Rule 17j–1. However, an ''access person'' required to file a report with a national bank pursuant to SEC Rule 17j–1 need not file a separate report under the OCC's reporting requirement if the required information is the same. *See* 12 CFR 12.7(d). The SEC rule defines ''access person'' as including directors, officers, and certain employees of the investment adviser. 17 CFR 270.17j–1(a)(1).

[54] *See* 69 FR 41696 (July 9, 2004).

[55] 17 CFR 230.501 *et seq.*

[56] 17 CFR 230.503.

[57] Specifically, Form D serves a useful purpose for the SEC in creating a uniform State notification form for purposes of the States' Uniform Limited Offering Exemption, which is inapplicable to national banks. In addition, the SEC uses the information in the forms to conduct economic and other analyses of the private placement market in general. The OCC does not use the information in the Form D for this purpose. *See* Sec. Act. Release No. 33–6339, 46 FR 41,791 (Aug. 18, 1981).

company of a bank (pursuant § 3(a) of the Bank Holding Company Act of 1956) to be eligible for exemption from the registration requirements of § 3(a)(12) of the Securities Act, and are equally appropriate in the reverse context where bank-issued securities are offered and sold in connection with the dissolution of the bank's holding company.

From a shareholder protection standpoint, the rationale for not requiring a registration statement for the formation of a shell holding company—that the interests of the bank and company shareholders are essentially the same—would apply equally to dissolution of a shell holding company. The business rationale—reduction of costs of dissolution of a holding company if a bank decides it does not need the flexibility of a holding company structure—also is similar.

The proposal also makes conforming amendments to part 16 by deleting the current cross-reference in § 16.5(a) to section 3(a)(12) of the Exchange Act and adding a reference to new § 16.9 in the listing of exempt securities under § 16.5.

Removal of Current and Periodic Report Filing (§ 16.20)

State banks and national banks are both subject to the Exchange Act's periodic and current reporting requirements if they have one or more classes of securities subject to the registration provisions of section 12(g) of the Exchange Act.[58] Pursuant to that statute, banks having a class of equity securities held by 500 or more owners of record are required to register that class of securities under § 12(g) of the Exchange Act.[59] Once registered, a bank becomes subject to the periodic and current reporting requirements of the Exchange Act.

Section 16.20 of the OCC's regulations imposes periodic and current reporting requirements for national banks that file registration statements with the OCC for the public offering of their securities. Pursuant to § 16.20, a national bank must file periodic and current reports after the registration statement becomes effective, even if the bank is not otherwise required to register its securities under the Exchange Act. This periodic and current reporting requirement was based on that imposed by section 15(d) of the Exchange Act on other entities filing Securities Act registration statements with the SEC.[60] The OCC adopted this periodic and current reporting requirement to ensure that potential purchasers in a bank's public offering had access to updated information necessary for their investment decisions, in the same manner as investors in other companies.

The periodic and current reporting requirements of § 16.20 applies to national banks until the securities to which the national bank's registration statement relates are held of record by fewer than 300 persons. The FDIC and the Federal Reserve Board have not imposed a comparable obligation on State banks. Instead, a State bank that conducts public offerings of their securities are subject to Exchange Act periodic and current reporting requirements only if the bank has more than 500 shareholders.

We propose to eliminate § 16.20 in order to reduce regulatory burden with respect to small national banks that file registration statements with the OCC for the public offering of their securities. Thus, only a national bank that has 500 or more shareholders of record would be subject to the Exchange Act periodic and current reporting requirements.[61] We also make a conforming change to § 16.6, by deleting the reference to § 16.20 in that section.

This proposal would not significantly diminish financial information about the banks that will be available to investors, since updated financial information, including the bank's most recent balance sheet and statement of income filed with the OCC as part of the bank's most recent Consolidated Report of Condition (Call Report), will still be publicly available to investors. This proposal also will have no effect on the requirement under the OCC's Exchange Act disclosure rule at 12 CFR part 11 that a national bank whose securities are registered under section 12(b) or 12(g) of the Exchange Act must file current and periodic reports that conform to section 13 of the Exchange Act.

Part 19—Rules of Practice and Procedure

The FSRRA made several changes affecting the OCC's exercise of its enforcement authority pursuant to section 8 of the FDI Act.[62] Section 303 of the FSRRA changes the procedures for issuing orders of suspension, removal or prohibition against institution-affiliated parties (IAPs) of national banks. Previously, section 8(e)(4) of the FDI Act required that, following proceedings before an administrative law judge, the determination whether to issue such orders would be made by the Federal Reserve Board. Section 303 of the FSRRA repeals that requirement, so that the OCC now has the authority to issue such orders, as it does with respect to other types of orders resulting from an OCC-initiated enforcement action. The proposal amends § 19.100 of the OCC's rules, pertaining to OCC adjudications, to reflect the change in the law.

Section 8(g) of the FDI Act pertains to the suspension, removal, or prohibition of an IAP when the IAP is the subject of an information, indictment, or complaint involving certain crimes set forth in the statute or when the IAP has been convicted of such a crime.[63] Section 708 of the FSRRA revises the statutory grounds that warrant suspension, removal or prohibition of an IAP from further participation in the conduct of the affairs of a depository institution, including a national bank, in such a case. Section 708 also clarifies that, if grounds exist, an appropriate Federal banking agency, including the OCC, may suspend or prohibit the IAP from participating in the affairs of any depository institution, and not only the institution with which the party is, or was last, affiliated. The amendment further clarifies that this authority applies even if the IAP is no longer associated with the depository institution at which the offense allegedly occurred or if the depository institution with which the IAP was affiliated no longer exists. The proposal amends §§ 19.110 and 19.111 of our rules to conform to these amendments. The proposal also updates the titles of OCC officials referenced in §§ 19.111 and 19.112.

Finally, the proposed rule eliminates the applicability of part 19 to DC banks by deleting a reference to DC banks in the definition of ''institution'' in § 19.3(g). The proposal also deletes a reference to DC banks in the scope section (§ 19.241) of subpart P, which relates to the removal, suspension, and debarment of accountants from performing audit services.

Part 21—Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program

Part 21 consists of three subparts. Subpart A requires each bank to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who such acts. Subpart B ensures that national banks file a Suspicious Activity Report when

[58] *See* Exchange Act Section 12(i), 15 U.S.C. 78l(i), 12 CFR part 335, and 12 CFR part 11.

[59] Section 12(g) of the Exchange Act also requires a bank to have more than $ 1 million of assets.

[60] 59 FR 54789 (Nov. 2, 1994).

[61] *See* Exchange Act Section 12(i), 15 U.S.C. 78l(i) and 12 CFR part 11.

[62] 12 U.S.C. 1818.

[63] *Id.* at 1818(g).

they detect a known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act. Subpart C requires that all national banks establish and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of the Bank Secrecy Act and its implementing regulations.

This proposed rule removes references to DC banks in the scope section of part 21 to clarify that part 21 no longer applies to DC banks.

Part 22—Loans in Areas Having Special Flood Hazards

Part 22 applies to loans secured by buildings or mobile homes located or to be located in areas subject to special flood hazards. It implements the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. This proposal eliminates the applicability of part 22 to DC banks by removing DC banks from the definition of ''bank'' in § 22.2(b).

Part 23—Leasing

Part 23 contains the standards for personal property lease financing transactions authorized for national banks. Section 23.6 applies the lending limits of 12 U.S.C. 84 or, if the lessee is an affiliate of the bank, the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1 to these lease transactions. This proposal would add to § 23.6 cross-references to the Federal Reserve Board's Regulation W, 12 CFR part 223, which implements 12 U.S.C. 371c and 371c–1. This is necessary because Regulation W contains new provisions that do not appear in 12 U.S.C. 371c and 371c–1. In addition Regulation W contains a definition of the term ''affiliate'' that is broader than the definition that appears in § 371c and § 371c–1. With these cross-references to Regulation W, these rules will more clearly reflect whether the requirements of 12 U.S.C. 84 or of Regulation W apply to a particular lease transaction.

Part 24—Community Development Investments

Prior to its amendment by the FSRRA, 12 U.S.C. 24(Eleventh) authorized a national bank to ''make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs)'' (the public welfare test). A national bank could ''make such investments directly or by purchasing interests in an entity primarily engaged in making such investments.''

The FSRRA narrowed the grant of authority in section 24(Eleventh) by providing that a national bank may ''make investments, directly or indirectly, each of which promotes the public welfare by benefiting primarily low- and moderate-income communities or families (such as by providing housing, services, or jobs).'' [64] The FSRRA also revised section 24(Eleventh) to state explicitly that the authority to make public welfare investments applies to investments made by a national bank directly and by its subsidiaries.[65]

The FSRRA also raised the maximum aggregate outstanding investment limit under section 24(Eleventh) from 10 to 15 percent of the bank's unimpaired capital and surplus.

The proposal revises part 24, which implements section 24(Eleventh) to conform to the statutory changes.

Definition of ''Community and Economic Development Entity'' (CEDE) § 24.2(c)

The definition of a CEDE in proposed § 24.2(c) implements the FSRRA change to the public welfare test. Proposed paragraph (c) defines a CEDE as ''an entity that makes investments or conducts activities that promote the public welfare by benefiting primarily low- and moderate-income areas or individuals'.

Definition of ''Benefiting Primarily Low- and Moderate-Income Areas or Individuals'' (§ 24.2(g))

12 U.S.C. 24(Eleventh) authorizes a national bank and its subsidiaries to make investments that promote the public welfare by ''benefiting primarily'' low- and moderate-income areas or individuals. The proposal defines ''benefiting primarily low and moderate-income areas or individuals'' when used to describe an investment to mean that: (1) A majority (more than 50 percent) of the investment benefits low- and moderate-income areas or individuals; or (2) the express, primary purpose of the investment (evidenced, for example, by government eligibility requirements) is to benefit ''low- and moderate-income areas or individuals.'' This proposed definition is consistent with the way in which the OCC and the other Federal banking agencies have construed the concept of ''primary'' in the phrase ''primary purpose'' for community development activities pursuant to the CRA rules.[66]

Public Welfare Investments (§§ 24.3, 24.1)

Section 24.3 contains the authorization to make investments pursuant to section 24(Eleventh). The proposal revises the authorizing language to conform with the changes made by the FSRRA. Here and elsewhere in the proposal where the ''benefiting primarily'' standard appears, the phrases ''low- and moderate-income individuals'' and ''low- and moderate income areas'' are retained to describe the beneficiaries of national banks' section 24(Eleventh) investments since the statutory language underlying those phrases was not revised by the FSRRA.[67] The proposal also adds a new section 24.1(e) to clarify that investments made, or written commitments to make investments entered into, before the enactment of the FSRRA continue to be subject to the statutes and regulations in effect prior to October 13, 2006.[68]

Investment Limits (§ 24.4)

The proposed revisions to § 24.4(a) implement the statutory change to the aggregate investment limit in section 24(Eleventh) from 10 to 15 percent of unimpaired capital and surplus.

This proposal also modifies the procedure that applies when a national bank requests OCC approval to exceed the investment limit. The current rule permits a national bank's aggregate outstanding investments to exceed 5 percent of its capital and surplus if the bank is well capitalized and the OCC determines, by written approval of a bank's proposed investment pursuant to the procedures set out at § 24.5(b), that

[64] We note that on February 27, 2007, the U.S. House of Representatives passed legislation that would reinstate the wording of the former grant of authority to national banks to make community development investments. *See* H.R. 1066, the Depository Institution Community Development Investments Enhancement Act. The enactment of legislation further amending section 24(Eleventh) may affect the content or timing of the OCC's issuance of final rules revising part 24.

[65] FSRRA, section 305, 120 Stat. at 1970–71.

[66] *See* Interagency Questions and Answers Regarding Community Reinvestment, Q&A §§ .12(i) and 563e.12(h) '' 7, 66 FR 36620, 36627 (July 12, 2001) (explaining ''primary purpose'' for community development activities in the context of the CRA rules).

[67] We also note that the OCC has consistently used the term ''areas'' interchangeably with ''communities'' and the term ''individuals'' interchangeably with ''families.''

[68] *See* 152 Cong. Rec. H7586 (daily ed. Sept. 29, 2006) (colloquy between Chairman Oxley of the House Financial Services Committee and Ranking Member Frank) (explaining that the revised standard in section 24(Eleventh) applies prospectively only and does not affect investments made, or written commitments to make investments that were entered into, prior to the enactment of the new standard).

a higher amount will pose no significant risk to the deposit insurance fund. Section 24.5(b) describes the application process that is required for the OCC's prior approval of an investment when a bank does not satisfy the requirements for using an after-the-fact notice. Thus, the investment limits provision in current § 24.4(a) requires a national bank to submit a request to exceed the 5 percent limit together with a specific investment proposal, and to use the prior approval procedures for that investment proposal.

This particular prior approval procedure is not required by the statute and the OCC has determined that the burden it imposes is not warranted in view of the low level of risk generally presented by the types of investments authorized pursuant to section 24(Eleventh). Accordingly, the proposal removes the requirement that a national bank submit a specific investment proposal for prior approval under § 24.5(b) when it also seeks approval to exceed the 5 percent investment limit. Under the proposed simpler procedure, the bank would submit a written request to the OCC to exceed the 5 percent limit and would not be required to tie this request to a specific investment proposal. If the OCC provides written approval of the request, the bank may make investments above the 5 percent limit. However, as is the case for investments below the 5 percent limit, for each investment above the limit the bank would submit either an after-the-fact notice under § 24.5(a) if it satisfies the requirements for after-the-fact notice, or an application under § 25.4(b) if it does not. These revisions facilitate national banks' ability to plan their investment activity while enabling the OCC to monitor the bank's use of the part 24 authority on a case-by-case basis. Thus, proposed § 24.4(a) permits a national bank's aggregate outstanding investments to exceed 5 percent of its capital and surplus, provided that the bank is at least adequately capitalized and the OCC determines, by written approval of a written request submitted by the bank, that a higher amount of investment will pose no significant risk to the deposit insurance fund.

Examples of Qualifying Public Welfare Investments (§ 24.6)

Current § 24.6 contains examples of qualifying public welfare investments. The proposal revises § 24.6 as necessary to reflect the revision to the language of the statutory standard effected by section 305 of the FSRRA. The proposal also makes conforming amendments to § 24.6 to clarify that the examples of qualifying public investments include investments that benefit primarily low- and moderate-income areas or individuals and that: (1) Finance minority- and women-owned small businesses; (2) provide technical assistance for minority- and women-owned small businesses; or (3) are made in minority- and women-owned depository institutions. The OCC expects these qualifying investments to be made in minority- and women-owned entities that conform to the ownership and control, profit and loss taking, and senior management representation requirements of the CRA's provision governing operation of branch facilities by minorities and women (*see* 12 U.S.C. 2907(b)(1)–(3)). In addition, the proposal revises references to investments in ''targeted redevelopment areas,'' which, after FSRRA, would be permissible only if they promote the public welfare by benefiting primarily low- and moderate-income areas or individuals. Finally, the proposal amends § 24.6(d)(1) to include investments that provide financial literacy as an additional example of a qualifying public welfare investment.

Technical Amendments

The proposal also revises several sections of part 24 to eliminate language that is inconsistent or unnecessary in light of the revised statutory standard for community development investments and to make technical changes, including:

- A revision to § 24.2(f) to update a cross-reference to the definitions of ''low-income'' and ''moderate-income'' in § 25.12. The revision to § 24.2(f) does not result in any substantive change to the definition of ''low- and moderate-income.''
- Technical amendments to § 24.5 to reflect an address change for sending certain notices, letters, and proposals to the OCC. These materials are proposed to be sent to the OCC's Community Affairs Department; the current regulation directs the materials to the Director, Community Development Division. Technical amendments to paragraphs (a)(2) and (b)(1) would permit national banks to submit after-the-fact notices and investment proposals needing prior approval via e-mail, fax, or electronically through National BankNet, rather than mailing the submissions. A technical amendment is proposed for paragraph (a)(1) to correct the format of a citation to 12 U.S.C. 24(Eleventh).
- Proposed § 24.6 would make a technical amendment to paragraph (b)(2) by removing the phrase ''low-or moderate-income'' and replacing it with ''low- and moderate-income,'' which is consistent with how that phrase appears throughout part 24. In addition, a conforming technical amendment is proposed for paragraph (d)(3) that would permit other public welfare investments, including investments of a type determined by the OCC to be permissible under the proposed revisions to part 24. Grandfathered investments that are subject to statutes and regulations in effect prior to October 13, 2006 would not be affected. These terms are familiar to national banks and correspond to similar terms in existing part 24 and the part 25 CRA regulations. Therefore, this proposal makes no change to the use of the terms ''areas'' and ''individuals'' in part 24.

The proposal also revises Appendix 1 to part 24, the CD–1 National Bank Community Development (Part 24) Investments Form, to reflect the proposed changes to the regulation.

Part 26—Management Officials Interlocks

Part 26 implements the provisions of the Depository Institution Management Interlocks Act (Interlocks Act)[69] which generally prohibits a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect. Section 610 of the FSRRA raised the asset-size amount from $20 million to $50 million for small banks that are exempt under certain provisions of the Interlocks Act. Because the OCC's current substantive rules implementing the Interlocks Act were issued together with the other Federal banking agencies, the OCC has implemented this FSRRA provision through a separate rulemaking conducted jointly with those agencies.[70]

However, this proposal amends part 26 by deleting the reference to DC banks in the scope section, § 26.1(c), deleting the definition of ''District bank'' in § 26.2(i), and deleting the reference to DC banks in the enforcement section, § 26.8.

Part 27—Fair Housing Home Loan Data System

Part 27 applies to activities of national banks and their subsidiaries that make home loans for the purpose of purchasing, construction-permanent financing, or refinancing of residential real property. The proposed rule would remove DC banks from the scope of part

[69] 12 U.S.C. 3201 *et seq.*

[70] The OCC and the other Federal banking agencies recently issued an interim final rule with request for comments amending their management interlocks rules to implement this change. *See* 72 FR 1274 (Jan. 11, 2007).

27 in § 27.1(a) and the definition of ''bank'' in § 27.2(c).

Part 28—International Banking Activities

This proposal makes a technical change to the definition of ''limited Federal branch'' in 12 CFR 28.11(s). Currently, this regulation defines a limited foreign branch as a Federal branch or agency that, pursuant to an agreement between the parent foreign bank and the FRB, may receive only those deposits permissible for an Edge corporation to receive. However, this agreement is not required for a foreign bank to operate a limited Federal branch in the United States. Therefore, we are removing the unnecessary reference to this agreement from this definition. This change, however, does not in any manner affect the requirement in § 28.11(s) that a limited Federal branch licensed by the OCC may accept only those deposits that are permissible for an Edge corporation.

We also are proposing a technical change to part 28 with respect to the expedited time periods for processing applications by eligible foreign banks to establish or relocate an interstate Federal branch or agency. Current 12 CFR 28.12(e)(3) provides that an application by an eligible foreign bank to establish and operate a *de novo* interstate Federal branch or agency is conditionally approved as of the 30th day after the OCC receives the application unless the OCC notifies the bank otherwise. However, the OCC is finding that the expedited process in the current regulation is not allowing sufficient time for the 30-day comment period to expire and for consideration of the comments received. As a result, the OCC is routinely notifying the eligible banks that the time period is extended. The proposal amends § 28.12(e) to provide that all expedited approvals to establish or relocate a Federal branch or agency are approved as of the 15th day after the close of the applicable public comment period, or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the bank otherwise. These are the same time frames that would apply under 12 CFR 5.20(f)(5) if a national bank were engaging in a similar transaction.

The proposal also would eliminate the applicability to DC banks of subpart C of part 28, which implements the International Lending Supervision Act of 1988 (12 U.S.C. 3901 *et seq.*). Specifically, the proposal would eliminate the references to DC banks in the scope section, § 28.50(c), and in the definition of ''banking institution'', § 28.51(a).

Part 31—Extensions of Credit to Insiders and Transactions With Affiliates

Sections 23A and 23B of the Federal Reserve Act, as implemented by the Federal Reserve Board's Regulation W, impose quantitative and qualitative limitations on a bank's transactions with its ''affiliates.'' Appendix A to part 31 of the OCC's rules contains two interpretations of section 23A pertaining to a national bank's transactions with an affiliate. One of these interpretations provides that a loan to an unaffiliated third party that is collateralized by securities issued by an affiliate is not a ''covered transaction'' (that is, a transaction to which the requirements of section 23A apply) so long as: the borrower provides additional collateral that meets or exceeds the collateral requirements of § 23A (*i.e.*, up to 130% of the loan); and the loan proceeds are not used to purchase the affiliate-issued securities or otherwise used for the benefit of, or transferred to, any affiliate. The Federal Reserve Board's Regulation W, which was issued subsequent to the OCC's adoption of these interpretations, treats this transaction differently. Accordingly, we are proposing to remove our interpretation on that issue from Appendix A to part 31.

In addition, we have made minor changes to section 2 of Appendix A to part 31 to reflect the applicability of 12 U.S.C. 371c, 371c–1, and their implementing regulation, Regulation W, to deposits between affiliated banks. Furthermore, we have added an exception to this provision in order to clarify that a national bank may make or receive a deposit if a party other than the depositary can legally offer and does post the collateral.

The proposal also removes the reference to 12 U.S.C. 1972(2)(G), which was repealed by section 601 of the FSRRA, in the authority section of part 31 as well as in § 31.1.

Finally, the proposal makes a technical amendment to Appendix B to part 31. This appendix compares the requirements of part 31 and part 32. However, it currently contains an inaccurate description of part 32 relating to exclusions to the definition of ''loans or extensions of credit.'' The proposal removes this inaccuracy.

Part 32—Lending Limits

Part 32 sets forth the lending limits that are applicable to a national bank. Section 32.1(c)(1) excludes from the scope of part 32's coverage loans made by a national bank and its domestic operating subsidiaries to a bank ''affiliate,'' as that term is defined in section 23A(b)(1) of the Federal Reserve Act. After the OCC adopted part 32 in its current form, the Gramm-Leach-Bliley Act [71] authorized a national bank (as well as insured State member banks) to hold financial subsidiaries and provided generally that financial subsidiaries would be treated as ''affiliates'' for purposes of sections 23A and 23B of the Federal Reserve Act. This treatment appears in the statute at section 23A(e). Accordingly, the Federal Reserve Board's Regulation W generally defines as ''affiliates'' financial subsidiaries established pursuant to the authorization in the Gramm-Leach-Bliley Act.

This proposal adds to § 32.1(c)(1) cross-references to section 23A(e) and to § 223.2(a) of the Federal Reserve Board's Regulation W. This change would directly cite the specific statute that defines an affiliate to include a financial subsidiary as well as the implementing provision of Regulation W. This amendment to § 32.1 would make clear that a bank's loan to its financial subsidiary is not covered by the lending limit and that, instead, Regulation W applies to such a loan.[72] The amendment also serves more generally to reflect the fact that Regulation W contains a definition of the term ''affiliate'' that is broader than the definition that appears in § 371c.

Part 34—Real Estate Lending and Appraisals

Under current § 34.22, if a national bank makes an adjustable rate mortgage (ARM) loan, the loan documents must specify an index to which a change in the interest rate will be linked. Section 34.22 describes the requirements that generally apply to such an index. This proposal amends § 34.22 to provide

[71] *See* Pub. L. 106–102, Section 121, 113 Stat. 1338, 1373–81 (Nov. 12, 1999).

[72] However, subsidiaries that are financial subsidiaries solely because they sell insurance as agent or broker in a manner not permitted to the parent bank are not considered ''affiliates'' under Regulation W (*see* 12 CFR 223.3(p)(2)(i)) (unless the subsidiary is an affiliate for reasons other than its status as a financial subsidiary under the Gramm-Leach-Bliley Act). Loans to such subsidiaries are not subject to the lending limit for the same reason that the lending limit does not apply to loans to companies that meet the general definition of ''affiliate'' in § 371c(b)(1) but are excepted from § 371c by another provision, *e.g.*, operating subsidiaries or companies engaged solely in holding the premises of the bank (*see* section 371c(b)(2)). The OCC does not apply the lending limit to loans to any financial subsidiary since it is not necessary given that another statutory scheme—the affiliate transaction restrictions—is generally applicable. This reason applies even where a specific exemption—such as for the entities described in 12 CFR 223.3(p)(2)(i)—causes the affiliate transaction restrictions to be inapplicable.

national banks with additional flexibility with respect to the indices upon which ARM rates may be based. Specifically, the amendment permits national banks to use a combination of indices to which changes in the interest rate will be linked, in addition to a single index. The amendment also permits a national bank to use an index other than one already permissible under the rule, if the bank files a notice with the OCC and the OCC does not notify the bank within 30 days that the notice raises supervisory concerns or significant issues of law or policy. If the OCC notifies the bank about such issues or concerns, the bank may not proceed unless it has obtained the OCC's written approval. The approval could include any restrictions or conditions necessary to address the issues or concerns the OCC has identified.

Part 37—Debt Cancellation Contracts and Debt Suspension Agreements

On September 19, 2002, the OCC published a final rule in the **Federal Register** that added a new 12 CFR part 37, which establishes standards governing DCCs and DSAs.[73] In the last sentence of § 37.7(a), the cross-reference to standards in § 37.6 is incorrect. The rule should say § 37.6(d), not § 37.6(b). This amendment corrects that error.

Part 40—Privacy of Consumer Financial Information

Part 40 governs the treatment of nonpublic personal information about consumers by financial institutions. Pursuant to the DC Bank Act, the proposal would amend the scope section, § 40.1(b), to eliminate the applicability of part 40 to DC banks.

Request for Comments

The OCC welcomes comments on any aspect of this proposal, particularly those issues specifically noted in this preamble.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

Regulatory Analysis

Regulatory Flexibility Act

Pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under Section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

We have estimated that the economic costs associated with the changes made by this proposal will not be significant and that the majority of banks affected by these costs will be those with assets greater than $250 million. Therefore, pursuant to Section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866. We have concluded that the changes made by this rule will not have an annual effect on the economy of $100 million or more. The OCC further concludes that this proposal does not meet any of the other standards for a significant regulatory action set forth in Executive Order 12866.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in this notice of proposed rulemaking have been submitted to OMB for review and approval under existing OMB control numbers 1557–0014 (Comptroller's Licensing Manual), 1557–0120 (Securities Offering Disclosure Rules), 1557–0194 (Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments), and 1557–0190 (Real Estate Lending and Appraisals).

The OCC is proposing to revise part 5 to reflect organizational restructuring, and to simplify, clarify and make conforming and technical corrections to corporate application procedures and standards. The PRA burden in part 5 is currently approved under OMB Control No. 1557–0014, which also covers the *Comptroller's Licensing Manual*. Therefore, we submitted the entire information collection to OMB for review. The numbers below reflect the total burden under part 5 and the *Comptroller's Licensing Manual* following adoption of the rule and the review of the entire information collection to ensure accuracy of the estimates.

Title of Information Collection: Comptroller's Licensing Manual.

OMB Number: 1557–0014.

Estimated Number of Respondents: 5,894.

Estimated Number of Responses: 5,894.

Average Hours Per Response: 2.98 hours.

Total Estimated Annual Burden: 17,572 hours.

Affected Public: National banks.

Estimated Net Burden Change: −7,975 hours.

The OCC is proposing to revise part 16 to delete the public and periodic requirements in 12 CFR 16.20 and the requirement to submit to the OCC a Form D required in 12 CFR 16(a)(3). The PRA burden in part 16 is currently approved under OMB Control No. 1557–0120. Therefore, we submitted the entire information collection for review. The numbers below reflect the entire burden for part 16 following adoption of the rule and the review of the entire

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information collection to ensure accuracy of the estimates.

Title of Information Collection: Securities Offering Disclosure Rules—12 CFR Part 16.

OMB Number: 1557–0120.

Estimated Number of Respondents: 48.

Estimated Number of Responses: 48.

Average Hours Per Response: 10.63.

Total Estimated Annual Burden: 510.

Affected Public: National banks.

Estimated Net Burden Change: −4,823 hours.

The OCC is proposing to revise part 24 to incorporate changes made by the FSRRA to community development investment authority. The OCC is also proposing to revise its community development investment form contained in Appendix 1 to Part 24. The PRA burden for part 24 is currently approved under OMB Control No. 1557–0194. Therefore, the OCC submitted the entire information collection for review. The numbers below reflect the entire burden for part 24 following adoption of the rule and the review of the entire information collection to ensure accuracy of the estimates.

Title of Information Collection: Community and Economic Development Entities, Community Development Projects—Part 24.

OMB Number: 1557–0194.

Estimated Number of Respondents: 400.

Estimated Number of Responses: 400.

Average Hours Per Response: 1.475 hours.

Total Estimated Annual Burden: 590 hours.

Affected Public: National banks.

Estimated Net Burden Change: + 219 hours.

The OCC is proposing to revise part 34 to provide national banks with additional flexibility with respect to the indices upon which ARM rates may be based. The PRA burden for part 34 is currently approved under OMB Control No. 1557–0190. Therefore, the OCC submitted the entire information collection for review. The numbers below reflect the entire burden for part 34 following adoption of the rule and the review of the entire information collection to ensure accuracy of the estimates.

Title of Information Collection: Real Estate Lending and Appraisals—12 CFR Part 34.

OMB Number: 1557–0190.

Estimated Number of Respondents: 1,800.

Estimated Number of Responses: 1,800.

Average Hours Per Response: 57.

Total Estimated Annual Burden: 102,650 hours.

Affected Public: National banks.

Estimated Net Burden Change: −12,900 hours.

The information collection requirements enable the OCC to ensure that the proposed transactions are permissible under law and regulation and are consistent with safe and sound banking practices.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection 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.

Comments on these burden estimates should be submitted using one of the methods outlined in the **ADDRESSES** caption set forth above, and a copy should also be sent to OCC Desk Officer, 1557–0014, 1557–0120, 1557–0194, or 1557–0190 by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974. You may request additional information or copies of the collections and supporting documentation submitted to OMB by contacting: Mary H. Gottlieb or Camille Y. Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 .S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this proposal is not subject to Section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 1

Banks, Banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 2

Credit life insurance, National banks.

12 CFR Part 3

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements.

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Bank Activities and Operations.

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

12 CFR Part 10

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 12

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 21

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 23

National banks

12 CFR Part 24

Community development, Credit investments, Low and moderate income housing, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses

12 CFR Part 26

Antitrust, Holding companies, National banks.

12 CFR Part 27

Civil rights, Credit, Fair housing, Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 31

Credit, National banks, Reporting and recordkeeping requirements

12 CFR Part 32

National banks, Reporting and recordkeeping requirements

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements

12 CFR Part 37

Banks, banking, Consumer protection, National banks, Reporting and recordkeeping requirements.

12 CFR Part 40

Banks, Banking, Consumer protection, National banks, Privacy, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), and 93a.

2. Amend § 1.1 by:

a. Revising the heading of § 1.1;

b. Revising the first sentence of paragraph (c); and

c. Adding a new paragraph (d).

The additions and revisions read as follows:

§ 1.1 Authority, purpose, scope, and reservation of authority.

* * * * *

(c) *Scope*. The standards set forth apply to national banks and federal branches of foreign banks. * * *

(d) *Reservation of authority*. The OCC may determine, on a case-by-case basis, that a national bank may acquire an investment security other than an investment security of a type set forth in this part, provided the OCC determines that the bank's investment is consistent with section 24 (Seventh) and with safe and sound banking practices. The OCC will consider all relevant factors, including the risk characteristics of the particular investment in comparison with the risk characteristics of investments that the OCC has previously authorized, and the bank's ability effectively to manage such risks. The OCC may impose limits or conditions in connection with approval of an investment security under this subsection.

3. Amend § 1.3 by:

a. In paragraph (h), removing the heading ''*Investment company shares*'' and in its place add the heading ''*Pooled investments*'';

b. In paragraph (h)(1)(i), removing the phrase ''under this part'';

c. In paragraph (h)(2), removing the phrase ''under this part'';

d. Adding a new paragraph (h)(3) to read as follows; and

e. In paragraph (i)(1), adding the phrase ''the security is marketable and'' after the word ''if'' and removing the phrase '', and the bank believes that the security may be sold with reasonable promptness at a price that corresponds reasonably to its fair value''.

The addition reads as follows:

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

* * * * *

(h) * * *

(3) Investments made under § 1.3(h) must be:

(i) Marketable and rated investment grade or the credit equivalent of a security rated investment grade, or

(ii) Satisfy the requirements of § 1.3(i).

* * * * *

PART 2—SALES OF CREDIT LIFE INSURANCE

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

Authority: 12 U.S.C. 24 (Seventh), 93a, and 1818(n).

5. In § 2.2 revise paragraph (a) to read as follows:

§ 2.2 Definitions.

(a) *Bank* means a national banking association.

* * * * *

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

7. In § 3.2, revise paragraph (b) to read as follows:

§ 3.2 Definitions.

* * * * *

(b) *Bank* means a national banking association.

* * * * *

8. In Appendix A of part 3, revise the first sentence of section 3(a)(1)(v) to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(1) * * *

(v) That portion of local currency claims on, or unconditionally guaranteed by, central governments of non-OECD countries, to the extent the bank has liabilities in that currency. * * *

* * * * *

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

9. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1817(a)(2) and (3), 1818(u) and (v), 1820(d)(6), 1920(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p–1, 1831o, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e.

10. In § 4.4, revise the second sentence to read as follows:

§ 4.4 Washington office.

* * * The Washington office directs OCC policy, oversees OCC operations, and is responsible for the direct supervision of certain national banks, including the largest national banks (through its Large Bank Supervision Department) and other national banks requiring special supervision. * * *

11. In § 4.5(a), revise the table to read as follows:

§ 4.5 District and field offices.

(a) * * *

District	Office address	Geographical composition
Northeastern District	Office of the Comptroller of the Currency, 340 Madison Avenue, 5th Floor, New York, NY 10017–2613.	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, eastern Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, the Virgin Islands, Virginia, and West Virginia.
Central District	Office of the Comptroller of the Currency, One Financial Place, Suite2700, 440 South LaSalle Street, Chicago, IL 60605.	Illinois, Indiana, eastern Iowa, northern Kentucky, Michigan, Minnesota, eastern Missouri, North Dakota, Ohio (except for eastern Ohio), and Wisconsin.
Southern District	Office of the Comptroller of the Currency, 500 North Akard Street, Suite 1600, Dallas, TX 75201.	Alabama, Arkansas, Florida, Georgia, southern Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.
Western District	Office of the Comptroller of the Currency, 1225 17th Street, Suite 300, Denver, CO 80202.	Alaska, Arizona, California, Colorado, Hawaii, Idaho, western Iowa, Kansas, western Missouri, Montana, Nebraska, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming, and Guam.

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

12. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 93a; 215a–2; 215a-3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

§ 5.3 [Amended]

13. In § 5.3 remove paragraph (j) and redesignate paragraphs (k) and (l) as paragraphs (j) and (k), respectively.

§ 5.4 [Amended]

14. Amend § 5.4(d) by:

a. Removing ''Licensing Manager'' in the first sentence and adding in its place ''Director for District Licensing''; and

b. Removing the phrase ''Bank Organization and Structure Department'' in the second sentence and adding in its place the phrase ''Licensing Department''.

15. Amend § 5.13 by:

a. In paragraph (c), adding two sentences at the end of the paragraph;

b. In paragraph (f):

i. Removing the phrase ''Deputy Comptroller for Bank Organization and Structure'' in the first sentence and adding in its place the phrase ''Deputy Comptroller for Licensing''; and

ii. Adding a sentence after the first sentence.

The additions read as follows:

§ 5.13 Decisions.

* * * * *

(c) * * * The OCC may return an application without a decision if it finds the filing to be materially deficient. A filing is materially deficient if it lacks sufficient information for the OCC to make a determination under the applicable statutory or regulatory criteria.

* * * * *

(f) * * * In the event the Deputy Comptroller for Licensing was the deciding official of the matter appealed, or was involved personally and substantially in the matter, the appeal may be referred instead to the Chief Counsel. * * *

* * * * *

16. Amend § 5.20 by:

a. In paragraph (i)(3), removing the term ''spokesperson'' wherever it appears and in its place adding the term '' contact person''; and

b. In paragraph (i)(5) by:

i. Revising the heading; and

ii. Adding a sentence after the second sentence of paragraph (i)(5)(i); and

iii. Redesignating paragraphs (i)(5)(ii) and (i)(5)(iii) as paragraphs (i)(5)(iii) and (i)(5)(iv), respectively; and

iv. Redesignating the last sentence of paragraph (i)(5)(i) as new paragraph (i)(5)(ii).

The addition and revision read as follows:

§ 5.20 Organizing a bank.

(i) * * *

(5) Activities.

(i) * * * A proposed national bank may offer and sell securities prior to OCC preliminary approval of the proposed national bank's charter application, provided that the proposed national bank has filed articles of association and an organization certificate, and a charter application that is completed and the bank complies with the OCC's securities offering regulations, 12 CFR part 16. * * *

17. Amend § 5.26 as follows:

a. Remove paragraph (e)(2)(i)(B);

b. Redesignate paragraphs (e)(2)(i)(C), (e)(2)(i)(D), (e)(2)(i)(E), as paragraphs (e)(2)(i)(B), (e)(2)(i)(C), (e)(2)(i)(D), respectively;

c. At the end of newly redesignated paragraph (e)(2)(i)(C), remove the word ''and';

d. At the end of newly redesignated paragraph (e)(2)(i)(D), remove the period and add in its place the phrase ''; and';

e. Add a new paragraph (e)(2)(i)(E) to read as follows;

f. In paragraph (e)(3), remove the designation ''(i)'' for paragraph (e)(3)(i); and

g. Remove paragraph (e)(3)(ii) in its entirety.

The addition reads as follows:

§ 5.26 Fiduciary powers.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(E) If requested by the OCC, an opinion of counsel that the proposed activities do not violate applicable Federal or State law, including citations to applicable law.

* * * * *

18. Amend § 5.30 as follows:

a. In paragraph (d)(1)(i), add ''intermittent facility,'' after ''temporary facility,' ''; and

b. Redesignate paragraphs (d)(3) though (d)(5) as paragraphs (d)(4) through (d)(6), respectively; and add a new paragraph (d)(3);

c. Redesignate paragraphs (f)(4) and (f)(5) as paragraphs (f)(5) and (f)(6), respectively, and add a new paragraph (f)(4) to read as follows.

The additions read as follows:

§ 5.30 Establishment, acquisition, and relocation of a branch.

* * * * *

(d) * * *

(3) *Intermittent branch* means a branch that is operated for one or more limited periods of time to provide branch banking services at a specified recurring event, on the grounds or premises where the event is held or at a fixed site adjacent to the grounds or premises where the event is held, and exclusively during the occurrence of the event. Examples of an intermittent branch include the operation of a branch on the campus of, or at a fixed site adjacent to the campus of, a specific college during school registration periods; or the operation of a branch during a State fair on State fairgrounds or at a fixed site adjacent to the fairgrounds.

* * * * *

(f) * * *

(4) *Intermittent branches.* Prior to operating an intermittent branch, a national bank shall file a branch application and publish notice in accordance with § 5.8, both of which shall identify the event at which the branch will be operated; designate a location for operation of the branch which shall be on the grounds or premises at which the event is held or on a fixed site adjacent to those grounds or premises; and specify the approximate time period during which the event will be held and during which the branch will operate, including whether operation of the branch will be on an annual or otherwise recurring basis. If the branch is approved, then the bank need not obtain approval each time it seeks to operate the branch in accordance with the original application and approval.

* * * * *

19. Amend § 5.33 to read as follows:

a. Add introductory text at the beginning of paragraph (d);

b. Remove the introductory text in paragraph (e)(1);

c. Redesignate paragraphs (e)(1)(i)(A) and (e)(1)(i)(B) as paragraphs (e)(1)(i)(A)(*1*) and (e)(1)(i)(A)(*2*), respectively, and paragraphs (e)(1)(i) through (e)(1)(iii) as paragraphs (e)(1)(i)(A) through (e)(1)(i)(C), respectively; paragraph (e)(1)(iv) as paragraph (e)(1)(ii); and paragraph (e)(1)(v) as paragraph (e)(1)(iii);

d. Add paragraph (e)(1)(i) introductory text;

e. Revise redesignated paragraph (e)(1)(ii);

f. Remove the phrase ‘‘, and with the appropriate district office’’ from the first sentence of paragraph (e)(8)(ii);

g. Revise the headings of paragraphs (g), (g)(1) and (g)(3);

h. Remove the phrase ‘‘or merger’’ in paragraph (g)(2)(ii);

i. Remove the phrase ‘‘12 U.S.C. 214c’’ in paragraph (g)(3)(i) and add in its place ‘‘12 U.S.C. 214b’’; and

j. Revise paragraph (h).

The additions and revisions read as follows:

§ 5.33 Business combinations.

* * * * *

(d) Definitions—For purposes of this § 5.33: * * *

(e) *Policy.*—(1) *Factors.*—(i) *Bank Merger Act.* When the OCC evaluates an application for a business combination under the Bank Merger Act, the OCC considers the following factors: * * *

(ii) *Community Reinvestment Act.* When the OCC evaluates an application for a business combination under the Community Reinvestment Act, the OCC considers the performance of the applicant and the other depository institutions involved in the business combination in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices.

* * * * *

(g) *Provisions governing consolidations and mergers with different types of entities.*—(1) *Consolidations and mergers under 12 U.S.C. 215 or 215a of a national bank with other national banks and State banks as defined in 12 U.S.C. 215b(1) resulting in a national bank.* * * *

* * * * *

(3) *Consolidation or merger of a national bank resulting in a State bank as defined in 12 U.S.C. 214(a) under 12 U.S.C. 214a or a Federal savings association under 12 U.S.C. 215c.* * * *

* * * * *

(h) *Interstate combinations under 12 U.S.C. 1831u.* A business combination between insured banks with different home States under the authority of 12 U.S.C. 1831u must satisfy the standards and requirements and comply with the procedures of 12 U.S.C. 1831u and either 12 U.S.C. 215, 215a, and 215a–1, as applicable, if the resulting bank is a national bank, or 12 U.S.C. 214a, 214b, and 214c if the resulting bank is a State bank. For purposes of 12 U.S.C. 1831u, the acquisition of a branch without the acquisition of all or substantially all of the assets of a bank is treated as the acquisition of a bank whose home State is the State in which the branch is located.

* * * * *

20. Amend § 5.34 as follows:

a. Amend paragraph (e)(2) by:

i. Redesignating paragraphs (e)(2)(i) and (e)(2)(ii) as paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B), respectively;

ii. Redesignating the first sentence of paragraph (e)(2) introductory text as paragraph (e)(2)(i) and revising it; and

iii. Redesignating the second sentence of paragraph (e)(2) introductory text as paragraph (e)(2)(ii) introductory text, republishing it for reader reference;

b. Amend paragraph (e)(5) by:

i. Revising paragraph (e)(5)(i);

ii. Removing paragraph (e)(5)(iv);

iii. Redesignating paragraphs (e)(5)(ii) and (e)(5)(iii) as paragraphs (e)(5)(iii) and (e)(5)(iv);

iv. Removing the word ‘‘and’’ at the end of paragraph (e)(5)(v)(X), and the period at the end of paragraph (e)(5)(v)(Y) and adding in its place ‘‘; and’’;

v. Revising paragraph (e)(5)(vi) introductory text;

vi. Removing the word ‘‘and’’ at the end of paragraph (e)(5)(vi)(B);

vii. Replacing the period with a semicolon and adding the word ‘‘and’’ at the end of (e)(5)(vi)(C); and

viii. Adding new paragraphs (e)(5)(ii), (e)(5)(v)(Z), (e)(5)(v)(AA), (e)(5)(v)(BB), (e)(5)(v)(CC), (e)(5)(v)(DD), (e)(5)(v)(EE), (e)(5)(v)(FF), (e)(5)(v)(GG), and (e)(5)(vi)(D).

The additions and revisions read as follows:

§ 5.34 Operating subsidiaries.

* * * * *

(e) * * *

(2) *Qualifying subsidiaries.* (i) An operating subsidiary in which a national bank may invest includes a corporation, limited liability company, limited partnership, or similar entity if:

(A) The bank has the ability to control the management and operations of the subsidiary by owning more than 50 percent of the voting interest in the subsidiary, or otherwise; and

(B) The operating subsidiary is consolidated with the bank under Generally Accepted Accounting Principles (GAAP).

(ii) However, the following subsidiaries are not operating subsidiaries subject to this section:

* * *

(5) *Procedures.*—(i) *Notice required.* (A) Except for operating subsidiaries subject to the application procedures set forth in paragraph (e)(5)(ii) of this section or exempt from notice or

application procedures under paragraph (e)(5)(vi) of this section, a national bank that is ''well capitalized'' and ''well managed'' may establish or acquire an operating subsidiary, or perform a new activity in an existing operating subsidiary, by providing the appropriate district office written notice within 10 days after acquiring or establishing the subsidiary, or commencing the new activity, if:

(*1*) The activity is listed in paragraph (e)(5)(v) of this section;

(*2*) The entity is a corporation or a limited liability company, or it is a limited partnership and the bank controls, directly or indirectly, all of the ownership interests in the limited partnership;

(*3*) If the entity is not organized in the form of a limited partnership, the bank has the ability to control the management and operations of the subsidiary by holding:

(*i*) More than 50 percent of the voting interests in the subsidiary, or

(*ii*) Voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management; and

(*4*) The financial statements of the bank and the subsidiary are consolidated under Generally Accepted Accounting Principles.

(B) The written notice must include a complete description of the bank's investment in the subsidiary and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity. To the extent that the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity in which the company is engaged and has present plans to conduct. The bank also must list for each State the lines of business for which the company holds, or will hold, an insurance license, indicating the State where the company holds a resident license or charter, as applicable. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(ii) *Application required.* (A) Except where the operating subsidiary is exempt from notice or application requirements under paragraph (e)(5)(vi) of this section, or subject to the notice procedures in paragraph (e)(5)(i), a national bank must first submit an application to, and receive approval from, the OCC with respect to the establishment or acquisition of an operating subsidiary, or the performance of a new activity in an existing operating subsidiary.

(B) The application must explain, as appropriate, how the bank ''controls'' the enterprise, describing in full detail structural arrangements where control is based on factors other than bank ownership of more than 50 percent of the voting interest of the subsidiary. The application also must include a complete description of the bank's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the bank and the subsidiary, and other information necessary to adequately describe the proposal. To the extent that the application relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity in which the company is engaged and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. The application must state whether the operating subsidiary will conduct any activity at a location other than the main office or a previously approved branch of the bank. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a pre-filing meeting with the OCC. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

* * * * *

(v) * * *

(Z) Providing data processing, and data transmission services, facilities (including equipment, technology, and personnel), data bases, advice and access to such services, facilities, data bases and advice, for the parent bank and for others, pursuant to 12 CFR 7.5006 to the extent permitted by published OCC precedent;

(AA) Providing bill presentment, billing, collection, and claims-processing services;

(BB) Providing safekeeping for personal information or valuable confidential trade or business information, such as encryption keys, to the extent permitted by published OCC precedent;

(CC) Providing payroll processing;

(DD) Providing branch management services;

(EE) Providing merchant processing services except when the activity involves the use of third parties to solicit or underwrite merchants;

(FF) Performing administrative tasks involved in benefits administration; and

(GG) Performing an activity approved in published OCC precedent for a non-controlling investment by a national bank or its operating subsidiary pursuant to 12 CFR 5.36(e)(2), provided the activity is conducted in accordance with the same terms and conditions applicable to the activity covered by the precedent as well as with any other restrictions that would be imposed due to its status as an operating subsidiary.

(vi) *No application or notice required.* A national bank may acquire or establish an operating subsidiary, or engage in the performance of a new activity in an existing operating subsidiary, without filing an application or providing notice to the OCC, if the bank is well managed and adequately capitalized or well capitalized and the:

* * *

(D) The standards set forth in paragraphs (e)(5)(i)(A)(*2*), (*3*), and (*4*) of this section are satisfied.

* * * * *

21.Amend § 5.35 as follows:

a. In paragraph (d)(1) remove ''insured banks'' each time it appears and add in its place ''insured depository institutions'';

b. In paragraph (d)(3) add '', except when such term appears in connection with the term 'insured depository institution' '' after ''means'';

c. Redesignate paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively;

d. Add new paragraph (d)(4);

e. In newly redesignated paragraph (d)(6):

i. Remove ''insured bank'' and add in its place ''insured depository institution'';

ii. Remove ''insured banks'' and add in its place ''insured depository institutions''; and

iii. Remove ''banks as its principal investor'' and add in its place ''insured depository institutions as its principal investor'';

f. Add the word ''and'' at the end of paragraph (g)(3);

g. Revise paragraph (g)(4);

h. Revise the heading in paragraph (i); and

i. Remove paragraphs (g)(5) and (i)(2) and the paragraph designation for paragraph (i)(1).

The additions and revisions read as follows:

§ 5.35 Bank service companies.

* * * * *

(d) * * *

(4) *Insured depository institution*, for purposes of this section, has the same meaning as in section 3 of the Federal Deposit Insurance Act.

* * * * *

(g) * * *

(4) Information demonstrating that the bank service company will perform only those services that each insured depository institution shareholder or member is authorized to perform under applicable Federal or State law and will perform such services only at locations in a State in which each such shareholder or member is authorized to perform such services unless performing services that are authorized by the Federal Reserve Board under the authority of 12 U.S.C. 1865(b).

* * * * *

(i) *Investment limitations*. * * *

22. Add § 5.36 as follows:

a. Add ''application or'' before ''notice'' in paragraph (b);

b. Remove the last sentence of paragraph (b);

c. Revise paragraph (e) introductory text;

d. Remove paragraph (e)(5);

e. Redesignate paragraphs (e)(6) through (e)(8) as paragraphs (e)(5) through (e)(7), respectively, and paragraphs (f) and (g) as paragraphs (h) and (i), respectively;

f. Revise redesignated paragraph (e)(6);

g. Add new paragraphs (f) and (g) to read as follows:

§ 5.36 Other equity investments.

* * * * *

(e) *Non-controlling investments; notice procedure*. Unless the procedures governing a national bank's non-controlling investment are prescribed by OCC rules implementing a separate legal authorization of the investment and except as provided in paragraphs (f) and (g) of this section, a national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in paragraph (e)(2) of this section by filing a written notice. The bank must file this written notice with the appropriate district office no later than 10 days after making the investment. The written notice must:

* * * * *

(6) Certify that the bank's loss exposure is limited as a legal matter and that the bank does not have unlimited liability for the obligations of the enterprise; and

* * * * *

(f) *Non-controlling investment; application procedure*. Unless the procedures governing a national bank's non-controlling investment are prescribed by OCC rules implementing a separate legal authorization of the investment, a national bank must file an application and obtain prior approval before making or acquiring, either directly or through an operating subsidiary, a non-controlling investment in an enterprise if the non-controlling investment does not qualify for the notice procedure set forth in paragraph (e) because the bank is unable to make the representations set forth in paragraph (e)(2) or (e)(3) of this section. The application must include the information required in paragraphs (e)(1) and (e)(4) through (e)(7) of this section and (e)(2) or (e)(3), as appropriate. If the bank is unable to make the representation set forth in paragraph (e)(2) of this section, the bank's application must explain why the activity in which the enterprise engages is a permissible activity for a national bank and why the applicant should be permitted to hold a non-controlling investment in an enterprise engaged in that activity. A bank may not make a non-controlling investment if it is unable to make the representations and provide the information specified in paragraphs (e)(1) and (e)(4) through (e)(7) of this section.

(g) *Non-controlling investments in entities holding assets in satisfaction of debts previously contracted*. Certain non-controlling investments may be eligible for expedited treatment where the bank's investment is in an entity holding assets in satisfaction of debts previously contracted or the bank acquires shares of a company in satisfaction of debts previously contracted.

(1) *Notice required*. A national bank that is well capitalized and well managed may acquire a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities of holding and managing assets acquired by the parent bank through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted, by filing a written notice in accordance with this paragraph (g)(i). The activities of the enterprise must be conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a national bank. The bank must file the written notice with the appropriate district office no later than 10 days after making the non-controlling investment. This notice must include a complete description of the bank's investment in the enterprise and the activities conducted, a description of how the bank plans to divest the non-controlling investment or the underlying assets within applicable statutory time frames, and a representation and undertaking that the bank will conduct the activities in accordance with OCC policies contained in guidance issued by the OCC regarding the activities. Any national bank receiving approval under this paragraph (g)(i) is deemed to have agreed that the enterprise will conduct the activity in a manner consistent with published OCC guidance.

(2) *No notice or application required*. A national bank is not required to file a notice or application under this § 5.36 if it acquires a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

* * * * *

23. Amend § 5.39 as follows:

a. Amend paragraph (d) by adding the phrase '', as implemented by Regulation W, 12 CFR part 223'' before ''as applicable'' in paragraph (d)(1);

b. Revise paragraph (h) by:

i. Removing the word ''Sections'' at the beginning of paragraph (h)(5) and adding in its place the phrase ''Except for a subsidiary of a bank that is considered a financial subsidiary under paragraph (a)(6) of this section solely because the subsidiary engages in the sale of insurance as agent or broker in a manner that is not permitted for national banks, sections'';

ii. Adding the phrase '', as implemented by Regulation W, 12 CFR part 223,'' before the word ''apply'' in paragraph (h)(5);

iii. Revising paragraph (h)(5)(iii);

iv. Redesignating paragraph (h)(5)(v) as paragraph (h)(5)(vi) and adding in redesignated paragraph (h)(5)(vi) the word ''other'' after the word ''Any''; and

v. Adding paragraph (h)(5)(v).

The additions and revisions read as follows:

§ 5.39 Financial subsidiaries.

* * * * *

(h) * * *

(5) * * *

(iii) A bank's purchase of or investment in a security issued by a financial subsidiary of the bank must be valued at the greater of:

(A) The total amount of consideration given (including liabilities assumed) by the bank, reduced to reflect amortization of the security to the extent consistent with GAAP, or

(B) The carrying value of the security (adjusted so as not to reflect the bank's *pro rata* portion of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the security).

* * * * *

(v) Any extension of credit to a financial subsidiary of a bank by an affiliate of the bank is treated as an extension of credit by the bank to the financial subsidiary if the extension of credit is treated as capital of the financial subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

* * * * *

24. Amend § 5.46 as follows:

a. Remove the phrase ''letter of notification'' wherever it appears and replace it with the word ''notice'';

b. Revise paragraph (e)(3)(iii);

c. Amend the first sentence of paragraph (i)(2) by removing the number ''30'' and replacing it with the number ''15''; and

d. Remove the phrase ''in order to obtain a certification from the OCC'' in the first sentence in paragraph (i)(3).

The revision reads as follows:

§ 5.46 Changes in permanent capital.

* * * * *

(e) * * *

(3) * * *

(iii) The amount transferred from undivided profits; and

* * * * *

25. Amend § 5.50 by:

a. Revising paragraph (a);

b. Redesignating paragraphs (d)(4) through (d)(6) as paragraphs (d)(5) through (d)(7), respectively;

c. Adding a new paragraph (d)(4);

d. Redesignating paragraphs (f)(2)(ii) through (f)(2)(v) as paragraphs (f)(2)(iii) through (f)(2)(vi), respectively;

e. Adding a new paragraph (f)(2)(ii);

f. Removing the phrase ''paragraph (f)(2)(ii)'' in newly redesignated paragraph (f)(2)(vi) and adding in its place ''paragraphs (f)(2)(ii) and (iii)'';

g. Adding the phrase ''information regarding the future prospects of the institution,'' after ''detailed financial information,'' in paragraph (f)(3)(i)(A);

h. Redesignating paragraphs (f)(4) and (f)(5) as paragraphs (f)(5) and (f)(6), respectively;

i. Adding a new paragraph (f)(4);

j. Removing the phrase ''The financial condition of any acquiring person'' and adding in its place ''Either the financial condition of any acquiring person or the future prospects of the institution'' in newly redesignated paragraph (f)(5)(iii);

k. Redesignating paragraph (h) as paragraph (i); and

l. Adding a new paragraph (h).

The additions and revisions read as follows:

§ 5.50 Change in bank control; reporting of stock loans.

(a) *Authority.* 12 U.S.C. 93a, 1817(j), and 12 U.S.C. 1831aa.

* * * * *

(d) * * *

(4) Immediate family includes a person's spouse, father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, children, stepchildren, grandparent, grandchildren, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and the spouse of any of the forgoing.

* * * * *

(f) * * *

(2) * * *

(ii) The OCC presumes, unless rebutted, that a person is acting in concert with his or her immediate family.

* * * * *

(4) *Conditional actions.* The OCC may impose conditions on its action not to disapprove a notice to assure satisfaction of the relevant statutory criteria for non-objection to a notice.

* * * * *

(h) *Reporting requirement.* After the consummation of the change in control, the national bank shall notify the OCC in writing of any changes or replacements of its chief executive officer or of any director occurring during the 12-month period beginning on the date of consummation. This notice must be filed within 10 days of such change or replacement and must include a statement of the past and current business and professional affiliations of the new chief executive officers or directors.

* * * * *

26. Revise § 5.64 to read as follows:

§ 5.64 Earnings limitation under 12 U.S.C. 60.

(a) *Definitions.* As used in this section, the term ''current year'' means the calendar year in which a national bank declared, or proposes to declare, a dividend. The term ''current year minus one'' means the year immediately preceding the current year. The term ''current year minus two'' means the year that is two years prior to the current year. The term ''current year minus three'' means the year that is three years prior to the current year. The term ''current year minus four'' means the year that is four years prior to the current year.

(b) *Dividends from undivided profits.* Subject to 12 U.S.C. 56 and this subpart, the directors of a national bank may declare and pay dividends of so much of the undivided profits as they judge to be expedient.

(c) *Earnings limitations under 12 U.S.C. 60.*—(1) *General rule.* For purposes of 12 U.S.C. 60, unless approved by the OCC in accordance with paragraph (c)(3) of this section, a national bank may not declare a dividend if the total amount of all dividends (common and preferred), including the proposed dividend, declared by the national bank in any current year exceeds the total of the national bank's net income for the current year to date, combined with its retained net income of current year minus one and current year minus two, less the sum of any transfers required by the OCC and any transfers required to be made to a fund for the retirement of any preferred stock.

(2) *Excess dividends in prior periods.* (i) If in current year minus one or current year minus two the bank declared dividends in excess of that year's net income, the excess shall not reduce retained net income for the three-year period specified in paragraph (c)(1) of this section, provided that the amount of excess dividends can be offset by retained net income in current year minus three or current year minus four. If the bank declared dividends in excess of net income in current year minus one, the excess is offset by retained net income in current year minus three and then by retained net income in current year minus two. If the bank declared dividends in excess of net income in current year minus two, the excess is first offset by retained net income in current year minus four and then by retained net income in current year minus three.

(ii) If the bank's retained net income in current year minus three and current year minus four was insufficient to offset the full amount of the excess dividends declared, as calculated in accordance with paragraph (c)(2)(i) of this section, then the amount that is not offset will reduce the retained net income available to pay dividends in the current year.

(iii) The calculation in paragraph (c)(2) of this section shall apply only to retained net loss that results from dividends declared in excess of a single year's net income and does not apply to other types of current earnings deficits.

(3) *Prior approval required.* A national bank may declare a dividend in excess of the amount described in paragraph (c) of this section, provided that the dividend is approved by the OCC. A national bank shall submit a request for prior approval of a dividend under 12

U.S.C. 60 to the appropriate district office.

(d) *Surplus surplus.* Any amount in capital surplus in excess of capital stock (referred to as ''surplus surplus'') may be transferred to undivided profits and available as dividends, provided:

(1) The bank can demonstrate that the amount came from earnings in prior periods, excluding the effect of any stock dividend; and

(2) The board of directors of the bank approves the transfer of the amount from capital surplus to undivided profits.

PART 7—BANK ACTIVITIES AND OPERATIONS

27. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 71, 71a, 92, 92a, 93, 93a, 481, and 1818.

§ 7.1016 [Amended]

28. Amend footnote 1 to part 7 by adding ''Supplement to UCP 500 for Electronic Presentation (eUCP) (available from ICC Publishing, Inc., 212/206–1150; *http://www.iccwbo.org*);'' before ''the International Standby Practices (ISP98) (ICC Publication No. 590)''.

29. Amend § 7.1017 by:

a. Redesignating the introductory text, paragraph (a), paragraph (b) introductory text, paragraphs (b)(1) through (b)(3), and paragraphs (b)(2)(i) through (b)(2)(iv) as paragraph (a) introductory text, paragraph (a)(1), paragraph (a)(2) introductory text, paragraphs (a)(2)(i) through (a)(2)(iii), and paragraphs (a)(2)(ii)(A) through (a)(2)(ii)(D), respectively; and

b. Adding a new paragraph (b) to read as follows:

§ 7.1017 National bank as guarantor or surety on indemnity bond.

* * * * *

(b) In addition to the foregoing, a national bank may guarantee financial obligations of a customer, subsidiary or affiliate, provided the amount of the bank's obligation is reasonably ascertainable and otherwise consistent with applicable law.

30. In § 7.2006, revise the second sentence to read as follows:

§ 7.2006 Cumulative voting in election of directors.

* * * If permitted by the national bank's articles of association, the shareholder may cast all these votes for one candidate or distribute the votes among as many candidates as the shareholder chooses. * * *

31. In § 7.5001, add a new paragraph (d)(3) to read as follows:

§ 7.5001 Electronic activities that are part of, or incidental to, the business of banking.

* * * * *

(d) * * *

(3) In addition to the electronic activities specifically permitted in § 7.5004 (sale of excess electronic capacity and by-products) and § 7.5006 (incidental non-financial data processing), the OCC has determined that the following electronic activities are incidental to the business of banking, pursuant to this section. This list of activities is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

(i) Web site development where incidental to other banking services;

(ii) Internet access and e-mail provided on a non-profit basis as a promotional activity;

(iii) Advisory and consulting services on electronic activities where the services are incidental to customer use of electronic banking services; and

(iv) Sale of equipment that is convenient or useful to customer's use of related electronic banking services, such as specialized terminals for scanning checks that will be deposited electronically by wholesale customers of banks under the Check Clearing for the 21st Century Act, Public Law 108–100 (12 U.S.C. 5001–5018) (the Check 21 Act).

32. Amend § 7.5002 by:

a. Removing the word ''and'' at the end of paragraph (a)(3),

b. Removing the period at the end of paragraph (a)(4) and adding in its place the ''; and''; and

c. Adding a new paragraph (a)(5) to read as follows:

§ 7.5002 Furnishing of products and services by electronic means and facilities.

(a) * * *

(5) Issuing electronic letters of credit within the scope of 12 CFR 7.1016.

* * * * *

33. In § 7.5006, add a new paragraph (c) as follows:

§ 7.5006 Data processing.

* * * * *

(c) *Software for performance of authorized banking functions.* A national bank may produce, market, or sell software that performs services or functions that the bank could perform directly, as part of the business of banking.

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

34. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

35. Revise § 9.20 to read as follows:

§ 9.20 Transfer agents.

(a)(1) *Registration.* An application for registration under Section 17A(c) of the Securities Exchange Act of 1934 of a transfer agent for which the OCC is the appropriate regulatory agency, as defined in section 3(a)(34)(B) of the Securities Exchange Act of 1934, shall be filed with the OCC on FFIEC Form TA–1, in accordance with the instructions contained therein. Registration shall become effective 30 days after the date an application on Form TA–1 is filed unless the OCC accelerates, denies, or postpones such registration in accordance with section 17A(c) of the Securities Exchange Act of 1934.

(2) *Amendments to registration.* Within 60 days following the date on which any information reported on Form TA–1 becomes inaccurate, misleading, or incomplete, the registrant shall file an amendment on FFIEC Form TA–1 correcting the inaccurate, misleading, or incomplete information. The filing of an amendment to an application for registration as a transfer agent under this section, which registration has not become effective, shall postpone the effective date of the registration for 30 days following the date on which the amendment is filed unless the OCC accelerates, denies, or postpones the registration in accordance with Section 17A(c) of the Securities Exchange Act of 1934.

(3) *Withdrawal from registration.* Any registered national bank transfer agent that ceases to engage in activities that require registration under Section 17A(c) of the Securities Exchange Act of 1934 may file a written notice of withdrawal from registration with the OCC. Deregistration shall be effective 60 days after filing.

(4) *Reports.* Every registration or amendment filed under this section shall constitute a report or application within the meaning of Sections 17, 17A(c), and 32(a) of the Securities Exchange Act of 1934.

(b) *Operational and Reporting Requirements.* The rules adopted by the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 prescribing operational and reporting requirements for transfer agents apply to the domestic activities of registered national bank transfer agents.

PART 10—MUNICIPAL SECURITIES DEALERS

36. The authority citation for part 10 is revised to read as follows:

Authority: 12 U.S.C. 93a, 481, and 1818; 15 U.S.C. 78o–4(c)(5) and 78q–78w.

37. In § 10.1 revise paragraph (a) to read as follows:

§ 10.1 Scope.

* * *

(a) Any national bank and separately identifiable department or division of a national bank (collectively, a national bank) that acts as a municipal securities dealer, as that term is defined in section 3(a)(30) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(30)); and

* * * * *

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

38. The authority citation for part 11 continues to read as follows:

Authority: 12 U.S.C. 93a, 15 U.S.C. 78l, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

39. In § 11.1 revise paragraph (a) to read as follows:

§ 11.1 Authority and OMB control number.

(a) *Authority.* The Office of the Comptroller of the Currency (OCC) is vested with the powers, functions, and duties otherwise vested in the Securities and Exchange Commission (Commission) to administer and enforce the provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (1934 Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p), regarding national banks with one or more classes of securities subject to the registration provisions of sections 12(b) and (g) of the 1934 Act (registered national banks). Further, the OCC has general rulemaking authority under 12 U.S.C. 93a, to promulgate rules and regulations concerning the activities of national banks.

* * * * *

PART 12—RECORDKEEPING AND CONFRIMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

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

Authority: 12 U.S.C. 24, 92a, and 93a.

§ 12.7 [Amended]

41. Amend § 12.7(a)(4) by removing ''ten business days after the end of the calendar quarter'' and adding ''the deadline specified in SEC rule 17j–1 (17 CFR 270.17j–1) for quarterly transaction reports'' in its place.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

42. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

43. In § 16.2 revise paragraph (b) to read as follows:

§ 16.2 Definitions.

* * * * *

(b) *Bank* means an existing national bank, a national bank in organization, or a Federal branch or agency of a foreign bank.

* * * * *

44. Amend § 16.5 as follows:

a. Revise paragraph (a); and

b. Add a new paragraph (h), to read as follows:

§ 16.5 Exemptions.

* * * * *

(a) If the securities are exempt from registration under section 3 of the Securities Act (15 U.S.C. 77c), but only by reason of an exemption other than section 3(a)(2) (exemption for bank securities), section 3(a)(11) (exemption for intrastate offerings), and section 3(a)(12) of the Securities Act (exemption for bank holding company formation).

* * * * *

(h) In a transaction that satisfies the requirements of § 16.9 of this part.

§ 16.6 [Amended]

45. Amend § 16.6 by:

a. In paragraph (a) introductory text, removing the phrase ''§§ 16.3, 16.15(a) and (b), and 16.20'' and adding in its place ''§§ 16.3 and 16.15(a) and (b)'';

b. In paragraph (a)(3), adding '', if issued in certificate form,'' after ''each note or debenture''.

§ 16.7 [Amended]

46. Amend § 16.7 as follows:

a. Remove paragraph (a)(3);

b. In paragraph (a)(1), add the word ''and'' after the semicolon; and

c. In paragraph (a)(2), remove ''; and'' and replace it with a period.

47. Add a new § 16.9 to read as follows:

§ 16.9 Securities offered and sold in holding company dissolution.

Offers and sales of bank issued securities in connection with the dissolution of the holding company of the bank are exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(h), provided all of the following requirements are met:

(a) The offer and sale of bank-issued securities occurs solely as part of a dissolution in which the security holders exchange their shares of stock in a holding company that had no significant assets other than securities of the bank, for bank stock;

(b) The security holders receive, after the dissolution, substantially the same proportional share interests in the bank as they held in the holding company;

(c) The rights and interests of the security holders in the bank are substantially the same as those in the holding company prior to the transaction; and

(d) The bank has substantially the same assets and liabilities as the holding company had on a consolidated basis prior to the transaction.

§ 16.20 [Removed]

48. Remove § 16.20.

PART 19—RULES OF PRACTICE AND PROCEDURE

49. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3018(a), 3909 and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note, 31 U.S.C. 330, 5321; and 42 U.S.C. 4012a.

50. In § 19.3, revise paragraph (g) to read as follows:

§ 19.3 Definitions.

* * * * *

(g) *Institution* includes any national bank or Federal branch or agency of a foreign bank.

* * * * *

§ 19.100 [Amended]

51. In § 19.100, second sentence, remove the phrase ''(except that in removal and prohibition cases instituted pursuant to 12 U.S.C. 1818, the administrative law judge will file the record and the recommended decision with the Board of Governors of the Federal Reserve System)''.

§ 19.110 [Amended]

52. In § 19.110, remove the phrase ''bank affairs'' and add in its place ''the affairs of any depository institution''.

53. Revise § 19.111 to read as follows:

§ 19.111 Suspension, removal, or prohibition.

The Comptroller may serve a notice of suspension or order of removal or prohibition on an institution-affiliated party. A copy of such notice or order will be served on any depository institution that the subject of the notice

or order is affiliated with at the time the notice or order is issued, whereupon the institution-affiliated party involved must immediately cease service to, or participation in the affairs of, that depository institution and, if so determined by the OCC, any other depository institution. The notice or order will indicate the basis for suspension, removal or prohibition and will inform the institution-affiliated party of the right to request in writing an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of any depository institution has not posed, does not pose, or is not likely to pose a threat to the interests of the depositors of, or has not threatened, does not threaten, or is not likely to threaten to impair public confidence in, any relevant depository institution. The written request must be sent by certified mail to, or served personally with a signed receipt on the District Deputy Comptroller in the OCC district in which the bank in question is located; if the bank is supervised by Large Bank Supervision, to the Senior Deputy Comptroller for Large Bank Supervision for the Office of the Comptroller of the Currency; if the bank is supervised by Mid-Size/Community Bank Supervision, to the Senior Deputy Comptroller for Mid-Size/Community Bank Supervision for the Office of the Comptroller of the Currency; or if the institution-affiliated party is no longer affiliated with a particular national bank, to the Deputy Comptroller for Special Supervision, Washington, DC 20219. The request must state specifically the relief desired and the grounds on which that relief is based. For purposes of this section, the term *depository institution* means any depository institution of which the petitioner is or was an institution-affiliated party at the time at which the notice or order was issued by the Comptroller.

§ 19.112 [Amended]

54. In § 19.112, amend paragraphs (a), (b), and (c) by removing the phrase ''the District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision,'' wherever it appears and adding in its place ''the District Deputy Comptroller, the Senior Deputy Comptroller for Large Bank Supervision, the Senior Deputy Comptroller for Mid-Size/Community Bank Supervision or the Deputy Comptroller for Special Supervision,''.

§ 19.113 [Amended]

55. In § 19.113, amend paragraph (c) by removing the phrase '' the bank'' and adding in its place ''any depository institution''.

56. Revise § 19.241 to read as follows:

§ 19.241 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDI Act (12 U.S.C. 1831m) for insured national banks and Federal branches and agencies of foreign banks.

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

57. The authority citation for part 21 continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881–1884, and 3401–3422; 31 U.S.C. 5318.

58. In § 21.1, revise the first sentence of paragraph (a) to read as follows:

§ 21.1 Purpose and scope of subpart A of this part.

(a) This subpart is issued by the Comptroller of the Currency pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882) and is applicable to all national banking associations.

* * *

* * * * *

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

59. The authority citation for part 22 continues to read as follows:

Authority: 12 U.S.C. 93a, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

60. In § 22.2 revise paragraph (b) to read as follows:

§ 22.2 Definitions.

* * * * *

(b) *Bank* means a national bank.

* * * * *

PART 23—LEASING

61. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 24 (Tenth), and 93a.

§ 23.6 [Amended]

62. Amend § 23.6 by:

a. Adding the phrase '', as implemented by Regulation W, 12 CFR part 223'' after ''12 U.S.C. 371c and 371c-1'' in the first sentence and before ''as applicable'' in the third sentence;

b. Adding '', as implemented by 12 CFR part 32'' after ''12 U.S.C. 84'' in the first sentence; and

c. Adding '', as implemented by part 32'', after ''12 U.S.C. 84'' in the fourth sentence.

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

63. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24 (Eleventh), 93a, 481, and 1818.

64. Amend § 24.1 by:

a. Removing in paragraph (a) the colon after the word ''Authority'' and adding a period in its place;

b. Revising paragraphs (b) and (d); and

c. Adding paragraph (e).

The revisions and addition read as follows:

§ 24.1 Authority, purpose, and OMB control number.

* * * * *

(b) *Purpose.* This part implements 12 U.S.C. 24 (Eleventh). It is the OCC's policy to encourage a national bank to make investments described in § 24.3, consistent with safety and soundness. This part provides the standards and procedures that apply to these investments.

* * * * *

(d) A national bank that makes loans or investments that are authorized under both 12 U.S.C. 24 (Eleventh) and other provisions of the Federal banking laws may do so under such other provisions without regard to the provisions of 12 U.S.C. 24 (Eleventh) or this part.

(e) Investments made, or written commitments to make investments made, prior to October 13, 2006, pursuant to 12 U.S.C. 24 (Eleventh) and this part, continue to be subject to the statutes and regulations in effect prior to the enactment of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109–351).

65. Amend § 24.2 by:

a. Revising paragraph (c);

b. Amending paragraph (f) by removing ''12 CFR 25.12(n)'' and adding ''12 CFR 25.12(m)'' in its place;

c. Redesignating paragraphs (g) through (i) as paragraphs (h) through (j), respectively; and

d. Adding new paragraph (g).

The revision and addition read as follows:

§ 24.2 Definitions.

* * * * *

(c) *Community and economic development entity* (CEDE) means an entity that makes investments or conducts activities that promote the public welfare by benefiting primarily low- and moderate-income areas or individuals.

* * * * *

(g) *Benefiting primarily low- and moderate-income areas or individuals*, when used to describe an investment, means:

(1) A majority (more than 50 percent) of the investment benefits low- and moderate-income areas or individuals; or

(2) The express, primary purpose of the investment (evidenced, for example, by government eligibility requirements) is to benefit low- and moderate-income areas or individuals.

* * * * *

66. Revise § 24.3 to read as follows:

§ 24.3 Public welfare investments.

A national bank or national bank subsidiary may make an investment directly or indirectly under this part if the investment promotes the public welfare by benefiting primarily low- and moderate-income areas or individuals.

67. Amend § 24.4 by:

a. Revising the first sentence in paragraph (a); and

b. Removing, in the second sentence of paragraph (a), ''10'' and adding ''15'' in its place.

The revision reads as follows:

§ 24.4 Investment limits.

(a) * * * A national bank's aggregate outstanding investments under this part may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines, by written approval of a written request by the bank to exceed the 5 percent limit, that a higher amount of investments will not pose a significant risk to the deposit insurance fund. * * *

* * * * *

68. Amend § 24.5 by:

a. Removing, in paragraph (a)(1), the space between the number ''24'' and the term ''(Eleventh)'';

b. Amending paragraphs (a)(2) and (b)(1) by removing ''Director, Community Development Division,'' and adding ''Community Affairs Department,'' in its place;

c. Adding a second sentence at the end of paragraph (a)(2);

d. In paragraph (a)(5), removing ''Community Development Division'' where it appears in the first and second sentences and adding ''Community Affairs Department'' in its place; and

e. Adding a new sentence after the first sentence in paragraph (b)(1).

The additions read as follows:

§ 24.5 Public welfare investment after-the-fact notice and prior approval procedures.

(a) * * *

(2) * * * The after-the-fact notification may also be e-mailed to *CommunityAffairs@occ.treas.gov,* faxed to (202) 874–4652, or provided electronically via National BankNet at *http://www.occ.treas.gov.*

* * * * *

(b) * * * (1) * * * The investment proposal may also be e-mailed to *CommunityAffairs@occ.treas.gov*, faxed to (202) 874–4652, or submitted electronically via National BankNet at *http://www.occ.treas.gov.* * * *

69. Amend § 24.6 by:

a. Revising the introductory text;

b. Amending paragraph (b)(1) by removing the phrase ''or other targeted redevelopment areas'';

c. Revising paragraphs (b)(2) and (d)(1);

d. Amending paragraphs (b)(3) and (b)(4) by removing the phrase ''or targeted redevelopment areas'';

e. Amend paragraph (d)(3) by removing the word ''previously'' and

f. Adding paragraph (d)(4).

The revisions and addition read as follows:

§ 24.6 Examples of qualifying public welfare investments.

The following are examples of qualifying public welfare investments to the extent they benefit primarily low- and moderate-income areas or individuals as set forth in § 24.3:

* * * * *

(b) * * *

(2) Investments that finance small businesses or small farms, including minority- and women-owned small businesses or small farms that, although not located in low- and moderate-income areas, create a significant number of permanent jobs for low- and moderate-income individuals.

* * * * *

(d) * * *

(1) Investments that provide credit counseling, financial literacy, job training, community development research, and similar technical assistance for non-profit community development organizations, low- and moderate-income individuals or areas, or small businesses, including minority- and women-owned small businesses, located in low- and moderate income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals.

* * * * *

(4) Investments in minority- and women-owned depository institutions that serve primarily low- and moderate-income individuals or low- and moderate-income areas.

70. Revise Appendix 1 to Part 24 to read as follows:

Appendix 1 to Part 24—CD–1—National Bank Community Development (Part 24) Investments

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Comptroller of the Currency
Administrator of National Banks

CD-1 – National Bank Community Development (Part 24) Investments

For Official Use Only

OMB Number
1557-0194

A national bank or national bank subsidiary may make an investment directly or indirectly under this part if the investment promotes the public welfare by benefiting primarily low- and moderate-income areas or individuals under the community development investment authority in 12 USC 24(Eleventh) and its implementing regulation, 12 CFR 24 (Part 24). Part 24 contains the OCC guidelines to determine whether an investment is designed to promote the public welfare by benefiting primarily low- and moderate-income areas or individuals and procedures that apply to those investments. National banks must submit the completed form to provide an after-the-fact notice or to request prior approval of a public welfare investment to the Community Affairs Department, Office of the Comptroller of the Currency, Washington, DC 20219. Please contact the Community Affairs Department at (202) 874-4930 or CommunityAffairs@occ.treas.gov for more information.

PLEASE PROVIDE THE FOLLOWING INFORMATION ABOUT THE INVESTING BANK.

Bank name:	Mailing address *(street or P.O. box):*
Bank charter number:	City, State, ZIP Code:
Telephone number:	Fax number:
E-mail address:	URL:

CONTACT FOR INFORMATION:

Name of bank contact responsible for form's information:	Name of bank contact responsible for CD investment (if different):
Mailing address *(street or P.O. box):*	Mailing address *(street or P.O. box)*:
City, State, ZIP Code:	City, State, ZIP Code:
Telephone number:	Telephone number:
Fax number:	Fax number:
E-mail address:	E-mail address:

PLEASE INDICATE THE PROCESS THE BANK REQUESTS BY CHECKING THE APPROPRIATE BOX, BELOW.

After-the-fact notice (12 CFR 24.5(a)) - complete sections 1 and 2. ☐

Prior approval (12 CFR 24.5(b)) - complete section 2. ☐

Form **Part 24**

Section 1 – After-The-Fact Notice Only (12 CFR 24.5(a))

A bank may provide an after-the-fact notice of its Part 24 investment if the bank responds affirmatively to all of the following requirements.

The bank is "well-capitalized," as defined in 12 CFR 24.2(j). Yes ☐ No ☐

The bank has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Yes ☐ No ☐

The bank's most recent Community Reinvestment Act rating is satisfactory or outstanding. Yes ☐ No ☐

The bank is not under a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive.

Yes ☐ No ☐

Including this investment, the bank's aggregate outstanding investments and commitments under Part 24 do not exceed 5 percent of its capital and surplus, unless the OCC has provided written approval of a written request by the bank allowing the bank to provide after-the-fact notices for investments that would raise the aggregate amount of the bank's Part 24 investments beyond 5 percent of its capital and surplus.

Yes ☐ No ☐

The investment does not involve properties carried on the bank's books as "other real estate owned." Yes ☐ No ☐

The OCC has not determined, in published guidance, that the investment is inappropriate for the after-the-fact notification.

Yes ☐ No ☐

Has the bank responded affirmatively to all of the above requirements in order to provide an after-the-fact notice of its Part 24 investment? [The OCC may have provided written notification that the bank may submit Part 24 after-the-fact notices. If so, please provide the date or a copy of the OCC's written notification.]

Yes ☐ (The bank may make an investment authorized by 12 USC 24(Eleventh) and this part and notify the OCC within 10 working days by submitting a completed after-the-fact notice.)

No ☐ (The bank must seek prior OCC approval of its investment and submit a completed investment proposal before making the investment.)

(To complete the after-the-fact notice process or to request prior OCC approval, please proceed to section 2 of this form.)

Section 2 — All Requests

1. **Please indicate how the bank's investment is consistent with Part 24 requirements for public welfare investments, under 12 CFR 24.3.**

   a. Check at least one of the following that applies to the bank's investment:

   The investment benefits primarily low- and moderate-income individuals. ☐

   The investment benefits primarily low- and moderate-income areas. ☐

2. **Please indicate how the bank's investment is consistent with Part 24 requirements for investment limits under 12 CFR 24.4 by responding to the following questions.**

   a. Dollar amount of the bank's investment that is the subject of this submission: _____.

   b. Percentage of the bank's capital and surplus represented by the bank's investment that is the subject of this submission: _____%.

   c. Percentage of the bank's capital and surplus represented by the aggregate outstanding Part 24 investments and commitments, including this investment: _____%.

   d. Does this investment expose the bank to unlimited liability?

   Yes ☐ (This investment cannot be made under Part 24.)

   No ☐

3. **Please attach a brief description of the bank's investment. (*See* 12 CFR 24.5(a)(3)(i) and (b)(2)(i)). Include the following information in the description.**

   a. The name of the community and economic development entity (CEDE) into which the bank's investment has been (or will be) made.

   b. The type of bank investment (equity, debt, or other).

   c. The activity or activities of the CEDE in which the bank has invested (or will invest). (*See* examples of qualifying investment activities described in 12 CFR 24.6 (a), (b), (c), and (d).)

   d. How the investment is structured so that it does not expose the bank to unlimited liability, such as by describing the structure of the CEDE (*e.g.*, CDC subsidiary, multi-bank CDC, multi-investor CDC, limited partnership, limited liability company, community development bank, community development financial institution, community development entity, community development venture capital fund, community development lending consortia, community development closed-end mutual funds, non-diversified closed-end investment companies, or any other CEDE) and by providing any other relevant information.

   e. The geographic area served by the CEDE.

   f. The total funding or other support by community development partners involved in the project (*e.g.*, government or public agencies, nonprofits, other investors), if known.

   g. Supplemental information (*e.g.*, prospectus, annual report, Web address that contains information about the CEDE in which the investment is or will be made), if available.

Form **Part 24**

4. Evidence of qualification is readily available for examination purposes.

The bank maintains information concerning this investment in a form readily accessible and available for examination that supports the certifications contained in this form and demonstrates that the investment meets the standards set out in 12 CFR 24.3, including, where applicable, the criteria of 12 CFR 25.23.

Yes ☐ No ☐

5. Certification

The undersigned hereby certifies that the foregoing information in this form is accurate and complete. It is further certified that the undersigned is authorized to file this form on Part 24 investments for the bank.

Name: _____

Title: _____

Signature: _____

Date: _____

Form **Part 24**

DESCRIPTION OF THE BANK'S CD INVESTMENT. (See *information previously requested*)

(*Type the description of the bank's Part 24 investment here. You may type as much text as necessary. You will have access to all of MS Word's editing features.*)

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PART 26—MANAGEMENT OFFICIAL INTERLOCKS

71. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 93a and 3201–3208.

72. In § 26.1 revise paragraph (c) to read as follows:

§ 26.1 Authority, purpose, and scope.

* * * * *

(c) *Scope.* This part applies to management officials of national banks and their affiliates.

§ 26.2 [Amended]

73. In § 26.2 remove paragraph (i) and redesignate paragraphs (j) through (q) as (i) through (p), respectively.

74. Revise § 26.8 to read as follows:

§ 26.8 Enforcement.

Except as provided in this section, the OCC administers and enforces the Interlocks Act with respect to national banks and their affiliates, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a national bank is subject to the primary regulation of another Federal depository organization supervisory agency, then the OCC does not administer and enforce the Interlocks Act with respect to that affiliate.

PART 27—FAIR HOUSING HOME LOAN DATA SYSTEM

75. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 1 *et seq.*, 93a, 161, 481, and 1818; 15 U.S.C. 1691 *et seq.*; 42 U.S.C. 3601 *et seq.*; 12 CFR part 202.

76. In § 27.1 revise paragraph (a) to read as follows:

§ 27.1 Scope and OMB control number.

(a) *Scope.* This part applies to the activities of national banks and their subsidiaries, which make home loans for the purpose of purchasing, construction-permanent financing, or refinancing of residential real property.

* * * * *

77. In § 27.2 revise paragraph (c) to read as follows:

§ 27.2 Definitions.

* * * * *

(c) *Bank* means a national bank and any subsidiaries of a national bank.

* * * * *

PART 28—INTERNATIONAL BANKING ACTIVITIES

78. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

§ 28.11 [Amended]

79. In § 28.11, remove the phrase ‘‘, pursuant to an agreement between the parent foreign bank and the FRB,’’ in paragraph (s).

§ 28.12 [Amended].

80. In § 28.12, remove the phrase ‘‘30th day after the OCC receives the filing,’’ in paragraph (e)(3) and add in its place ‘‘15th day after the close of the applicable public comment period, or the 45th day after the filing is received by the OCC, whichever is later,’’.

81. In § 28.50, revise paragraph (c) to read as follows:

§ 28.50 Authority, purpose, and scope.

* * * * *

(c) *Scope.* This subpart requires national banks to establish reserves against the risks presented in certain international assets and sets forth the accounting for various fees received by the banks when making international loans.

82. In § 28.51, revise paragraph (a) to read as follows:

§ 28.51 Definitions.

* * * * *

(a) *Banking institution* means a national bank.

* * * * *

PART 31—EXTENSIONS OF CREDIT TO INSIDERS AND TRANSACTIONS WITH AFFILIATES

83. The authority citation for part 31 is revised to read as follows:

Authority: 12 U.S.C. 93a, 375a(4), 375b(3), and 1817(k).

§ 31.1 [Amended]

84. Amend § 31.1 by removing ‘‘1817(k), and 1972(2)(G),’’ and adding in its place ‘‘and 1817(k),’’.

85. Revise Appendix A to part 31 as follows:

Appendix A to Part 31—Interpretations: Deposits Between Affiliated Banks

a. *General rule.* A deposit made by a bank in an affiliated bank is treated as a loan or extension of credit to the affiliate bank under 12 U.S.C. 371c, as this statute is implemented by the Federal Reserve Board’s Regulation W, 12 CFR part 223. Thus, unless an exemption from Regulation W is available, these deposits must be secured in accordance with 12 CFR 223.14. However, a national bank may not pledge assets to secure private deposits unless otherwise permitted by law (*see*, *e.g.*, 12 U.S.C. 90 (permitting collateralization of deposits of public funds); 12 U.S.C. 92a (trust funds); and 25 U.S.C. 156 and 162a (Native American funds)). Thus, unless one of the exceptions to 12 CFR part 223 noted in paragraph b. of this interpretation applies, unless another exception applies that enables a bank to meet the collateral requirements of § 223.14, or unless a party other than the bank in which the deposit is made can legally offer and does post the required collateral, a national bank may not:

1. Make a deposit in an affiliated national bank;

2. Make a deposit in an affiliated State-chartered bank unless the affiliated State-chartered bank can legally offer collateral for the deposit in conformance with applicable State law and 12 CFR 223.14; or

3. Receive deposits from an affiliated bank.

b. *Exceptions.* The restrictions of 12 CFR part 223 (other than 12 CFR 223.13, which requires affiliate transactions to be consistent with safe and sound banking practices) do not apply to deposits:

1. Made in an affiliated depository institution or affiliated foreign bank provided that the deposit represents an ongoing, working balance maintained in the ordinary course of correspondent business. *See* 12 CFR 223.42(a); or

2. Made in an affiliated, insured depository institution that meets the requirements of the ‘‘sister bank’’ exemption under 12 CFR 223.41(a) or (b).

Appendix B to Part 31—[Amended]

86. Amend Appendix B to part 31 by removing the third sentence under the heading ‘‘Exclusions to Definition.’’

PART 32—LENDING LIMITS

87. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 84, and 93a.

§ 32.1 [Amended]

88. In § 32.1(c)(1), add the phrase ‘‘and (e), as implemented by section 223.2(a) of Regulation W’’ after ‘‘12 U.S.C. 371c(b)(1)’’.

PART 34—REAL ESTATE LENDING AND APPRAISALS

89. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

90. Amend § 34.22 by:

a. Designating the existing text as paragraph (a), and by adding the following heading;

b. In newly designated paragraph (a), adding to the first sentence the words ''or combination of indices'' after the words ''specify an index''; and

c. Adding a new paragraph (b).

The addition and revision read as follows:

§ 34.22 Index.

(a) *In General.* * * *

(b) *Exception.* Thirty days after filing a notice with the OCC, a national bank may use an index other than one described in paragraph (a) of this section unless, within that 30-day period, the OCC has notified the bank that the notice presents supervisory concerns or raises significant issues of law or policy. If the OCC provides such notice to the bank, the bank may not use that index unless it applies for and receives the OCC's prior written approval.

PART 37—DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS

91. The authority citation for part 37 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a, 1818.

§ 37.7 [Amended]

92. Amend the last sentence in § 37.7(a) by removing the phrase ''§ 37.6(b)'' and adding the phrase ''§ 37.6(d)'' in its place.

PART 40—PRIVACY OF CONSUMER FINANCIAL INFORMATION

93. The authority citation for part 40 continues to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 6801 *et seq.*

94. In § 40.1 revise the last sentence of paragraph (b)(1) to read as follows:

§ 40.1 Purpose and scope.

* * * * *

(b) Scope. (1) * * * These are national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities except a broker or dealer that is registered under the Securities Exchange Act of 1934, a registered investment adviser (with respect to the investment advisory activities of the adviser and activities incidental to those investment advisory activities), an investment company registered under the Investment Company Act of 1940, an insurance company that is subject to supervision by a State insurance regulator (with respect to insurance activities of the company and activities incidental to those insurance activities), and an entity that is subject to regulation by the Commodity Futures Trading Commission.

* * * * *

Dated: May 25, 2007.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. 07–3206 Filed 7–2–07; 8:45 am]

BILLING CODE 4810–33–P

Federal Register

Tuesday,
July 3, 2007

Part III

The President

Proclamation 8158—Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Policies and Actions That Threaten Lebanon's Sovereignty and Democracy

Federal Register
Vol. 72, No. 127
Tuesday, July 3, 2007

Presidential Documents

Title 3—

The President

Proclamation 8158 of June 28, 2007

Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Policies and Actions That Threaten Lebanon's Sovereignty and Democracy

By the President of the United States of America

A Proclamation

In order to foster democratic institutions in Lebanon, to help the Lebanese people preserve their sovereignty and achieve their aspirations for democracy and regional stability, and to end the sponsorship of terrorism in Lebanon, it is in the interest of the United States to restrict the international travel, and to suspend the entry into the United States, as immigrants or nonimmigrants, of aliens who deliberately undermine or harm Lebanon's sovereignty, its legitimate government, or its democratic institutions, contribute to the breakdown in the rule of law in Lebanon, or benefit from policies or actions that do so, including through the sponsorship of terrorism, politically motivated violence and intimidation, or the reassertion of Syrian control in Lebanon.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 212(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1182(f), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in sections 2 and 3 of this proclamation, be detrimental to the interests of the United States.

I therefore hereby proclaim that:

Section 1. The entry into the United States, as immigrants or nonimmigrants, of the following aliens is hereby suspended:

(a) Lebanese government officials, former Lebanese government officials, and private persons who deliberately undermine or harm Lebanon's sovereignty, its legitimate government, or its democratic institutions, or contribute to the breakdown in the rule of law in Lebanon, including through the sponsorship of terrorism, politically motivated violence or intimidation, or the reassertion of Syrian control in Lebanon;

(b) Syrian government officials, former Syrian government officials, and persons who meet the criteria for designation under section 3(a)(i) or (ii) of Executive Order 13338 of May 11, 2004, who deliberately undermine or harm Lebanon's sovereignty, its legitimate government, or its democratic institutions, or contribute to the breakdown in the rule of law in Lebanon, including through the sponsorship of terrorism, politically motivated violence or intimidation, or the reassertion of Syrian control in Lebanon;

(c) Persons in Lebanon who act on behalf of, or actively promote the interests of, Syrian government officials by deliberately undermining or harming Lebanon's sovereignty, its legitimate government, or its democratic institutions, or contribute to the breakdown in the rule of law in Lebanon, including through the sponsorship of terrorism, politically motivated violence or intimidation, or the reassertion of Syrian control in Lebanon;

(d) Persons who, through their business dealings with any of the persons described in subsection (a), (b), or (c) of this section, derive significant financial benefit from, or materially support, policies or actions that deliberately undermine or harm Lebanon's sovereignty, its legitimate government, or its democratic institutions, or contribute to the breakdown in the rule of law in Lebanon, including through the sponsorship of terrorism, politically motivated violence or intimidation, or the reassertion of Syrian control in Lebanon; and

(e) The spouses and dependent children of persons described in subsections (a), (b), (c), and (d) of this section.

Sec. 2. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interests of the United States.

Sec. 3. Persons covered by section 1 or 2 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such procedures as the Secretary may establish under section 5 of this proclamation.

Sec. 4. Nothing in this proclamation shall be construed to derogate from U.S. Government obligations under applicable international agreements.

Sec. 5. The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary, in the Secretary's sole discretion, may establish.

Sec. 6. This proclamation is effective immediately. It shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated, either in whole or in part. Any such determination by the Secretary of State shall be published in the **Federal Register**.

Sec. 7. This proclamation is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of June, 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. 07–3275

Filed 7–2–07; 8:52 am]

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To provide that the Executive Director of the Inter-American Development Bank or the Alternate Executive Director of the Inter-American Development Bank may serve on the Board of Directors of the Inter-American Foundation. (June 21, 2007; 121 Stat. 230)

S. 1537/P.L. 110–39
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