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FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1270]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation. Regulation E requires that financial institutions make a receipt available at the time a consumer initiates an electronic fund transfer (EFT) at an electronic terminal. The final rule creates an exception from this requirement for EFTs of $15 or less.

DATES: The final rule is effective August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Vivian W. Wong, Attorney, or Ky Tran-Trong, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (EFTA or Act) (15 U.S.C. 1693 *et seq.*), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of the types of transfers covered by the Act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation provide for disclosure of the terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account activity statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. The Act and regulation also prescribe restrictions on the unsolicited issuance of ATM and debit cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) interprets the requirements of Regulation E to facilitate compliance and provides protection from liability under sections 915 and 916 of the EFTA for financial institutions and persons subject to the Act. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

II. Background and Overview of Comments Received

Under the EFTA and Regulation E, financial institutions must make a receipt available at the time a consumer initiates an EFT at an electronic terminal.[1] For this purpose, electronic terminals include ATMs and POS terminals. The receipt requirement applies whenever an EFT is made at an electronic terminal, regardless of the transaction amount.[2]

According to industry representatives, the receipt requirement has been an obstacle to their ability to respond to recent shifts in consumer payment preferences from cash to debit cards, particularly in environments that exclusively handle small-dollar transactions. For vending machines, for example, the costs associated with installing and servicing additional printing equipment capable of providing terminal receipts have been an impediment to offering cashless payment options. For public mass transit systems, the time required to provide each consumer with a receipt for debit card transactions at the gate or on a vehicle would cause delays that render the use of debit cards impractical in such circumstances.

On December 1, 2006, the Board published a notice of proposed rulemaking to eliminate the requirement to provide a receipt to consumers at POS and other electronic terminals for transactions of $15 or less. 71 FR 69500. In support of the proposal, the Board cited the implementation costs and the growing consumer preference for using debit cards in all types of transactions, regardless of the dollar amount of the transaction.[3] In addition, the Board noted that while receipts may be important to consumers for moderate- to high-value transactions, receipts may be less significant for small-dollar transactions because consumers are less likely to retain them for proof of payment or for account management purposes given the limited risk of loss to the consumer. Moreover, consumers would continue to receive a record of each transaction on their periodic statements and retain the right to assert an error arising from that transaction with their account-holding financial institution, provided notice was given within the required time frames.[4]

The Board received 56 comment letters in response to the proposal. Commenters included banks, credit unions, card associations, financial and other industry trade associations, consumer groups, and individual consumers. A majority of the comment letters were submitted by industry while nearly 20 letters were submitted by individual consumers or consumer groups. In general, financial institutions and other industry commenters supported the Board's proposal to eliminate the receipt requirement for small-dollar transactions although many of these commenters urged the Board to increase the dollar threshold for the

[1] *See* Section 906 of the EFTA (15 U.S.C. 1693d) and 12 CFR 205.9(a).

[2] The terminal receipt requirement does not apply to transactions initiated through a telephone operated by a consumer, or to transactions initiated by a consumer ''by a means analogous in function to a telephone.'' Thus, the receipt requirement does not apply to Internet transactions, where a consumer uses a computer to visit a merchant's web site to purchase goods or services. *See* § 205.2(h); comment 2(h)–1(ii).

[3] *See* Elizabeth Olson, *Who Needs Pocket Change When You've Got Plastic?*, N.Y. Times, Jun. 17, 2007, at BU5. *See also* Geoffrey Gerdes and Jack Walton II, ''Trends in the Use of Payment Instruments in the United States,'' *Federal Reserve Bulletin* 180, 181 (Spring 2005), and Ron Borzekowski, Elizabeth Kiser, and Shaista Ahmed, *Consumers' Use of Debit Cards: Patterns, Preferences, and Price Response* (Board of Governors of the Federal Reserve System, Financial and Economic Discussion Series 2006–16, April 2006).

[4] *See* 12 CFR 205.9(b) and 205.11.

exception. Specifically, these commenters advocated an increase in the dollar threshold from $15 to $25, stating that a higher threshold would provide greater flexibility in the future to accommodate consumer preferences for electronic forms of payment in more market segments in the future. Industry commenters also favored a $25 threshold for consistency with current payment card association rules that waive the personal identification number (PIN) and signature authorization requirements for certain merchants for transactions under $25.

Consumer group commenters believed that the $15 threshold was too high and stated that a $5 threshold would be sufficient to accommodate the retail environments that currently do not accept debit cards. Consumer groups also suggested some additional consumer protections be implemented along with the exception, including limiting the exception only to retail environments that do not conduct any transactions over the dollar threshold.

The Board received comments from 18 individual consumers. While six individual consumers supported the Board's proposal, the rest of the comments from individual consumers opposed the proposal, citing a need for receipts for various reasons, including account management, fraud detection, and reimbursement and income tax substantiation purposes.

III. Summary of the Final Rule

The Board is amending Regulation E to eliminate the requirement for providing terminal receipts for EFTs of $15 or less. The revisions are being adopted largely as proposed without substantive change. Pursuant to its authority under section 904(c) of the EFTA, the Board is adopting this limited exception to effectuate the purpose of the Act and facilitate the use and acceptance of debit cards in transactions where that option does not currently exist due to the compliance burdens associated with the receipt requirement.[5] In addition, a revision to the commentary clarifies that the fact that a financial institution does not make a terminal receipt available for an EFT of $15 or less is not an error for purposes of the error resolution provisions in § 205.11.

IV. Section-by-Section Analysis

Section 205.9 Receipts at Electronic Terminals; Periodic Statements

Consumer Need for a Receipt

Most commenters agreed that an exception from the receipt requirement would be appropriate to facilitate consumers' use of debit cards in locations that do not currently offer that option. Many individual consumer commenters, however, opposed the Board's proposal, offering various reasons for needing receipts. A majority of these commenters stated that they use terminal receipts to accurately enter the transaction amounts in their financial records to track their finances or to independently verify transactions listed on their periodic statement. A few consumer commenters stated that the receipts can be used as proof of purchase to obtain reimbursements by employers or to substantiate tax deductions. Several of these individual consumer commenters also raised concerns that eliminating the receipt requirement for transactions of $15 or less might make it more difficult for consumers to dispute these transactions. These commenters asserted that without the receipt to serve as evidence to support a consumer's claim of error, consumers may be less likely to prevail in a dispute with the financial institution.

As noted in the proposal, the intended purpose of making a terminal receipt available to a consumer at the time the consumer initiates an EFT was to provide a record of the transaction equivalent to a cancelled check.[6] Receipts may also serve to assist consumers in tracking their purchases for account management purposes. However, in certain retail environments, the burden in costs or delays in transaction time of making receipts available to consumers may discourage merchants and others from offering consumers the option to use a debit card, thus potentially limiting consumer payment options. The Board has previously recognized this potential obstacle in the context of vending machines in particular. In its March 1997 Report to the Congress on the Application of the Electronic Fund Transfer Act to Electronic Stored-Value Products (1997 Report), the Board noted that the delay in transaction time from printing a receipt might discourage the use of machines accepting products that require receipts.[7] The Board also noted in the 1997 Report the additional compliance costs of the receipt requirement. Moreover, in other retail environments, the requirement to provide receipts may be impractical, such as in the case of mass transit systems where the time required to print a receipt for each consumer purchasing single fares with a debit card would cause delays that would significantly conflict with a transit system's need to handle a heavy volume of transactions within short time periods. In these circumstances, a consumer using cash would not be provided a receipt for transactions conducted in these environments nor would the consumer expect one.

The Board believes that receipts are of minimal benefit to consumers in small-dollar transactions for several reasons. First, consumers are less likely to obtain a receipt or retain it for such transactions due to the limited risk of loss. Furthermore, even without a receipt for small-dollar transactions, consumers have other means to track their finances. For example, in addition to receiving a record of each transaction on periodic statements, consumers can in most cases access information on specific transactions before receiving their periodic statements from their financial institutions through the telephone and often through the Internet as well. For expense reimbursement and tax substantiation purposes, consumers can use their periodic statements for small-dollar transactions if documentary evidence is needed. Also, while a receipt may be helpful for a consumer in disputing a transaction with their account-holding financial institution for certain types of errors, the absence of a receipt does not affect the consumer's right to assert any error with their financial institution.

In light of the foregoing, the Board is exercising its authority under section 904(c) of the EFTA (15 U.S.C. 1693b) to create an exception to the receipt requirement that applies to EFTs of $15 or less. *See* § 205.9(a) and (e). The Board believes that the limited exception to the receipt requirement has significant potential benefits for consumers because the exception will facilitate compliance with the regulation and allow financial institutions to offer consumers the

[5] Section 904(c) of the EFTA (15 U.S.C. 1693b(c)) provides that the rules issued by the Board ''may contain such classifications, differentiations, or other provisions, and may provide for any adjustments and exceptions for any class of electronic fund transfers'' that in the judgment of the Board are ''necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion thereof, or to facilitate compliance therewith.''

[6] *See* National Commission on Electronic Fund Transfers, *EFT in the United States: Policy Recommendations in the Public Interest*, 47–48 (1977). *See also* S. Rep. No. 915, 95th Cong., 2d Sess. 5 (1978) (noting that ''receipts * * * would give the consumer written verification of the amount, date, and type of transfer and the person paid.'').

[7] *See Report to the Congress on the Application of the Electronic Fund Transfer Act to Electronic Stored-Value Products* 50–51 (March 1997).

additional option of using a debit card in retail environments where the costs and time delays of making receipts available now effectively preclude merchants from offering that option. Proposed § 205.9(e) is revised in the final rule, for consistency with § 205.9(a), to state that the exception applies to the general requirement to ''make available'' a terminal receipt at the time of the EFT. No substantive change is intended.

The Board also notes that the types of retail environments making use of the exception will likely be limited to circumstances where providing a receipt is impractical. In retail environments that process both large- and small-dollar transactions, merchants still will be required to make receipts available for those higher-dollar transactions, and the Board believes they will be unlikely to change their practices based on the dollar amount of the transaction. Similarly, merchants that provide receipts for purposes other than to comply with Regulation E, for example to facilitate merchandise returns, likely still would make receipts available for all transactions.

A few commenters requested clarification regarding the applicability of the proposed exception to ATM transactions. In the proposal, the Board stated that the proposed exception would apply to deposits at ATMs of $15 or less.[8] These commenters interpreted the statement as limiting the exception to ATM deposits and suggested that the exception should apply to all transactions conducted at an ATM. The Board did not intend to so limit the exception but instead to note that the exception could potentially apply to all transactions at an ATM, *including* deposits. Nevertheless, the Board anticipates that for operational reasons, financial institutions would continue to make receipts available for ATM transactions, regardless of the amount of transfer.

A small number of commenters suggested that instead of excepting small-dollar transactions altogether from the requirement to provide receipts, receipts should be provided to consumers upon request. Currently, comment 9(a)–1 already states that receipts may be provided only upon a consumer's request. As discussed above, however, in some retail environments, such as vending machines, the burdens associated with installing and maintaining printing equipment would be an obstacle to merchant acceptance of debit cards, even if the receipts are only provided upon request.

[8] *See* 71 FR at 69502.

Dollar Threshold

The Board specifically requested comment on whether $15 is the appropriate threshold for the proposed exception. Several industry commenters suggested that the threshold should be set at $25 to be consistent with current card association rules that waive requirements for signature or PIN authorization for transactions under that amount for certain retailers. These commenters stated that having different dollar amount thresholds for receipts and authorization requirements would be confusing to consumers and would be difficult to implement in terms of training staff and reprogramming terminals. Industry commenters also asserted that a $25 threshold would better accommodate rising costs than the $15 threshold and provide greater flexibility for expansion of the use of debit cards in additional retail environments.

Consumer group commenters and some individual consumers, however, thought the proposed threshold was too high, and they suggested that the threshold be the minimum amount necessary to address the limited circumstances cited by the industry. Thus, consumer groups recommended a threshold of no more than $5, which they stated would be sufficient to accommodate the types of retail environments discussed in the proposal. One consumer commenter suggested that the amount be lowered to $10, which the commenter believed would still take into account future price increases.

The final rule provides an exception for transactions of $15 or less, as proposed. As discussed in the proposal, the Board believes that the $15 threshold strikes an appropriate balance between industry's need for flexibility to offer cashless payment options in a variety of retail environments and consumers' need for receipts in higher-dollar transactions. Commenters did not provide any data that suggests that a higher or lower threshold than the one proposed by the Board better or more appropriately balances the costs and benefits of the exception. The $5 threshold suggested by consumer groups may be sufficient today to enable consumers to use debit cards in a majority of retail environments where the option to use a debit card is currently unavailable.[9] The Board believes, however, that such a low threshold might not sufficiently accommodate price increases that may occur in these retail environments over time. A lower threshold might also foreclose the possibility of additional retail environments accepting cashless payments in the future.

Commenters also did not provide strong arguments for increasing the threshold. While a $25 threshold would make the rule consistent with the card association rules that waive signature and PIN authorization for certain transactions under that amount, the Board does not believe consumers would be confused by a different dollar threshold for receiving receipts because these two rules fulfill different goals and purposes. The Board will continue to monitor the market need for the exception and revisit this dollar threshold as necessary.

Additional Consumer Protections

The Board solicited comment in the proposal on whether the Board should adopt any additional consumer protections in connection with the proposed exception. Most industry commenters thought that current consumer protections were sufficient and that additional protections were not necessary. A couple of industry commenters, however, suggested that a notice be posted at the terminal informing consumers that a receipt will not be provided for transactions of $15 or less. The Board believes that, on balance, the consumer benefit from receiving this notice is outweighed by the costs of imposing the burden on financial institutions of providing this notice. Many of the retail environments that would take advantage of the exception, such as vending machines, do not currently provide receipts for cash transactions. The Board believes that consumers will not expect a receipt when using a debit card in those environments. Thus, a notice informing them of the lack of a receipt is unnecessary.

Consumer group commenters proposed some additional consumer protections. First, consumer groups advocated that receipts should be required in transactions where additional fees are imposed because

[9] Vending industry data indicates that the average cost in 2005 for food and beverages sold in vending machines was about 75 cents for candy, $1 for bottled beverages, and $2 for frozen and refrigerated food products. ''State of the Vending Industry Report: Operators Slow to Invest; Sales Rise 3 Points in 2005,'' *Automatic Merchandiser,* 40–62 (August 2006). A survey of major transit systems in Boston, Chicago, New York, and Washington, DC, indicates the maximum one-way fares range between $2 and $5 for subway systems. In addition, according to one creator of smart-card based payment solutions for municipal parking, the average purchase in parking meters using its smart-card system is $1.39. *See* Ryan Kline, ''No Change, No Problem With Smart Card Enabled Meters,'' *SecureID News* (Mar. 28, 2007).

they believe receipts are helpful to alert consumers to these fees. Although a merchant or ATM operator would be aware of any fees it may impose in connection with a debit card transaction, it is the Board's understanding that information about transaction fees charged by the consumer's account-holding financial institution in connection with an EFT typically would not be transmitted to merchants or to ATM operators unless the terminal is owned and operated by the financial institution. Thus, a receipt that is made available in such circumstances is unlikely to alert the consumer to *all* fees that may be charged in the transaction. Accordingly, the Board declines to adopt the suggestion. Nonetheless, the Board agrees that consumers should be made aware in some manner of all of the fees that may be imposed *before* entering into a transaction.

Consumer group commenters also suggested that the exception should not be available in retail environments where transactions of both small- and large-dollar amounts are processed. As previously noted, however, the Board expects that for operational reasons, many businesses that process transactions of varying amounts will still make receipts available for all transactions, regardless of amount. Moreover, limiting the exception in the manner suggested would add additional complexity to the rule, and therefore, the Board believes the rule should be applied consistently for ease of compliance.

Section 205.11 Procedures for Resolving Errors

11(a) Definition of Error

Comment 11(a)–6, as proposed, clarified that the fact that a financial institution does not make a terminal receipt available for a transaction of $15 or less is not a billing error for purposes of §§ 205.11(a)(1)(vi) or (vii).[10] No comments were received regarding this provision, and the comment is adopted as proposed.

V. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the rule's expected impact on small entities. Under section 605(b) of the RFA, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and provides a statement providing the factual basis for such certification. Based on the analysis and reasons stated below, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C. 1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The Act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion [of the Act], or to facilitate compliance [with the Act].'' 15 U.S.C. 1693b(c).

The Board is revising Regulation E to provide financial institutions relief from the requirement to make available terminal receipts at the time of a transaction for EFTs of $15 or less. The Board believes that these revisions to Regulation E are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute and to facilitate compliance with the EFTA. These revisions facilitate financial institutions' compliance with the EFTA in small-dollar transactions by eliminating obstacles to the use of electronic payment methods in such transactions where the value to the consumer of having a record of the transaction in the form of a terminal receipt is limited.

2. *Issues raised by comments in response to the initial regulatory flexibility analysis.* In accordance with section 603(a) of the RFA, the Board conducted an initial regulatory flexibility analysis in connection with the proposed amendments. 71 FR 69502–03. The Board did not receive any comments on its regulatory flexibility analysis with respect to providing an exception from the requirement to make terminal receipts available for EFTs of $15 or less.

3. *Small entities affected by the final rule.* The requirement to make available receipts when a consumer initiates an EFT at an electronic terminal applies to all financial institutions, regardless of their size. Accordingly, the proposed exception would reduce the burden and compliance costs for small institutions by providing relief from the requirement to make terminal receipts available to consumers at the time of the transaction where the transaction amount is $15 or less.

4. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the final revisions to Regulation E.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The final rule contains requirements subject to the PRA. The collection of information that is required by this final rule is found in 12 CFR part 205. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200. This collection of information is required to provide benefits for consumers and is mandatory (15 U.S.C. 1693 *et seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months.

The final rule provides relief to financial institutions from the requirement to make available terminal receipts to consumers for all EFTs of $15 or less. The burden associated with use of this exception was previously estimated in the proposed rule and reported in documents filed with OMB. Under the Board's prior analysis, respondents that are currently providing receipts for EFTs of $15 or less would face a one-time burden of 8 hours (one business day) to reprogram and update their systems if they wish to make use of the exception. The Board did not receive any comments on the burden estimate provided in the proposal.

Although the current requirement to make receipts available for all transactions initiated at an electronic terminal applies to financial institutions, third parties, such as merchants, typically make receipts available on behalf of an account-holding financial institution. In retail environments that do not currently accept debit cards, the financial

[10] Section 205.11(a)(1)(vi) defines an ''error'' to include an EFT not identified in accordance with § 205.9 or § 205.10(a). Section 205.11(a)(1)(vii) states that a consumer's request for documentation required by § 205.9 or § 205.10(a) or for additional information or clarification concerning an EFT is also considered an ''error'' for error resolution purposes.

institution's burden under Regulation E due to the receipt requirement will not be impacted if the merchant should choose to accept debit cards for transactions of $15 or less without printing a receipt. Under the final rule, however, an account-holding financial institution may also choose to program its ATMs to make receipts available only for transactions above $15. For purposes of this PRA analysis, the Board estimates that if approximately 100 of the 1,289 institutions subject to the Board's supervisory authority program their ATMs in this manner, the resulting total annual burden for this requirement would be 800 hours. This would increase the total annual burden of this information collection from 83,866 hours to 84,666 hours for the first year the financial institution elects to take advantage of the exception. Thereafter, the Board estimates that the burden of making receipts available will decrease as a result of the new exception. Nevertheless, as stated above, the Board anticipates that financial institutions will likely continue to make receipts available for all transactions regardless of the amount and therefore incur no costs in reprogramming their ATMs.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Board's burden estimates. The Board estimates that if 1,500 of the approximately 19,300 depository institutions program their ATMs to take advantage of the exception, the resulting increase in their total estimated annual burden for complying with Regulation E as a whole would be 12,000 hours.

Because the records would be maintained by the institutions and the notices are not provided to the Board, no issue of confidentiality arises under the Freedom of Information Act.

Text of Final Revisions

Comments are numbered to comply with **Federal Register** publication rules.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 12 CFR part 205 and the Official Staff is amended as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

■ 2. Section 205.9 is amended by revising paragraph (a) introductory text and adding paragraph (e), to read as follows:

§ 205.9 Receipts at electronic terminals; periodic statements.

(a) *Receipts at electronic terminals—General.* Except as provided in paragraph (e) of this section, a financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

* * * * *

(e) *Exception for receipts in small-value transfers.* A financial institution is not subject to the requirement to make available a receipt under paragraph (a) of this section if the amount of the transfer is $15 or less.

■ 3. In Supplement I to part 205, under section 205.11—Procedures for Resolving Errors, under *11(a) Definition of Error,* paragraph 6 is added, to read as follows:

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.11—Procedures for Resolving Errors

11(a) Definition of Error

* * * * *

■ 6. *Terminal receipts for transfers of $15 or less.* The fact that an institution does not make a terminal receipt available for a transfer of $15 or less in accordance with § 205.9(e) is not an error for purposes of §§ 205.11(a)(1)(vi) or (vii).

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 27, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–12810 Filed 7–3–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27439; Airspace Docket No. 07–AAL–04]

Revision of Class E Airspace; Red Dog, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Red Dog, AK to provide adequate controlled airspace to contain aircraft executing Instrument Approach Procedures. Two Area Navigation (RNAV) Required Navigation Performance (RNP) Special Instrument Approach Procedures and an RNAV RNP Special Departure Procedure (DP) are being developed for the Red Dog Airport. This action revises existing Class E airspace upward from 1,200 feet (ft.) above the surface at Red Dog Airport, Red Dog, AK.

DATES: *Effective Date:* 0901 UTC, August 30, 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: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Monday, April 9, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 1,200 ft. above the surface at Red Dog, AK (72 FR 17445). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing Special Instrument Approach Procedures for the Red Dog Airport. A recent rulemaking action revealed that a small area of additional controlled airspace is required for these procedures. Additionally, the coordinates listed for the Red Dog Airport and the Selawik VOR/DME have been updated to reflect the most current location surveys. Class E controlled airspace extending upward from 1,200 ft. above the surface, in the

Red Dog Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment in favor of the action was received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Red Dog Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing Special Instrument Approach Procedures, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules operations at the Red Dog Airport, Red Dog, Alaska.

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. It, therefore—(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 rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Red Dog Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation Administration 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 Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Red Dog, AK [Revised]

Red Dog Airport, AK
(Lat. 68°01′56″ N., long. 162°53′57″ W.)
Noatak NDB/DME, AK
(Lat. 67°34′19″ N., long. 162°58′26″ W.)
Selawik VOR/DME, AK
(Lat. 66°35′58″ N., long. 159°59′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Red Dog Airport, AK; and that airspace extending upward from 1,200 ft. above the surface within a 14-mile radius of the Red Dog Airport, AK, and within 5 miles either side of a line from the Selawik VOR/DME, AK, to lat. 67°38′06″ N., long. 162°21′42″ W., to lat. 67°54′30″ N., long. 163°00′00″ W., and within 5 miles either side of a line from the Noatak NDB/DME, AK, to lat. 67°50′20″ N., long. 163°19′16″ W., and within 8 miles either side of the 219° bearing of the Red Dog NDB, AK, extending from the 14-mile radius from the Red Dog NDB, AK, to 30 miles southwest of the Red Dog Airport, AK.

* * * * *

Issued in Anchorage, AK, on June 25, 2007.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–12794 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No.: 070613195–7196–01]

RIN 0605–AA25

Disclosure of Government Information; Change to Designated Official

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Commerce's (Department) Freedom of Information Act (FOIA) regulations by changing the official authorized to deny requests for records under the Freedom of Information Act, and requests for correction or amendment under the Privacy Act (PA), for the Bureau of the Census.

DATES: Effective July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Christa D. Jones, Chief of the Policy Office, Bureau of the Census, 301–763–7310.

SUPPLEMENTARY INFORMATION: Appendix B to 15 CFR Part 4 designates the officials authorized to deny requests for records under the FOIA, and requests for records and requests for correction or amendment under the PA. In order to change the designated official for the Bureau of the Census, we are amending the regulations.

Classification

It has been determined that this notice is not significant for purposes of E.O. 12866. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning agency organization, procedure, or practice (5 U.S.C. 553(b)(A)). The Department finds good cause to waive the 30-day delay in effectiveness because it is unnecessary. This rule merely changes the name of the official who is authorized to deny

requests for records under the Freedom of Information Act, and requests for correction or amendment under the Privacy Act. 5 U.S.C.(d)(3).

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects in 15 CFR Part 4

Freedom of information, Privacy.

■ For the reasons above, amend 15 CFR Part 4 as follows:

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

■ 1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

Appendix B to Part 4—[Amended]

■ 2. In Appendix B to part 4, under the heading ECONOMICS AND STATISTICS ADMINISTRATION, delete ''Bureau of the Census: Manager, Freedom of Information Act'' and replace with ''Bureau of the Census: Freedom of Information Act Officer''.

Dated: June 28, 2007.

Brenda Dolan,

Departmental Freedom of Information and Privacy Act Officer.

[FR Doc. E7–13001 Filed 7–3–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

New Animal Drugs; Change of Sponsor's Name; Liquid Crystalline Trypsin, Peru Balsam, Castor Oil

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Mylan Bertek Pharmaceuticals, Inc., to UDL Laboratories, Inc.

DATES: This rule is effective July 5, 2007.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Mylan Bertek Pharmaceuticals, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478, has informed FDA that it has changed its name to UDL Laboratories, Inc., and is using a new drug labeler code. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect these changes. A conforming change is being made in 21 CFR 524.2620 for this sponsor's sole product.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''Mylan Bertek Pharmaceuticals, Inc.'' and alphabetically add a new entry for ''UDL Laboratories, Inc.''; and in the table in paragraph (c)(2) remove the entry for ''062749'' and numerically add a new entry for ''051079'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
UDL Laboratories, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478.	051079
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* *	* * * *
051079	UDL Laboratories, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478
* *	* * * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.2620 [Amended]

■ 4. In paragraph (a)(2) of § 524.2620, remove ''062794'' and add in its place ''051079''.

Dated: June 21, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–13010 Filed 7–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–123–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Virginia is revising its remining regulations to make three of those provisions permanent by deleting a termination date of September 30, 2004, from the regulations. The amendment is intended to render the State regulations consistent with recent amendments to SMCRA.

EFFECTIVE DATE: July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Dieringer, Director, Knoxville Field Office; Telephone: (276) 523–4303. Internet: *tdieringer@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * *a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Submission of the Amendment

By letter dated February 13, 2007 (Administrative Record Number VA–1058), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that the program amendment revises the Virginia Coal Surface Mining Reclamation Regulations to reflect the deletion from SMCRA, at section 510(e), of the termination date of section 510(e) of September 30, 2004.

Section 510 of SMCRA concerns permit approval or denial. Subsection 510(e) provides an exception to the prohibition of subsection (c), which prohibits the issuance of a permit where any surface coal mining operation owned or controlled by an applicant is currently in violation of SMCRA or such other laws referenced at subsection 510(c). Prior to being amended by the Tax Relief and Health Care Act of 2006, subsection 510(e) provided as follows:

(e) After the date of enactment of this subsection, the prohibition of subsection (c) shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subsection, the term ''violation'' has the same meaning as such term has under subsection (c). The authority of this subsection and section 515(b)(20)(B) shall terminate on September 30, 2004.

The effect of the deletion of the termination date in the SMCRA provision quoted above (the entire last sentence was deleted) is twofold: (1) It makes permanent the authority at subsection 510(e) of SMCRA to approve a permit application for surface coal mining operations on lands eligible for remining notwithstanding the existence of a violation resulting from an unanticipated event or condition at the site, and (2) it makes permanent the two-year revegetation responsibility period for lands eligible for remining at subsection 515(b)(20)(B) of SMCRA.

In its amendment, Virginia is deleting the termination date of September 30, 2004, from three of its program regulations concerning remining.

We announced receipt of the proposed amendment in the April 9, 2007, **Federal Register** (72 FR 17449). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 4, 2007. No comments were received.

III. OSM's Findings

1. 4 VAC 25–130–785.25. Lands eligible for remining.

This provision is amended by deleting subsection (c) in its entirety. Currently, 4 VAC 25–130–785.25 provides as follows:

(a) This section contains permitting requirements to implement 4 VAC 25–130–773.15(b)(4). Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this section.

(b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall:

(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

(2) With regard to potential environmental and safety problems referred in subdivision (b)(1) of this section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of this chapter can be met.

(c) The requirements of this section shall not apply after September 30, 2004.

In its submittal letter, the DMME stated that the deletion of subsection (c) containing the termination date of September 30, 2004, is intended to reflect the deletion of that same termination date at subsection 510(e) of SMCRA.

We find that the deletion of the termination date of September 30, 2004, renders 4 VAC 25–130–785.25 consistent with and no less stringent than § 510(e) of SMCRA and can be approved.

2. 4 VAC 25–130–816.116(c)(2)(ii) and 817.116(c)(2)(ii). Revegetation; standards for success.

These provisions are amended by deleting the phrase ''included in permits issued before September 30, 2004, or any renewals thereof'' at the end of the first sentence in subparts (c)(2)(ii). Currently, 4 VAC 25–130–816.116(c) and 817.116(c) provide as follows:

(c) (1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the division in accordance with subdivision (c)(3) of this section.

(2) The period of responsibility shall continue for a period of not less than:

(i) Five full years except as provided in subdivision (c)(2)(ii) of this section. The vegetation parameters identified in subsection (b) of this section for grazing land or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) The division may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal

conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

In its submittal letter, the DMME stated that the deletion of the September 30, 2004, termination date at subparts (c)(2)(ii) is intended to reflect the deletion of that same termination date at subsection 510(e) of SMCRA.

We find that the deletion of the termination date of September 30, 2004, renders 4 VAC 25–130–816.116(c)(2)(ii) and 817.116(c)(2)(ii) consistent with and no less stringent than § 510(e) of SMCRA and can be approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Number VA–1068) and no comments were received.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on February 22, 2007, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program (Administrative Record Number VA–1060). The United States Department of the Interior, Bureau of Land Management responded and stated that they found no inconsistencies with the proposed changes and the Federal Laws, which govern mining. The United States Department of Labor, Mine Safety and Health Administration responded and stated that there did not seem to be any conflicts with the changes and deemed the changes appropriate. The United States Department of the Interior, Fish and Wildlife Service responded and stated that no impacts to Federally listed or proposed species or Federally designated critical habitat will occur and was in agreement with the changes made.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(II)(i), we requested comments on the amendment from the EPA (Administrative Record number VA–1060). No comments were received.

V. OSM's Decision

Based on the above findings, we are approving the amendment sent to us by Virginia on February 13, 2007. To implement this decision, we are amending the Federal regulations at 30 CFR part 946, which codify decisions concerning the Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that a portion of the provisions in this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations 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.*). This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 29, 2007.

Brent Wahlquist,

Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR Part 946 is amended as set forth below:

PART 946—VIRGINIA

■ 1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 946.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
February 13, 2007	July 5, 2007	4 VAC 25–130–785.25(c)(deleted); 4 VAC 25–130–816.116 and 817.116(c)(2)(ii).

[FR Doc. E7–12979 Filed 7–3–07; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD09–07–052]

RIN 1625–AA08

Special Local Regulations for Marine Events; Port Huron to Mackinac Island Race

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Special Local Regulations for the Port Huron to Mackinac Island Race. This action is necessary to safely control vessel movements in the vicinity of the race and provide for the safety of the general boating public and commercial shipping. During this period, no person or vessel may enter the regulated area without the permission of the Coast Guard Patrol Commander.

DATES: Effective July 21, 2007 at 11 a.m. to July 24, 2007 at 11:59 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jennings, Jr., Enforcement Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH at (216) 902–6095.

SUPPLEMENTARY INFORMATION: We are publishing this document to provide notice that under the provisions of 33 CFR 100.901, the Port Huron to Mackinac Race Special Local Regulations will be enforced from 11 a.m. on July 21, 2007 to 11:59 p.m. on July 24, 2007. The Special Local Regulations apply to the waters of the Black River, St. Clair River and lower Lake Huron from:

Latitude	Longitude
42[deg]58.8[min] N	082[deg]26[min] W, to
42[deg]58.4[min] N	082[deg]24.8[min] W, thence
northward along the International Boundary to	
43[deg]02.8[min] N	082[deg]23.8[min] W, to
43[deg]02.8[min] N	082[deg]26.8[min] W, thence
southward along the U.S. shoreline to	
42[deg]58.9[min] N	082[deg]26[min] W, thence to
42[deg]58.8[min] N	082[deg] 26[min] W.

In order to ensure the safety of spectators and participating vessels, the Special Local Regulations will be enforced for the duration of the event. The Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.'' Vessels not participating in the race shall not make a wake nor endanger participants in the event or any other craft. Vessels participating in the race and patrol craft may create a wake but shall not endanger other vessels and are not required to check-in nor out with the Patrol Commander while participating in the race.

In the event these Special Local Regulations affect shipping, commercial vessels may request permission from the Patrol Commander to transit the area of the event by hailing call sign ''Coast Guard Patrol Commander'' on Channel 16 (156.8 MHZ).

Dated: June 22, 2007.

John E. Crowley, Jr.,

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

[FR Doc. E7–13020 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0046; EPA–R05–OAR–2006–0891; EPA–R05–OAR–2006–0892; FRL–8335–6]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an error in the final rule pertaining to the Motor Vehicle Emissions Budgets (MVEBs) for Washington County (Parkersburg-Marietta, WV–OH), Jefferson County, (Steubenville-Weirton, WV–OH), Belmont County (Wheeling, WV–OH), Stark County (Canton, OH) and Allen County (Lima, OH). The Environmental Protection Agency (EPA) proposed MVEBs for 2009 and 2018 for each of these Ohio counties. In the final approvals for the redesignation of these areas to attainment of the 8-hour ozone standard, EPA provide the 2018 MVEBs for each county but inadvertently omitted the 2009 interim MVEBs that were discussed in the proposed rules. This technical correction to these final rules provides the 2009 MVEBs.

EFFECTIVE DATE: This final rule is effective on July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Steve Marquardt, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3214, *marquardt.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published four notices of final rulemaking to redesignate Washington County (Parkersburg-Marietta, WV–OH), Jefferson County, (Steubenville-Weirton, WV–OH), Belmont County (Wheeling, WV–OH), Stark County (Canton, OH) and Allen County (Lima, OH) areas to attainment for the 8-hour ozone standard. For each of these counties EPA had proposed approval of the 2009 and 2018 MVEBs. In each of the final rulemaking notices, EPA omitted the 2009 MVEBs from the final rules. This is a correction to add these 2009 MVEBs.

Correction

For Allen County, and Stark County, Ohio, in the final rule published in the **Federal Register** on May 16, 2007 (70 FR 27647), on page 27649 in the first column, first paragraph: ''In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2018 VOC and NO_X MVEBs for each county for transportation conformity purposes. The 2018 motor vehicle * * *'' is corrected to read: ''In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2009 and 2018 VOC and NO_X MVEBs for each county for transportation conformity purposes. The 2009 MVEB for Allen County, Ohio are 5.08 tons per day of VOC and 8.28 tons per day of NO_X. The 2018 MVEBs for Allen County are 2.89 tons per day VOC and 3.47 tons per day of NO_X. For Stark County, Ohio, the 2009 MVEB area 10.02 tons per day of VOC and 18.03 tons per day of NO_X and the 2018 MVEBs are 5.37 tons per day of VOC and 7.08 tons per day of NO_X.

For Belmont County, Ohio, in the final rule published in the **Federal Register** on May 16, 2007 (70 FR 27644), on page 27645 in the first column, first paragraph: ''In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2018 VOC and NO_X MVEBs for transportation conformity purposes. The 2018 MVEBs * * *'' is corrected to read: ''In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2009 and 2018 VOC and NO_X MVEBs for transportation conformity purposes. For Belmont County, Ohio, the 2009 MVEBs are 2.60 tons per day of VOC and 2.22 tons per day of NO_X and the 2018 MVEBs are 1.52 tons per day of VOC and 1.91 tons per day of NO_X. West Virginia develops MVEBs for its portion of the area.''

For Jefferson County, Ohio, in the final rule published in the **Federal Register** on May 16, 2007 (70 FR 27640), on page 27641 in the first column, first paragraph: ''In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2018 volatile organic compound (VOC) and oxides of nitrogen (NO_X) MVEBs for Jefferson County for transportation conformity purposes. The 2018 MVEBs * * *'' is corrected to read: ''In addition, and supported by and

consistent with the ozone maintenance plan, EPA is approving the 2009 and 2018 volatile organic compound (VOC) and oxides of nitrogen (NO_X) MVEBs for Jefferson County for transportation conformity purposes. The 2009 MVEBs are 2.63 tons per day of VOC and 4.10 tons per day of NO_X and the 2018 MVEBs are 1.37 tons per day of VOC and 1.67 tons per day of NO_X.''

For Washington County, Ohio, in the final rule published in the **Federal Register** on May 16, 2007 (70 FR 27652), on page 27653 in the first column, first paragraph: ''In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2018 volatile organic compound (VOC) and oxides of nitrogen (NO_X) MVEBs for Washington County for transportation conformity purposes. The 2018 MVEBs * * *'' is corrected to read: ''In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2009 and 2018 volatile organic compound (VOC) and oxides of nitrogen (NO_X) MVEBs for Washington County for transportation conformity purposes. The 2009 MVEBs are 2.59 tons per day of VOC and 3.58 tons per day of NO_X and the 2018 MVEBs are 1.67 tons per day of VOC and 1.76 tons per day of NO_X. West Virginia develops MVEBs for its portion of the area.''

EPA is also making changes to 40 CFR 52.1885(ff) in order to include the 2009 MVEBs for the Ohio Counties.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an omission in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore 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)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this 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, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) 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 rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of July 5, 2007. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to 40 CFR part 52 for Ohio is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: June 25, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1885 is amended by revising paragraphs (ff) introductory text and (ff)(1) through (4) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(ff) Approval—The 8-hour ozone maintenance plans for the following areas have been approved:

(1) Jefferson County, as submitted on July 31, 2006 and supplemented on October 3, 2006. The maintenance plan establishes 2009 motor vehicle emissions budgets (MVEBs) for Jefferson County of 2.63 tons per day (tpd) of volatile organic compounds (VOCs) and 4.10 tpd of oxides of nitrogen (NO_X), and 2018 motor vehicle emission budgets of 1.37 tpd of VOCs and 1.67 tpd of NO_X.

(2) Belmont County, as submitted on June 20, 2006, and supplemented on August 24, 2006, and December 4, 2006. The maintenance plan establishes 2009 MVEBs for Belmont County of 2.60 tpd of VOCs and 2.22 tpd of NO_X and 2018

MVEBs of 1.52 tpd of VOCs and 1.91 tpd of NO_X.

(3) Allen County and Stark County, as submitted on June 20, 2006, and supplemented on August 24, 2006, and December 4, 2006. The maintenance plan establishes 2009 MVEBs for Allen County of 5.08 tpd of VOCs and 8.28 tpd of NO_X, and 2018 MVEBs for Allen County of 2.89 tpd of VOCs and 3.47 tpd of NO_X. For Stark County the 2009 MVEBs are 10.02 tpd of VOCs and 18.03 tpd of NO_X, and the 2018 budgets are 5.37 tpd of VOC and 7.08 tpd of NO_X.

(4) Washington County, as submitted on September 22, 2006, and supplemented on November 17, 2006. The maintenance plan establishes 2009 MVEBs for Washington County of 2.59 tpd of VOCs and 3.58 tpd of NO_X, and 2018 MVEBs for Washington county of 1.67 tpd of VOCs and 1.76 tpd of NO_X.

[FR Doc. E7–13000 Filed 7–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–RO4–OAR–2006–0584–200723; FRL–8335–4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request, submitted on September 29, 2006, from the Commonwealth of Kentucky (Kentucky), through the Kentucky Division for Air Quality (KDAQ), to redesignate the Kentucky portion of the bi-State Louisville 8-hour ozone nonattainment area to attainment for the 8-hour National Ambient Air Quality Standard (NAAQS). The Kentucky portion of the bi-State Louisville 8-hour ozone nonattainment area (hereafter referred to as the ''Kentucky State Louisville Area'') is comprised of three Kentucky Counties—Bullitt, Jefferson and Oldham. The Indiana portion of the bi-State Louisville 8-hour ozone nonattainment area is comprised of two Indiana Counties—Clark and Floyd. EPA's approval of Kentucky's redesignation request is based upon the determination that Kentucky has demonstrated that the Kentucky State Louisville Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire (both the Kentucky and Indiana portions) bi-State Louisville 8-hour ozone nonattainment area has attained the 8-hour ozone standard. Additionally, EPA is approving the 8-hour ozone maintenance plan for the Kentucky State Louisville Area, including the regional motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOCs) which cover the Kentucky and Indiana portions of this bi-State area. In July and September 2006, Indiana submitted a redesignation request and maintenance plan for the Indiana portion of this 8-hour ozone area with identical MVEBs to those reflected in Kentucky's maintenance plan. EPA is taking action on that redesignation request and maintenance plan in a separate action. This final rule also addresses a comment made on EPA's proposed rulemaking for this action, previously published April 27, 2007 (72 FR 20966).

EFFECTIVE DATE: This rule will be effective August 6, 2007.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–RO4–OAR–2006–0584. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

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

SUPPLEMENTARY INFORMATION:

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IV. What Are the Effects of These Actions?
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I. What Is the Background for the Actions?

On September 29, 2006, Kentucky, through the KDAQ, submitted a request to redesignate the Kentucky bi-State Louisville Area to attainment for the 8-hour ozone standard, and for EPA approval of the Kentucky State Implementation Plan (SIP) revision containing a maintenance plan for the Kentucky State Louisville Area. In an action published on April 27, 2007 (72 FR 20966), EPA proposed to approve the redesignation of the Kentucky State Louisville Area to attainment. EPA also proposed approval of Kentucky's plan for maintaining the 8-hour NAAQS as a SIP revision, and proposed to approve the regional MVEBs for the Kentucky bi-State Louisville Area that were contained in the maintenance plan. This rule is EPA's final action on the April 27, 2007, proposed rule.

During the comment period for EPA's proposal, one commenter submitted an adverse comment. EPA is addressing that comment in this action, and is taking final action as described in Section II and Section V of this rulemaking.

EPA is also providing information on the status of the Agency's transportation conformity adequacy determination for the new regional MVEBs for the years 2003 and 2020 that are contained in the maintenance plan for the Kentucky bi-State Louisville Area. These MVEBs are identical to those reflected in Indiana's maintenance plan for this bi-State area. The maintenance plans establish the following regional MVEBs for the Kentucky bi-State Louisville Area.

KENTUCKY BI-STATE LOUISVILLE 8-HOUR OZONE MVEBS

[Tons per day]

	2003	2020
VOC	40.97	22.92
NO_X	95.51	29.46

EPA's adequacy public comment period on these budgets (as contained in Kentucky's submittal) began on April 27, 2007, and closed on May 29, 2007.

No comments related to the adequacy of the MVEBs were received during EPA's adequacy public comment period.

Consequently, in a letter dated June 18, 2007, to John Lyons, Director of the Kentucky Department of Air Quality, and Art Williams, Director of Jefferson County Air Pollution Control District, EPA informed Kentucky of its intention to find the new 2003 and 2020 MVEBs for VOC and NO_X adequate for transportation conformity purposes. The State of Indiana was also informed of EPA's intentions in a letter date June 18, 2007. Subsequently, in a separate **Federal Register** notice, EPA is finding the 2003 and 2020 MVEBs, as contained in Kentucky's submittal, adequate. A similar notice was published for these MVEBs as contained in Indiana's submittal. These MVEBs meet the adequacy criteria contained in the Transportation Conformity Rule. The new regional MVEBs are thus currently being used for transportation conformity determinations.

Various aspects of EPA's Phase 1 8-hour ozone implementation rule were challenged in court and on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004.) *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA*, 472 F. 3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of federal actions. The June 8th decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations.

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

II. What Actions Is EPA Taking?

EPA is taking final action to approve Kentucky's redesignation request and to change the legal designation of the Kentucky bi-State Louisville Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA's response to the only comment received on the April 27, 2007, proposed rule, is described in Section III below. The entire bi-State Louisville 8-hour ozone nonattainment area is comprised of three Kentucky Counties—Bullitt, Jefferson, and Oldham, and two Indiana Counties—Clark and Floyd. This final action addresses only the Kentucky portion of the bi-state Louisville 8-hour ozone area. EPA will take action on the redesignation request and maintenance plan for the Indiana portion of this area in a separate action. EPA is also approving Kentucky's 8-hour ozone maintenance plan for Bullitt, Jefferson, and Oldham counties (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Kentucky state Louisville Area in attainment for the 8-hour ozone NAAQS through 2020. These approval actions are based on EPA's determination that Kentucky has demonstrated that the Kentucky state Louisville Area has met the criteria for redesignation to attainment specified in the CAA, including a demonstration that the entire bi-state Louisville area has attained the 8-hour ozone standard. EPA's analyses of Kentucky's 8-hour ozone redesignation request and maintenance plan are described in detail in the proposed rule published April 27, 2007 (72 FR 20966).

Consistent with the CAA, the maintenance plan that EPA is approving today also includes 2003 and 2020 regional MVEBs for NO_X and VOCs. In this action, EPA is approving these 2003 and 2020 MVEBs. For regional emission analysis years that involve years prior to 2020, the applicable budget, for the purpose of conducting transportation conformity analyses, are the new 2003 MVEBs. For regional emission analysis years that involve the year 2020 and beyond, the applicable budget, for the purpose of conducting transportation conformity analyses, are the new 2020 MVEBs. EPA determined that the 2003 and 2020 MVEBs are adequate through a previous action. EPA is approving such MVEBs in this action.

Additionally, in this action, EPA is responding to the one comment received on the April 27, 2007 (72 FR 20966), rulemaking proposing to approve the redesignation request and the maintenance plan SIP revision.

III. Why Are We Taking These Actions?

EPA has determined that the entire bi-state Louisville area has attained the 8-hour ozone standard and has also determined that Kentucky has demonstrated that all other criteria for the redesignation of the Kentucky State Louisville Area from nonattainment to attainment of the 8-hour ozone NAAQS have been met. See, section 107(d)(3)(E) of the CAA. EPA is also taking final action to approve the maintenance plan for the Kentucky State Louisville Area as meeting the requirements of sections 175A and 107(d) of the CAA. Furthermore, EPA is approving the 2003 and 2020 MVEBs contained in Kentucky's maintenance plan because these MVEBs are consistent with maintenance for the entire bi-state Louisville area. In the April 27, 2007, proposal to redesignate the Kentucky State Louisville Area, EPA described the applicable criteria for redesignation to attainment and its analysis of how those criteria have been met. The rationale for EPA's findings and actions is set forth in the proposed rulemaking and summarized in this rulemaking.

IV. What Are the Effects of These Actions?

Approval of the redesignation request changes the official designation of

Bullitt, Jefferson, and Oldham Counties for the 8-hour ozone NAAQS, found at 40 CFR Part 81. It also incorporates into the Kentucky SIP a plan for maintaining the 8-hour ozone NAAQS in the area through 2020. The maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS, and establishes MVEBs for the years 2003 and 2020 for the entire bi-state Louisville area.

V. Response to Comments

EPA received comments from one individual in response to the April 27, 2007, proposal to redesignate the Kentucky State Louisville Area. 72 FR 20966. The following is a summary of the adverse comment received and EPA's response to that comment.

Comment: Kentucky Resource Council states that the data reflects that Louisville Gas & Electric's (LG&E) power plants, Trimble, Ghent and Mill Creek, are running at low NO_X emission rates due to recent installation of selective catalytic reduction control technology. To the extent that these reductions achieved by the utilities to aid compliance with the NO_X SIP call are relied upon by the District and Kentucky in order to demonstrate attainment or maintenance of attainment, those emission reductions must be made permanent and enforceable. As a cap and trade program, the NO_X SIP call would not itself require that the utilities continue to operate at such a low emissions rate from these units.

Response: In evaluating attainment and future maintenance of the 8-hour ozone standard in the Louisville area, the Commonwealth of Kentucky and EPA utilized current air quality monitoring data and future projected emissions data based upon enforceable, permanent reductions. Some of these reductions are related to regional NO_X reduction programs, such as the NO_X SIP Call and the Clean Air Interstate Rule. As discussed in the redesignation proposal, the emissions analysis for the Louisville area indicates that the area will continue to maintain the 8-hour ozone standard until at least 2020 without taking into account the reductions from LG&E's use of specific control technology. The projected NO_X levels without reductions from the NO_X SIP Call for the years 2005, 2008, 2011, 2014, 2017 and 2020, continue to show reductions below the base year, which demonstrate maintenance as summarized in the table below. We expect the area will continue to benefit from the reductions due to control equipment installed to meet the NO_X SIP Call. However, EPA's analysis indicates that the area will continue to maintain even without those reductions.

ACTUAL AND PROJECTED NO_X EMISSIONS FOR BULLITT, JEFFERSON AND OLDHAM COUNTIES

[Tons per day]

Categories	2003	2005	2008	2011	2014	2017	2020
Point							
Bullitt	0.60	0.61	0.64	0.65	0.68	0.71	0.72
Jefferson	74.48	53.95	53.63	50.91	51.76	51.24	46.49
Oldham	0.09	0.09	0.09	0.10	0.10	0.10	0.10
Area Subtotal	75.47	54.65	54.36	51.66	52.54	52.05	47.31
Point							
Bullitt	0.11	0.11	0.12	0.12	0.13	0.13	0.14
Jefferson	0.75	0.76	0.76	0.76	0.76	0.76	0.76
Oldham	0.07	0.07	0.07	0.08	0.09	0.09	0.09
Area Subtotal	0.93	0.94	0.95	0.96	0.98	0.98	0.99
Mobile*							
Bullitt	7.52	7.23	5.99	4.83	3.84	3.17	2.73
Jefferson	63.29	54.96	41.55	29.62	19.76	13.87	11.02
Oldham	4.43	4.36	3.58	2.88	2.34	1.96	1.72
Mobile Subtotal	75.24	66.55	51.12	37.33	25.94	19.00	15.47
Nonroad							
Bullitt	1.81	1.78	1.70	1.60	1.47	1.35	1.27
Jefferson	31.94	31.11	29.36	27.37	25.26	23.44	22.17
Oldham	1.63	1.59	1.49	1.37	1.22	1.07	0.95
Nonroad Total	35.38	34.48	32.55	30.34	27.95	25.86	24.39
Total with NO_X SIP Call Reductions	187.02*	156.62	138.98	120.29	107.41	97.89	88.16
Reductions due to NO_X SIP Call	.....	20.88	21.25	23.93	23.05	23.54	28.25
Total without NO_X SIP Call reductions	.....	177.50	160.23	144.22	130.46	121.43	116.41

* Actual baseline emissions.

Without taking credit for NO_X SIP Call reductions, projected emissions are below the baseline emissions for attainment.

VI. Final Action

After evaluating Kentucky's redesignation request and the comments received, EPA is taking final action to approve the redesignation and change the legal designation of the Kentucky state Louisville Area from nonattainment to attainment for the 8-hour ozone NAAQS. Through this action, EPA is also approving into the Kentucky SIP, the 8-hour ozone maintenance plan for Bullitt, Jefferson,

and Oldham Counties, which includes the new 2003 MVEBs of 40.97 tpd for VOC, and 95.51 tpd for NO_X, and 2020 MVEBs of 22.92 tpd for VOC, and 29.46 tpd for NO_X for the entire bi-state Louisville area. These identical MVEBs are reflected in Indiana's 8-hour maintenance plan which was developed for Clark and Floyd Counties, as part of this bi-state 8-hour ozone area. EPA is taking action on the Indiana SIP through a separate rulemaking.

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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 27, 2007.

J.I. Palmer Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920(e) is amended by adding a new entry at the end of the table for ''Louisville 8-hour Ozone Maintenance Plan'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
Louisville 8-hour Ozone Maintenance Plan.	Bullitt County, Jefferson County, Oldham County.	.....	07/05/07 [Insert first page of publication].	

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.318, the table entitled ''Kentucky-Ozone (8–Hour Standard)'' is amended by revising the entry for ''Louisville, KY-IN'', ''Bullitt County'', ''Jefferson County'', and ''Oldham County'' to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Louisville, KY–IN:				
Bullitt County	08/06/07	Attainment.		
Jefferson County	08/06/07	Attainment.		
Oldham County	08/06/07	Attainment.		
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E7–13003 Filed 7–3–07; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2006–0560; FRL–8335–5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio Rules to Control Emissions From Hospital, Medical, and Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is giving final approval to a State plan submitted by Ohio concerning criteria pollutant and toxic emissions from Hospital, Medical and Infectious Waste Incinerators (HMIWI) in the State. Ohio prepared a plan based on Clean Air Act (CAA) sections 111(d) and 129 for existing hospital, medical and infectious waste incinerators and asked that it be reviewed and approved as the State plan. The State's HMIWI plan sets out requirements for affected units at least as stringent as the EPA requirements entitled ''Emission Guidelines (EG) and Compliance Times for Hospital/ Medical/ Infectious Waste Incinerators'' published in the **Federal Register** dated September 15, 1997. For approval, the State plan must include requirements for emission limits at least as protective as those requirements stated in the emission guideline. We are approving, with some exceptions, items requested in Ohio's letter of October 18, 2005, including limits for a variety of emissions from HMIWI units including mercury, cadmium, lead, hydrogen chloride, and dioxin and criteria pollutants. The rules in the plan apply to existing sources only, for which construction commenced on or before June 20, 1996. New sources constructed after this date are covered by a Federal new source performance standard. The Ohio rules, contained in the plan, were proposed on March 22, 2002, and a public hearing was held on April 29, 2002. The rules became effective in Ohio on March 23, 2004. EPA proposed approval in the **Federal Register** on January 10, 2007, and received no comments on the proposal. We are approving the Ohio plan, with several noted exceptions, because it meets the requirements of the EPA emission guideline affecting hospital incinerators.

DATES: This final rule is effective on August 6, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0560. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Paskevicz, Engineer, at (312) 886–6084 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084, *paskevicz.john@epa.gov.*

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

I. What action is being taken by EPA?
II. The HMIWI State Plan Requirement
III. What does the Ohio plan contain?
IV. Is my HMIWI subject to these regulations?
V. Why is the Ohio HMIWI plan approvable?
VI. Statutory and Executive Order Reviews

I. What action is being taken by EPA?

We are approving selected portions of the Ohio plan to control the air emissions from HMIWI units in the State. Our approval is based on EPA's review of the Ohio plan compared to the EPA Emission Guideline (EG) document dated September 15, 1997, 40 CFR part 60, subpart Ce (Emission Guidelines and Compliance Times for HMIWIs, see 62 FR 48348–48391). As noted in our proposed rule approval, (72 FR 1197, dated January 10, 2007) we are not taking action on the following portions of the Ohio Rule 3745–75–02(I)(1) (arsenic), –02(I)(2) (beryllium), –02(I)(4) (chromium), and –02(I)(7) (nickel) because these pollutants and the emission limits noted in the State rule for these pollutants are not part of the EPA emission guideline document. EPA

approves all other items requested in the Ohio letter of October 18, 2005.

II. The HMIWI State Plan Requirement

A HMIWI plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical or infectious waste.

States were required under section 111(d) and 129 of the CAA to submit State plans to control emissions from existing HMIWI units. The requirement for a State plan was triggered when EPA published the EG for HMIWI under 40 CFR part 60, subpart Ce (62 FR 48348, September 15, 1997). The State plan is required to reduce several types of air pollutants associated with waste incineration.

The State plan includes control requirements which will reduce emissions of criteria pollutants including: particulate matter, sulfur dioxide, carbon monoxide, and nitrogen oxides. The approved plan will also control the emissions of toxic pollutants including: hydrogen chloride, lead, cadmium, mercury, and dioxin/furans. All of these pollutants cause adverse effects to public health and the environment. Dioxin, lead, and mercury bio-accumulate through the food chain. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Exposure to dioxin and furans can cause skin disorders, cancer, and reproductive effects such as endometriosis. Dioxin and furans can also affect the immune system. Acid gases affect the respiratory tract, as well as contribute to the acid rain that damages lakes and harms agriculture and forests and man-made structures. Particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Nitrogen oxide emissions contribute to the formation of acid rain and ground level ozone, which is associated with a number of adverse health and environmental effects.

III. What does the Ohio plan contain?

The Ohio Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d)/129 State Plan;
2. State rule, known as OAC 3745–75, as the enforceable mechanism;
3. An inventory of known active and exempt facilities, along with estimates of their potential air emissions;
4. Emission limits that are as protective as the EG;
5. A compliance date accomplished under the Federal Plan;
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing on the State Plan; and,
8. Provisions for progress reports to EPA.

IV. Is my HMIWI subject to these regulations?

If your HMIWI as defined by Ohio is presently in operation and you rely on it to get rid of your hospital, medical and infectious waste and it was built on or before June 20, 1996, then it is subject to the State's regulation.

V. Why is the Ohio HMIWI plan approvable?

We compared the Ohio rules to the EPA's EG for HMIWI and found the Ohio rules matching very closely with the EPA EG with one exception. The exception is the Ohio rules also cover additional toxic pollutants including arsenic, beryllium, chromium, and nickel. These additional toxic pollutants are not part of the HMIWI EG and EPA is not including these pollutants in today's approved rule.

VI. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

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

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

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

Executive Order 13132: Federalism

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

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

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

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

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

Congressional Review Act

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

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Waste treatment and disposal, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 25, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 62, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart KK—Ohio

■ 2. Subpart KK is amended by adding an undesignated center heading and § 62.8880 to read as follows:

* * * * *

Emissions From Hospital, Medical, and Infectious Waste Incinerators (HMIWI)

§ 62.8880 Identification of plan.

(a) *Identification of plan.* Ohio rules to Control Emissions from Hospital, Medical, and Infectious Waste Incinerators (HMIWI), submitted by the Ohio EPA on October 18, 2005. Rules 3745–75–01, 3745–75–02, 3745–75–03, 3745–75–04, 3745–75–05, and 3745–75–06 of the Ohio Administrative Code, effective in the state March 23, 2004, with the exception of rules 3745–75–02(I)(1), 3745–75–02(I)(2), 3745–75–02(I)(4), and 3745–75–02(I)(7).

(b) *Identification of sources.* The plan applies to existing hospital/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced on or before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

(c) *Effective date.* The effective date of the plan is August 6, 2007.

[FR Doc. E7–13002 Filed 7–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–8335–9]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of partial deletion of the Uravan Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a direct final notice of partial deletion of approximately 7 acres within the Uravan Superfund Site (Site), located in Montrose County, Colorado, from the National Priorities List (NPL). The acerage comprises a one mile section of Colorado State Highway 141 between mile posts 75 and 76.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substance Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Colorado, through the Colorado Department of Public Health and the Environment because EPA has determined that all appropriate response actions, under CERCLA, for the approximate 7 acres have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective September 4, 2007. If adverse comments are received by August 6, 2007, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Rebecca Thomas, Project Manager, 8EPR–SR, *thomas.rebecca@epa.gov*, U.S. EPA, Region 8, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6552 or 1–800–227–8917, extension 6552.

INFORMATION REPOSITORIES: Comprehensive information about the Site is available for viewing and copying at the Site information repository located at U.S. EPA Region 8 Records Center, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6473, hours of operation M–F 8 a.m. to 4 p.m., or at the Colorado Department of Public Health and the Environment, Records Center, Building B, Second Floor, 4300 Cherry Creek Drive South, Denver, CO 80246–1530, hours of operation M–F 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rebecca Thomas, Project Manager, 8EPR–SR, *thomas.rebecca@epa.gov*, U.S. EPA, Region 8, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6552 or toll free 1–800–227–8917, extension 6552.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 8 is publishing this direct final notice of partial deletion of approximately 7 acres within the Uravan Superfund Site from the National Priorities List.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of

the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 4, 2007, unless EPA receives adverse comments by August 6, 2007, on this document. If adverse comments are received within the 30 day public comment period on this document, EPA will publish a timely withdrawal of this direct final partial deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Uravan Superfund Site and demonstrates how a portion of the site meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

1. The EPA consulted with Colorado on the deletion of the Site from the NPL prior to developing this direct final notice of partial deletion.

2. Colorado concurred with deletion of the Site from the NPL.

3. Concurrently with the publication of this direct final notice of partial deletion, a notice of the availability of the parallel notice of intent to partially delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

4. The EPA placed copies of documents supporting the deletion in the Site information repository identified above.

5. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of partial deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's right or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for partially deleting the Site from the NPL.

Site Location

The Uravan site is located in western Colorado in the western portion of Montrose County on Highway 141 approximately 13 miles northwest of the Town of Nucla. The town of Uravan was demolished during remedial activities at the Site. The Site is located adjacent to the San Miguel River which drains into the Dolores River and hence to the Colorado River.

This partial deletion pertains to approximately 7 acres, a one mile section of Colorado State Highway 141, comprised of a right-of-way up to 60 feet in width between mile posts 75 and 76.

Site History

Colorado State Highway 141 traverses the Uravan Superfund site in western Colorado. The Uravan site is included on the National Priorities List (NPL) and is undergoing remedial work pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Colorado Department of Transportation (CDOT) has completed cleanup activities along the portion of Highway 141 impacted by radioactive mill tailings generated from the Manhattan Project in the 1940's.

A curve in State Highway 141 between mile posts 75 and 76 was identified as having significant safety issues related to its design. Highway 141 in this area was thought to be underlain by radioactive materials. Gamma data and 26 soil borings along the roadway confirmed that the roadway was underlain by radioactive materials.

Construction activities associated with the road realignment exposed approximately 1 mile of road bed containing radioactive materials and these waste materials were removed and relocated to a secure on-site repository on Club Mesa for long-term isolation. Institutional controls or future site inspections of the highway are not warranted because of the successful removal of contaminated materials.

Site Investigation

Post-remedial action conditions at the Highway 141 site were evaluated using penetrating radiation surveys and laboratory analyses conducted on surface and subsurface soil samples collected in 2006. All of the pertinent details concerning site activities were taken from the September 2006 *Final Construction and Soil Confirmation Investigation Report* prepared by Umetco Minerals Corporation (Umetco). Twelve representative soil sample locations were randomly selected using the U.S. Department of Energy's (DOE) Visual Sampling Plan Version 2.2

software. Investigative procedures followed site-specific guidance documents regarding data collection.

CDPHE conducted walking surveys of the highway right-of-way after excavation was complete. In addition, CDPHE obtained splits of selected samples and conducted soil sample analyses in their laboratory. Both of these activities confirmed that the measurements and analytical results obtained during Umetco's investigation were reasonable, repeatable and valid.

Cleanup criteria for soils in the Uravan area were established in Umetco's report titled *Soil Cleanup Program Methodology for Uravan, Colorado* dated June 1999. The report sets forth two criteria for unrestricted use of the property. Category 1 criteria are based on attaining soil cleanup levels that are within background ranges and Category 2 criteria represent soil cleanup levels that are health-risk based. Both Category 1 and 2 cleanup levels are protective of human health and allow for unrestricted use of the property.

Remedy Decision

Evaluation of radioactive materials and contaminated soils along Highway 141 was initiated in 1996 with the development of a remedial investigation plan for the highway right-of-way and surrounding environs that Umetco reported in a March 1996 *Remedial Investigation Plan for Surface and Subsurface Soils and Structures Northeast of Highway 141.* This investigation plan described field techniques and methods to be used during site characterization activities and set forth data quality objectives for conducting on-site gamma measurements and obtaining analytical data from the laboratory testing of surface and subsurface soil samples. The April 2000 *Characterization Report and Remedial Action Plan* prepared by Umetco shows that contaminated materials were likely present beneath the roadway between mileposts 75 and 76 but that the remaining part of the roadway from milepost 76 and 78 did not contain uranium mill tailing materials. This conclusion was in conformance with known, historical processing activities that only occurred in the area between mileposts 75 and 76 (the Manhattan Project).

CDOT characterized the area utilizing 26 soil borings along the highway shoulders to obtain subsurface geological, environmental and geotechnical information. Boring depths ranged from 4 to 20 feet and all were logged with a gamma scintillometer. The borings were advanced until native soils were encountered, generally 10 to 20 feet, or until refusal. Umetco supplied trained radiological technicians and equipment to assist in logging the borings, and to maintain control of contaminated materials.

Direct surface and subsurface field measurements included the use of scintillation penetrating radiation measurements. Gamma radiation measurements were performed at the soil surface and subsurface at approximately 1 foot intervals along the vertical bore path. Gamma radiation measurements were collected in-situ to appraise penetrating radiation exposure rates and to estimate soil radionuclide concentrations.

Characterization of Risk

A characterization investigation was conducted in accordance with established procedures that indicated radioactive materials were present in the area from mileposts 75 and 76 but that such materials were not present in the remaining Highway 141 right-of-way.

Following site cleanup, the average contaminant concentrations of radionuclides and heavy metals in soil in the CDOT Highway 141 project area have been reduced to levels below appropriate soil cleanup objectives. Remedial actions were successful in restoring the land to concentrations at or below background ranges and, thus, assuring that there is no incremental human risk from any of the eleven constituents of concern.

Response Actions

CDOT's contractor began the removal of contaminated materials in the southwest area of Highway 141 on January 16, 2006. The contractor removed contaminated debris and excavated contaminated soils from specified areas within the highway right-of-way. Radiologically elevated soils were removed to depths determined by real time scintillometer surveys. Approximately 51,000 cubic yards of contaminated materials were removed from the CDOT right-of-way and an additional 2,800 cubic yards were removed from Umetco's property adjacent to the right-of-way.

All material excavated from the roadway was dry and groundwater was not encountered while conducting the remedial activities. In addition, there was a sharp boundary between the tailings material and the underlying native, clayey soils. Contaminated materials did not migrate into the soils or into groundwater in the subject area.

The area was backfilled and regraded. On numerous occasions, CDPHE verified that cleanup activities were being conducted properly.

Contaminated materials were removed from the access to county road EE–22 and the bypass was backfilled. All disturbed areas were graded to blend with the surrounding topography and provide, as far as practicable, the original drainage features. The area was revegetated in May 2006.

Cleanup Standards

Remedial activities were conducted in accordance with the Uravan Consent Decree and Remedial Action Plan that sets forth cleanup goals for the removal and disposal of radioactive materials. These cleanup goals were established using applicable, relevant and appropriate standards described in the Consent Decree. The Final Construction and Soil Confirmation Report describes the remedial actions performed along the roadway and assesses the effectiveness of the soil cleanup activities.

Operation and Maintenance

The remedial actions attained the goal of unrestricted use of the property. Future institutional controls or future site inspections are not warranted in the Highway 141 project area because all soil cleanup criteria for unrestricted use of the land have been attained at the site.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repository.

V. Deletion Action

The EPA, with concurrence of the State of Colorado, has determined that all appropriate responses, for the approximate 7 acres within the Uravan Superfund Site, under CERCLA have been completed, and that no further response actions, under CERCLA, are necessary. Therefore EPA is partially deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 4, 2007, unless EPA receives adverse comments by August 6, 2007. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will

not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 26, 2007.

Robert E. Roberts,

Regional Administrator, Region 8.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to Part 300 is amended by revising the entry under Colorado for ''Uravan Uranium Project (Union Carbide)'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
*	*	*	*
CO	Uravan Uranium Project (Union Carbide)	(former town of) Uravan	P*
*	*	*	*

(a) * * *
*P = sites with partial deletion(s).

[FR Doc. E7–13056 Filed 7–3–07; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 100

RIN 0905–AA68

National Vaccine Injury Compensation Program: Calculation of Average Cost of a Health Insurance Policy

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Final rule.

SUMMARY: Subtitle 2 of Title XXI of the Public Health Service Act, as enacted by the National Childhood Vaccine Injury Act of 1986, as amended (the Act), governs the National Vaccine Injury Compensation Program (VICP). The VICP, administered by the Secretary of Health and Human Services (the Secretary), provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary, and the filing of a petition with the United States Court of Federal Claims (the Court). In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and the ''average cost of a health insurance policy, as determined by the Secretary.'' The final rule establishes the new method of calculating the average cost of a health insurance policy and determines the amount of the average cost of a health insurance policy to be deducted from the compensation award.

DATES: This regulation is effective August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Tamara Overby, Chief, Policy Analysis Branch, Division of Vaccine Injury Compensation, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), Room 11C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; e-mail: *toverby@hrsa.gov;* telephone number: (301) 443–6593.

SUPPLEMENTARY INFORMATION: On June 9, 2006, the Secretary published in the **Federal Register** (71 FR 33420), a Notice of Proposed Rulemaking (NPRM) to revise regulations for the National Vaccine Injury Compensation Program (VICP) to establish a new method of calculating the average cost of a health insurance policy. The public comment period on the NPRM closed on August 8, 2006.

The Secretary received one written comment. The one commenter stated that the proposed rule raises both Federalism and Constitutional issues. The Secretary has considered this comment and notes that section 2115(a)(3)(B) of the Public Health Service Act gives explicit authority to the Secretary to determine the average cost of a health insurance policy.

Based on the new methodology, the amount of a health insurance policy to be deducted from a compensation award for the 12-month period, October 1, 2006—September 30, 2007 is $363.12 per month. In August 2006, Medical Expenditure Panel Survey-Insurance Component (MEPS–IC), available at *http://www.meps.ahrq.gov,* published the annual 2004 average total single premium per enrolled employee at private-sector establishments that provide health insurance. The figure published was $3,705. This figure is divided by 12 months to determine the cost per month of $308.75 which is the proposed new baseline figure for 2004. The baseline of $308.75 shall be increased or decreased by the percentage change reported by the most recent ''Employer Health Benefits'' Annual Survey, Kaiser Family Foundation and Health Research and Educational Trust (KFF/HRET) survey at *http://www.kff.org.* The percentage increase from 2004–2005 was 9.2 percent. By adding this percentage increase, the calculated average monthly cost of a health insurance policy in 2005 is $337.16. The KFF/HRET reported increase from 2005–2006 was 7.7 percent. By adding this percentage increase to the calculated $337.16 for 2005, the calculated average cost of a health insurance policy in 2006 is $363.12 per month.

Because the KFF/HRET survey is published annually, the Department will periodically (generally on an annual basis) recalculate the average cost of a health insurance policy by obtaining a new baseline from the latest MEPS–IC data and updating this

baseline using the percentage change(s) reported by the most recent data from KFF/HRET or other authoritative source that may be more accurate or appropriate in the future. The updated calculation will be published as a notice in the **Federal Register** and filed with the Court.

Economic and Regulatory Impact

Regulatory Flexibility Act and Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act of 1980 (RFA), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget. Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that minimal resources, if any, are required to implement the provisions included in this regulation. Therefore, in accordance with the RFA, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this Final Rule will not affect any entities defined as small under this Act and will not have a significant impact on a substantial number of small entities.

This Final Rule does not meet the criteria for a major rule as defined by Executive Order 12866. The Secretary has determined that this Final Rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. The Secretary conducted a cost analysis comparing the two methodologies using a single claim. This difference was multiplied by the annual average percent of claims compensated that include this calculation (20 percent) in which the award for lost wages is reduced by this more accurate amount, resulting in a slightly larger award. The new methodology is estimated to increase the annual total amount of awards by $50,000. Therefore, the additional cost to the Federal Government will be about $50,000 per year.

The table below compares the average cost of a health insurance policy using MEPS–IC only, KFF/HRET only and the new methodology.

Year	KFF/HRET only	MEPS–IC only	New methodology
2000	$202	$221.22	[1] $206.44
2001	221	240.77	[2] 232.46
2002	255	265.75	[3] 276.98
2003	282	290.08	[4] 309.61
2004	308	308.75	[5] 336.59
2005	335	NA	[6] 352.25
2006	354	NA	[7] 363.12

[1] 1998 MEPS–IC increased by 1999 and 2000 percent changes from KFF/HRET.
[2] 1999 MEPS–IC increased by 2000 and 2001 percent changes from KFF/HRET.
[3] 2000 MEPS–IC increased by 2001 and 2002 percent changes from KFF/HRET.
[4] 2001 MEPS–IC increased by 2002 and 2003 percent changes from KFF/HRET.
[5] 2002 MEPS–IC increased by 2003 and 2004 percent changes from KFF/HRET.
[6] 2003 MEPS–IC increased by the 2004 and 2005 percent changes from KFF/HRET.
[7] 2004 MEPS–IC increased by the 2005 and 2006 percent changes from KFF/HRET.
N/A—Not available due to 2-year lag in reporting data.

The table below shows a comparison of the average cost of a health insurance policy using both methodologies, and the percent change between these methodologies.

Year	Old methodology	New methodology	Percent change (old vs. new)
2000	$276.28	$206.44	−25
2001	294.24	232.46	−21
2002	313.78	276.98	−12
2003	332.60	309.61	−7
2004	353.81	336.59	−5
2005	374.82	352.25	−6
2006	[a] 397.45	363.12	−9

[a] Revise this number when September 2006 CPI is published on October 31, 2006.

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

Unfunded Mandates Reform Act of 1995

The Secretary has determined that this Final Rule will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Federalism Impact Statement

The Secretary has also reviewed this Final Rule in accordance with Executive

Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The Final Rule would not ''have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Impact on Family Well-Being

This Final Rule will not adversely affect the following elements of family well-being: family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

Impact of the New Rule

This Final Rule revises § 100.2 to incorporate a new methodology for calculating the average cost of a health insurance policy. This new methodology will result in a more accurate reflection of the actual average cost of a health insurance policy as compared to the old methodology which resulted in a number that was too high.

Paperwork Reduction Act of 1980

This Final Rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Compensation, Health insurance, Immunizations.

Dated: January 28, 2007.

Elizabeth M. Duke,

Administrator, HRSA.

Approved: March 29, 2007.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on June 29, 2007.

■ For the reasons stated above, HHS amends part 100 of 42 CFR as follows:

PART 100—VACCINE INJURY COMPENSATION

■ 1. The authority section for 42 CFR part 100 is revised to read as follows:

Authority: Secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note); sec. 2114(c) and (e) of the PHS Act (42 U.S.C. 300aa–14(c) and (e)); sec. 2115(a)(3)(B) of the PHS Act (42 U.S.C. 300aa–15(a)(3)(B)); sec. 904(b) of Pub. L. 105–34, 111 Stat. 873; sec. 1503 of Pub. L. 105–277, 112 Stat. 2681–741; and sec. 523(a) of Pub. L. 106–170, 113 Stat. 1927–1928.

■ 2. Section 100.2 is revised to read as follows:

§ 100.2 Average cost of a health insurance policy.

For purposes of determining the amount of compensation under the VICP, section 2115(a)(3)(B) of the PHS Act, 42 U.S.C. 300aa–15(a)(3)(B), provides that certain individuals are entitled to receive an amount reflecting lost earnings, less certain deductions. One of the deductions is the average cost of a health insurance policy, as determined by the Secretary. The Secretary has determined that the average cost of a health insurance policy is $363.12 for 2006. This figure is calculated periodically (generally on an annual basis) using the most recent Medical Expenditure Panel Survey-Insurance Component (MEPS–IC) data available as the baseline for the average monthly cost of a health insurance policy. This baseline is adjusted by the annual percentage increase/decrease obtained from the most recent annual Kaiser Family Foundation and Health Research and Educational Trust (KFF/HRET) Employer Health Benefits survey or other authoritative source that may be more accurate or appropriate in the future. The revised amount will be effective upon its delivery by the Secretary to the United States Court of Federal Claims, and the amount will be published as a notice in the **Federal Register** periodically (generally on an annual basis).

[FR Doc. E7–13039 Filed 7–3–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1529–N]

RIN 0938–AO30

Medicare Program; Hospital Direct and Indirect Graduate Medical Education Policy Changes; Notice

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

ACTION: Final rule; clarification.

SUMMARY: This notice clarifies the availability of certain physician salary proxy data for purposes of the hospital direct and indirect graduate medical education policy adopted in the ''Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2008: Annual Payment Rate Updates, and Policy Changes; and Hospital Direct and Indirect Graduate Medical Education Policy Changes'' final rule that appeared in the May 11, 2007 **Federal Register**.

EFFECTIVE DATE: This notice is effective on July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487 (General information). Miechal Lefkowitz, (410) 786–5316 (Graduate Medical Education payments). Renate Rockwell, (410) 786–4645 (Graduate Medical Education payments).

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 07–2206 (72 FR 26870), there was an erroneous statement of fact relating to the GME policy adopted in the final rule. In light of the error, this notice serves to clarify the availability of certain salary proxy data that can be used for purposes of the hospital direct and indirect graduate medical education policy adopted in the final rule.

II. Provisions of the Notice

In the final rule that appeared in the May 11, 2007 **Federal Register** (72 FR 26958), we responded erroneously to the following comment, ''One commenter stated that CMS should use average compensation figures for dental faculty based on specialty and regional variation. The commenter stated that the commenter would be happy to work with CMS to develop compensation figures for dental programs.'' We responded, ''The AMGA [American Medical Group Association] data does not apply to dental faculty, at this point we are unaware of a comparable data source for dental faculty salaries. We will work with the commenter to determine whether we can develop proxy salary amounts for supervisory dentists.'' After the final rule was issued, we were made aware that the AMGA data, in fact, do apply to dentists and podiatrists. Because AMGA data are available for the dental and podiatry specialties, the AMGA *2006 Medical Group Compensation and Financial Survey* data can be used as the salary proxy for both dentistry and podiatry in accordance with the policies adopted in the final rule. We will also correct our posting of 2006 AMGA salary data at the following Web site address to include the median salary data for both dentistry and podiatry: *http://www.cms.hhs.gov/AcuteInpatientPPS/Downloads/Specialty_Table_050107.pdf.*

Authority

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

Dated: June 29, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 07–3260 Filed 6–29–07; 3:21 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1529–CN]

RIN 0938–AO30

Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2008: Annual Payment Rate Updates, and Policy Changes; Corrections

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

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors in the ''Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2008: Annual Payment Rate Updates, and Policy Changes; and Hospital Direct and Indirect Graduate Medical Education Policy Changes; Final Rule'' (hereinafter referred to as the RY 2008 LTCH PPS final rule) that appeared in the May 11, 2007 **Federal Register**. We are correcting the high cost outlier (HCO) fixed-loss amount that is effective for long-term care hospital (LTCH) prospective payment system (PPS) payments beginning on or after July 1, 2007 from $22,954 to $20,738. The incorrect fixed-loss amount was determined due to a typographical error in the computer programming. We are also correcting figures in Table 9 and Table 11 since the incorrect figures originally published originated from the same typographical error. We are making additional conforming changes to the preamble of the final rule which were necessary as a result of the correction of the fixed-loss amount and the figures in Tables 9 and 11.

EFFECTIVE DATE: July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487 (General information). Elizabeth Truong, (410) 786–6005 (Federal rate update, budget neutrality, other adjustments, and calculation of the payment rates).

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 07–2206 (72 FR 26870), there were technical errors stemming from a typographical error in the computer programming of the payment simulation program that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the RY 2008 LTCH PPS final rule. Accordingly, the corrections are effective July 1, 2007.

II. Summary of Errors

In the RY 2008 LTCH PPS final rule, we incorrectly calculated the HCO fixed-loss amount. Specifically, we discovered that there was a typographical error in one of the numeric inputs used in the payment simulation program and this resulted in an understating of the nonlabor share of payments to LTCHs. Since the nonlabor related share is used in the calculation of the fixed-loss amount, this error caused the fixed-loss amount to be inaccurate. We corrected the typographical error in the payment simulation program and computed the payment using the same payment methodology that was discussed and used in the final rule. Consequently, the corrected final fixed-loss amount for RY 2008 is $20,738. This document replaces all incorrect HCO fixed-loss amounts references in the RY 2008 LTCH PPS final rule with the corrected fixed-loss amount of $20,738.

Furthermore, the payment simulation program was used in the analysis of payment changes for the impact section of the RY 2008 LTCH PPS final rule. Specifically, Tables 9 and 11 of the final rule address the projected impact of payment rate policy changes by comparing payments based on the policies that were in effect for RY 2007 to LTCH PPS payments based on policies to be in effect for RY 2008, including the RY 2008 HCO fixed-loss amount (72 FR 26870, 26977 through 26978, and 26985 through 26986). In this correction notice, we are providing the revised Tables 9 and 11 to reflect the changes resulting from correcting the typographical error in the payment simulation program. We note that it was necessary to revise only two columns in Table 11. Correcting the typographical error for the nonlabor share generally reduced the estimated impact on estimated payments per discharge from RY 2007 to RY 2008 due to finalized changes to the area wage adjustment (column 7). In addition, applying the revised fixed-loss amount, which is $2,216 lower than the incorrect fixed-loss amount applied in the RY 2008 LTCH PPS final rule, generally reduced the estimated impact on estimated payments per discharge from RY 2007 to RY 2008 (column 9). In addition, we are making conforming changes to the preamble of the final rule (as indicated in Section III. of this correction notice) that are necessary as a result of the correction of the fixed-loss amount and Tables 9 and 11.

III. Correction of Errors

In FR Doc. 07–2206 (72 FR 26870), make the following corrections:

1. On page 26898,

a. In the 2nd column, 1st full paragraph, lines 25 and 30, the figure ''$22,954'' is corrected to read ''$20,738''.

b. In the 3rd column, 2nd full paragraph, lines 4 and 11, the figure ''$22,954'' is corrected to read ''$20,738''.

2. On page 26899,

a. In the 1st column,

(1) In the 1st partial paragraph,

(a) Line 26, the figure ''3.8'' is corrected to read ''1.2''.

(b) Line 42, the figure ''1.0'' is corrected to read ''0.5''.

(c) Lines 46 through 48, the sentence ''We also project an estimated 2.5 percent decrease in estimated payments per discharge from RY 2007 to RY 2008 due'' is corrected to read, ''We also project an estimated 0.4 percent decrease in estimated payments per discharge from RY 2007 to RY 2008 primarily due''.

(2) In the 1st full paragraph, line 2, the figure ''$22,954'' is corrected to read ''$20,738''.

b. In the 2nd column,

(1) In the 1st partial paragraph, line 14, the figure ''10'' is corrected to read ''8''.

(2) In the 1st partial paragraph, line 31, the figure ''10'' is corrected to read ''8.5''.

3. On page 26900, in the 1st column, in the 3rd full paragraph, in the 2nd line from the bottom, the figure ''$22,954'' is corrected to read ''$20,738''.

4. On page 26977, in the 3rd column, in the 1st partial paragraph, lines 27 and 28, the phrase ''approximately $156 million (or about 3.8 percent).'' is corrected to read, ''approximately $50 million (or about 1.2 percent). In addition, applying the case-mix adjustment (2.49 percent) to account for the increase in payments in FY 2005, the result is estimated to be an impact of approximately $100 million.''

5. On pages 26977 through 26978, Table 9: Estimated Impact of the

Provisions of this Final Rule is corrected to read as follows:

TABLE 9.—ESTIMATED IMPACT OF THE PROVISIONS OF THIS FINAL RULE [1]

Policy	Estimated percent change in estimated aggregate LTCH PPS payments
Payment Rate and Policy Changes:	
Changes to the Federal Rate [2]	0.6
Changes to the Area Wage Adjustment	−0.5
Revision of the SSO Policy	−0.9
Adjustment of the High Cost Outlier Threshold [3]	−0.4
Subtotal [4]	−1.2
Expansion of the "25 Percent" Policy [5]	0
Total [6] (−1.2% + 0%)	−1.2

[1] Percent change in estimated aggregate LTCH PPS payments from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year based on the best available data for 377 LTCHs.

[2] As discussed in greater detail in section XV.B.4. of this regulatory impact analysis, about 34 percent of all LTCH cases are projected to receive a payment under the existing SSO policy that is based either on the estimated cost of the case or the "IPPS comparable amount" (rather than the Federal rate). Therefore, the percent change in estimated aggregate LTCH PPS payments due to the changes to the Federal rate, 0.61 percent, is slightly less than the update to the Federal rate of 0.71 percent.

[3] This estimated 0.4 percent decrease in estimated payments per discharge from RY 2007 to RY 2008 is primarily due to the changes in the fixed-loss amount resulting from the use of more recent LTCH data to estimate the cost of each LTCH case.

[4] We also note that the estimated percent change for all payment rate and policy changes may not exactly equal the sum of the estimated percent change for the changes to the Federal rate, the changes to the area wage adjustment and the revision of the SSO policy due to the effect of estimated changes in aggregate HCO payments, as well as other interactive effects that cannot be isolated.

[5] Expansion of the existing special payment provision for co-located LTCHs (HwHs and satellites of LTCHs) at existing § 412.534 to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs (as discussed in section V.B. of the preamble of this final rule).

[6] Total estimated impact of the provisions of this final rule (that is, sum of the estimated impact of the payment rate and policy change, including the revision of the SSO policy, and the estimated impact of the expansion of the "25 percent" policy).

6. On page 26978,

a. In the 1st column, 1st paragraph, lines 6 and 7, the phrase "We note the $156 million (or 3.8 percent)" is corrected to read, "We note the approximately $50 million (or 1.2 percent)".

(b) In the 2nd column,

(1) In the 2nd full paragraph,

(a) Line 3, the figure "3.8" is corrected to read "1.2".

(b) Line 4, the figure "$156 million" is corrected to read "approximately $50 million".

(c) Line 9 the figure "3.8" is corrected to read "1.2".

b. In the 3rd column, in the 1st partial paragraph, line 7, the figure "3.8" is corrected to read "1.2".

7. On page 26979,

a. In the 1st column,

(1) In the 1st full paragraph,

(a) Line 2, the figure "2.5" is corrected to read "0.4".

(b) Lines 4 and 5, the phrase "discharge from RY 2007 to RY 2008 due to the changes in" is corrected to read "discharge from RY 2007 to RY 2008 due primarily to the changes in".

b. In the 2nd column,

(1) In the 1st partial paragraph,

(a) Line 14, the figure "9" is corrected to read "8.5".

(b) Line 28, the figure "10.3" is corrected to read "9.6".

(c) Line 42, the figure "22,954" is corrected to read "$20,738".

(d) Lines 44 and 45, the phrase "estimated aggregate LTCH PPS payments of 2.5 percent, we believe that" is corrected to read "estimated aggregate LTCH PPS payments of 0.4 percent, we believe that".

(2) In the 1st full paragraph, line 5, the figure "3.8" is corrected to read "1.2".

c. In the 3rd column, in the 1st partial paragraph, lines 2 and 3, the phrase "finalizing a 3.8 percent decrease to the Federal rate" is corrected to read "finalizing an estimated 1.2 percent decrease in estimated LTCH PPS payments".

8. On page 26980,

a. In the 1st column, 1st full paragraph, line 21, the figure "1.0" is corrected to read "0.5".

b. In the 2nd column, 2nd full paragraph, line 5, the figure "3.8" is corrected to read "1.2".

c. In the 3rd column, 2nd full paragraph,

(1) Line 4, the figure "3.8" is corrected to read "1.2".

(2) Line 5, the figure "$156 million" is corrected to read "$50 million".

9. On page 26981, in the 1st column, 1st partial paragraph, line 2, the figure "6.2" is corrected to read "3.1".

10. On page 26982,

a. In the 1st column, 1st full paragraph,

(1) Line 2, the figure "2.8" is corrected to read "0.7".

(2) Lines 4 and 5, the phrase "per discharge to rural LTCHs from RY 2007 to RY 2008 due to the changes in" is corrected to read "per discharge to rural LTCHs from RY 2007 to RY 2008 due primarily to the changes in".

(3) Line 29, the figure "$22,954" is corrected to read "$20,738".

(4) Lines 32 and 33, the phrase "payments to rural hospitals by 2.8 percent, we believe that this is" is corrected to read "payments to rural LTCHs, we believe that this is".

b. In the 2nd column, in the 1st full paragraph, lines 26 and 39, the figure "6.2" is corrected to read "3.1".

11. On page 26984, in the 2nd column, 1st partial paragraph, line 4, the figure "$22,954" is corrected to read "$20,738".

12. On pages 26985 and 26986, Table 11: Projected Impact of Payment Rate and Payment Rate Policy Changes to LTCH PPS Payments for RY 2008 is corrected to read as follows:

TABLE 11.—PROJECTED IMPACT OF PAYMENT RATE AND PAYMENT RATE POLICY CHANGES TO LTCH PPS PAYMENTS FOR RY 2008

LTCH Classification	Number of LTCHs	Number of LTCH PPS cases	Average RY 2007 LTCH PPS rate year payment per case	Average RY 2008 LTCH PPS rate year payment per case	Percent change in estimated payments per discharge from RY 2007 to RY 2008 for finalized changes to the Federal rate	Percent change in estimated payments per discharge from RY 2007 to RY 2008 for finalized changes to the area wage adjustment	Percent change in estimated payments per discharge from RY 2007 to RY 2008 for finalized changes to the SSO policy	Percent change in payments per discharge from RY 2007 to RY 2008 for all changes
ALL PROVIDERS	377	129,812	$32,968.71	$32,562.05	0.6	−0.5	−0.9	−1.2
By Location:								
RURAL	23	5,300	27,010.90	26,162.27	0.7	−2.2	−0.9	−3.1
URBAN	354	124,512	33,222.31	32,834.47	0.6	−0.4	−0.9	−1.2
LARGE	182	75,064	34,591.56	34,353.33	0.6	−0	−0.9	−0.7
OTHER	172	49,448	31,143.73	30,528.78	0.6	−1.2	−0.9	−2
By Participation Date:								
BEFORE OCT. 1983	16	6,989	28,729.04	28,674.54	0.6	0.2	−0.6	−0.2
OCT. 1983–SEPT. 1993	44	20,751	34,169.65	33,823.79	0.6	−0.2	−0.9	−1
OCT. 1993–SEPT. 2002	203	73,460	32,818.53	32,447.29	0.6	−0.5	−0.8	−1.1
AFTER OCTOBER 2002	108	27,949	33,597.54	32,959.21	0.6	−0.9	−1.1	−1.9
UNKNOWN PARTICIPATION DATE	6	663	30,205.22	30,024.91	0.6	−0.5	−0.7	−0.6
By Ownership Type:								
VOLUNTARY	83	25,732	32,181.69	31,691.50	0.6	−0.6	−1	−1.5
PROPRIETARY	254	97,294	33,104.72	32,737.43	0.6	−0.5	−0.9	−1.1
GOVERNMENT	14	2,694	36,419.51	35,676.30	0.6	−0.8	−0.9	−2
UNKNOWN OWNERSHIP TYPE	23	4,027	32,404.90	31,809.07	0.6	−0.7	−1	−1.8
By Census Region:								
NEW ENGLAND	16	9,634	27,887.51	27,850.12	0.6	0.3	−0.7	−0.1
MIDDLE ATLANTIC	30	8,114	33,652.40	33,219.72	0.6	−0.7	−0.9	−1.3
SOUTH ATLANTIC	47	13,402	36,643.93	36,003.38	0.6	−0.9	−1	−1.7
EAST NORTH CENTRAL	69	19,477	35,747.81	35,504.41	0.6	−0	−0.9	−0.7
EAST SOUTH CENTRAL	28	7,848	33,545.58	32,685.39	0.6	−1.7	−1	−2.6
WEST NORTH CENTRAL	18	5,337	35,484.45	34,896.78	0.6	−0.7	−0.9	−1.7
WEST SOUTH CENTRAL	129	50,983	29,564.84	28,976.97	0.6	−1.2	−0.9	−2
MOUNTAIN	22	5,768	35,135.25	35,239.57	0.6	1.1	−1.1	0.3
PACIFIC	18	9,249	41,954.57	42,350.72	0.6	1.5	−0.7	0.9
By Bed Size:								
BEDS: 0–24	32	4,998	30,275.32	29,713.64	0.7	−0.8	−0.9	−1.9
BEDS: 25–49	196	45,487	33,230.63	32,686.65	0.6	−0.9	−1	−1.6
BEDS: 50–74	65	24,371	33,247.51	32,865.03	0.6	−0.4	−0.9	−1.2
BEDS: 75–124	48	22,364	33,634.49	33,243.59	0.6	−0.4	−0.8	−1.2
BEDS: 125–199	21	17,716	33,285.43	32,909.60	0.6	−0.2	−0.9	−1.1
BEDS: 200 +	15	14,876	31,237.88	31,203.20	0.6	0.3	−0.7	−0.1
UNKNOWN BED SIZE	0	0	0.00	0.00	0	0	0	0

13. On page 26986, in the 2nd column, in the 1st full paragraph, line 4, the figure, ''3.8'' is corrected to read ''1.2''.

14. On page 26987, in the 3rd column,

(a) In the 1st partial paragraph, line 23, the figure ''$22,954'' is corrected to read ''$20,738''.

b. In the 1st full paragraph,

(1) Line 13, the figure ''6.2'' is corrected to read ''3.1''.

(2) Line 14, the figure ''3.7'' is corrected to read ''1.2''.

c. In the 3rd full paragraph,

(1) Line 2, the figure ''3.2'' is corrected to read ''0.7''.

(2) Line 7, the figure ''4.7'' is corrected to read ''2''.

15. On page 26988,

a. In the 1st column,

(1) In the 1st full paragraph, lines 2 and 3, the phrase, ''experience a lower than average decrease in estimated payments per'' is corrected to read, ''experience no change in estimated payments per''.

(2) In the 3rd full paragraph, line 12, the figure, ''3.8'' is corrected to read ''1.1''.

(3) In the 4th full paragraph,

(a) Line 6, the figure, '' 3.4'' is corrected to read, ''1.0''.

(b) Line 18, the figure ''0.8'' is corrected to read ''0.2''.

b. In the 2nd column,

(1) The 1st full paragraph is corrected in its entirety to read as follows:

''LTCHs that began participating before October 1983 are projected to experience a 0.2 percent increase in estimated payments per discharge from the 2007 LTCH PPS rate year compared to the 2008 LTCH PPS rate year (see Table 11). We are projecting that LTCHs that began participating in Medicare before October 1983 would experience an increase in estimated payments for RY 2008 as compared to RY 2007 primarily because we are projecting that LTCHs in this participation date category would experience a decrease in estimated payments in RY 2008 as compared to RY 2007 because several of these LTCHs are located in areas that have a wage index value of greater than 1.0, as explained above.

(2) In the 2nd full paragraph,

(a) Line 7, the figure ''4.5'' is corrected to read as ''1.9''.

(b) Line 19, the figure ''1.5'' is corrected to read as ''0.9''.

c. In the 3rd column,

(1) In the 1st partial paragraph, line 10, the figure ''4.5'' is corrected to read as ''2.0''.

(2) In the 1st full paragraph, line 5, the figure ''4'' is corrected to read as ''1.5''.

(3) In the 2nd full paragraph, line 6, the figure ''3.7'' is corrected to read as ''1.1''.

16. On page 26989,

a. In the 1st column,

(1) In the 1st partial paragraph,

(a) Lines 1 through 3, the phrase ''East South Central and West South Central regions (5.3 percent and 4.8 percent, respectively; see'' is corrected to read ''East South Central region (2.6 percent, see''.

(b) Lines 9 through 12, the phrase ''adjustment (2.3 percent for the East South Central region, and 1.7 percent for the West South Central region, as shown in Table 11)'' is corrected to read ''adjustment (1.7 percent, as shown in Table 11)''.

(c) Line 15, the phrase ''and the West South Central regions'' is removed.

b. In the 3rd full paragraph,

(1) Line 10, the figure ''4.7'' is corrected to read ''1.9''.

(2) Line 12, the figure ''4.3'' is corrected to read ''1.6''.

c. In the 2nd column

(1) In the 1st partial paragraph, line 10, the figure ''2.5'' is corrected to read ''0.1''.

(2) In the 1st full paragraph,

(a) Lines 12 and 13, the phrase ''about $156 million'' is corrected to read ''approximately $50 million''.

(b) Line 13, the figure ''3.8'' is corrected to read ''1.2''.

17. On page 26991, in the 1st column,

(a) In the 1st full paragraph, lines 5 and 6, the phrase ''payments of $156 million (or about 3.8 percent)'' is corrected to read ''payments of approximately $50 million (or about 1.2 percent)''

(b) In Table 12, in the 2nd row, in the 2nd column, line 4, the figure ''$156'' is corrected to read ''$50''.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the Federal Register to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the correction notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This correction notice corrects technical errors in the RY 2008 LTCH PPS final rule. It does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. We believe it is unnecessary to undergo notice and comment procedures and have a 30-day delay in effective date of these technical changes because they merely ensure that the RY 2008 LTCH PPS final rule accurately reflects the policies that were adopted in that final rule, final policies which were previously subjected to notice and comment procedures and that have had more than a 30 day-delayed effective date. We believe it impracticable to engage in notice and comment procedures and have a 30-day delayed effective date for these technical corrections as the correct payment rates must be effective July 1, 2007.

Therefore, we are waiving proposed rulemaking and the 30-day delay in effective date for the technical corrections in this correction notice.

Authority

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

Dated: June 29, 2007.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 07–3261 Filed 6–29–07; 3:21 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–2388; MB Docket No. 05–102; RM–10630]

Radio Broadcasting Services; Akron and Denver, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition for rulemaking filed by Akron Broadcasting Company (''Petitioner''), seeking to amend the FM Table of Allotments by allotting Channel 279C1 at Akron, Colorado, as the community's first local aural transmission service. Channel 279C1 is allotted at Akron, Colorado, at Petitioner's requested site 24.5 kilometers (15.2 miles) southeast of the community at coordinates 40–03–28 NL and 102–57–35 WL.

DATES: Effective July 23, 2007.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–102, adopted June 6, 2007, and released June 8, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by adding Akron, Channel 279C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–12650 Filed 7–3–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060824226–6322–02]

RIN 0648–AV69

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fishery. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) August 1, 2007. Comments on this final rule must be received no later than 5 p.m., local time on August 6, 2007.

ADDRESSES: You may submit comments, identified by RIN 0648–AV69 by any of the following methods:

- E-mail: *Inseason2.nwr@noaa.gov*. Include RIN 0648–AV69 in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Gretchen Arentzen
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail *gretchen.arentzen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's (Council's) website at *http://www.pcouncil.org/*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. A proposed rule to implement the 2007–2008 specifications and management measures for the Pacific Coast groundfish fishery and Amendment 16–4 of the FMP was published on September 29, 2006 (71 FR 57764). The final rule to implement the 2007–2008 specifications and management measures for the Pacific Coast Groundfish Fishery was published on December 29, 2006 (71 FR 78638). These specifications and management measures were codified in the CFR (50 CFR part 660, subpart G). The final rule was subsequently amended on: March 20, 2007 (71 FR 13043); and April 18, 2007 (72 FR 19390).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its June 11–15, 2007, meeting in Foster City, California. At that meeting, the Pacific Council recommended adjusting current groundfish management measures to respond to updated fishery information and other inseason management needs. The Pacific Council recommended: (1) moving the seaward boundary of the Limited Entry Trawl Rockfish Conservation Area (RCA) between Cascade Head (45°03.83′ N. lat.) and the Columbia River (46°16′ N. lat.) from a line approximating the 150–fm (274–m) depth contour to a line approximating the 200–fm (366–m) depth contour; (2) increasing the 2–month cumulative limit in the limited entry trawl fishery for longspine thornyheads using large and small footrope gear north of 40°10′ N. lat.; (3) increasing the 2–month cumulative limit in the limited entry trawl fishery south of 40°10′ N. lat. for Dover sole; (4) increasing the monthly cumulative limit in the limited entry trawl fishery for chilipepper rockfish using small footrope gear south of 40°10′ N. lat.; (5) increasing the 2–month cumulative limit in the limited entry fixed gear fishery for shortspine thornyheads south of 34°27′ N. lat.; (6) combining the 2–month cumulative limits for shelf rockfish, widow rockfish and bocaccio, in the limited entry fixed gear fishery, between 40°10′ N. lat. and 34°27′ N. lat. into a single 2–month cumulative limit starting September 1; (7) increasing the daily and weekly limits in the open access sablefish daily trip limit (DTL) fishery south of 36° N. lat.. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to trip limits or management measures will be made as necessary to allow achievement of, or to avoid exceeding, optimum yields (OYs).

Limited Entry Trawl Fishery Management Measures

At its March 2007 meeting, the Council received a NMFS report indicating higher than anticipated canary rockfish bycatch rates by selective flatfish trawl gear vessels fishing shoreward of the trawl RCA in 2005. The Council responded to this new information by restricting access to some shoreward fishing areas north of 40°10' N. lat. and by liberalizing fishing opportunities seaward of the RCA to encourage a shift of effort to offshore waters in the 2007 limited entry non-whiting trawl fisheries (71 FR 19390, April 18, 2007). The Council expected these inseason adjustments to result in a decreased canary rockfish bycatch in the 2007 limited entry non-whiting trawl fisheries, but with a possible higher bycatch of darkblotched rockfish, a slope rockfish, with impacts for both species projected to stay within their respective OYs.

At its June 2007 meeting, the Council considered the most recently available information on groundfish landings and on updated projections of groundfish species total catches, and concluded that the April inseason adjustments effectively reduced canary rockfish impacts in the 2007 limited entry non-whiting trawl fishery. However, effort shifts by limited entry trawl vessels to areas seaward of the trawl RCA were greater than anticipated, resulting in a higher bycatch of darkblotched rockfish than projected in the area between Cascade Head (45°03.83′ N. lat.) and the Columbia River (46°16′ N. lat.). Under the previously adopted RCA schedule, the seaward boundary in this area was scheduled to shift from the line approximating the 150–fm (274–m) depth contour to the line approximating the 200–fm (366–m) depth contour beginning September 1; however, further reduction in the impacts of effort shifts to darkblotched rockfish is necessary. Therefore, the Council recommended and NMFS is

implementing an expansion of the limited entry non-whiting trawl RCA between Cascade Head and the Columbia River by adjusting the seaward boundary to the line approximating the 200–fm (366–m) depth contour beginning August 1.

The Council also considered adjustments to trip limits in the limited entry non-whiting trawl fishery. Available catch limits of longspine thornyheads taken with large and small footrope trawl gear north of 40°10′ N. lat., Dover sole south of 40°10′ N. lat., and chilipepper rockfish taken with small footrope trawl gear south of 40°10′ N. lat. are being attained by participating vessels. The Council considered increases to trip limits for these species and the potential impacts on overall catch levels and overfished species. The most recently available information as of June 25, 2007, indicates that 19 percent (411 mt out of the 2,220 mt OY) of the longspine thornyhead OY north of 34°27′ N. lat. and 27 percent (4,555 mt out of the 16,500 mt OY) of the coastwide Dover sole OY have been taken through June 16, 2007. These projections are below the anticipated catch projections through June, and continuing the trawl fishery under these limits is projected to prevent the fishery from attaining the OYs for these species. Modest increases to longspine thornyhead and Dover sole cumulative limits are expected to increase overall catch levels, but those increases are predicted to be within the 2007 OYs for these species and are not expected to result in greater than projected overfished species impacts.

Therefore, the Council recommended and NMFS is implementing the following trip limit changes for the limited entry trawl fishery: (1) North of 40°10' N. lat., increase longspine thornyhead limits using large and small footrope gear from 22,000 lb (9,979 kg) per 2 months to 25,000 lb (11,340 kg) per 2 months beginning in period 4; and (2) south of 40°10' N. lat., increase Dover sole limits from 70,000 lb (31,751 kg) per 2 months to 80,000 lb (36,287 kg) per 2 months beginning in period 4.

Chilipepper rockfish are an abundant species taken in common with other rockfish in the southern shelf rockfish complex. Based on the most recently available West Coast Groundfish Observer Program (WCGOP) data, chilipepper rockfish are being regularly discarded under current trip limits for small footrope trawl gear south of 40°10' N. lat. OYs for chilipepper rockfish have not come close to being achieved in recent years. For example, in the 2005 limited entry trawl and fixed gear fishery, the chilipepper rockfish landings were 28 mt, less than 3 percent of the 1099 mt chilipepper rockfish OY. The Council considered increasing chilipepper rockfish limits to accommodate some of this discard while keeping limits low enough to prevent targeting. Targeting of chilipepper rockfish could increase impacts to bocaccio and widow rockfish, co-occurring overfished species. Current catch projections estimate that less than 80 percent of the 2007 OYs will be obtained for either bocaccio or widow rockfish by the end of the year; therefore, if unexpected targeting of chilipepper rockfish were to occur, and higher than expected bycatch of bocaccio and widow rockfish occurs, bocaccio and widow rockfish total catch could be expected to remain within 2007 OYs. Therefore, the Council recommended and NMFS is implementing the following trip limit changes for the limited entry trawl fishery: South of 40°10′ N. lat., increase chilipepper rockfish limits using small footrope trawl gear from 500 lb (227 kg) per month to 800 lb (363 kg) per month beginning August 1.

Limited Entry Fixed Gear Trip Limits South of 40°10′ N. Lat.

As of May 31, 2007, the total shortspine thornyhead landings south of 34°27′ N. lat. were estimated to be 60.6 mt out of a 421 mt OY. The Council considered increases to the shortspine thornyhead cumulative limits south of 34°27′ N. lat., and discussed concerns with possible effort shifts. Increases in effort in this area could result in higher sablefish catch and higher catches of other species. Estimates show that sablefish catches in this area are lower than they had been predicted to be at the beginning of the year. The Council recommended a short term increase in shortspine thornyhead cumulative limits to balance the potential impacts on sablefish from a possible effort shift and the large amount of shortspine thornyheads available for harvest. The Council will consider further adjustments to shortspine thornyhead cumulative limits upon receipt of additional fishery information later in the year. Shortspine thornyheads are a slope rockfish species and most of the overfished species south of 36° N. lat. are shelf species, so no increased impacts on overfished species are expected to occur as a result of increasing shortspine thornyhead trip limits.

The Council also considered industry concerns regarding high discard rates of minor shelf, bocaccio, and widow rockfish in the fixed gear fishery between 40°10′ N. lat. and 37° N. lat. and a request to combine bocaccio, chilipepper, and widow rockfish into a single combined limit with minor shelf rockfish between 40°10′ N. lat. and 37° N. lat. The Council had concerns with the impacts to overfished species by combining chilipepper rockfish cumulative limits into a single cumulative limit with minor shelf, bocaccio and widow rockfish, since the high abundance of chilipepper rockfish would result in a combined limit too high to be supported by less abundant species in the complex. Leaving cumulative limits for chilipepper rockfish separate, while combining minor shelf, bocaccio and widow rockfish into a single cumulative limit, will allow the industry increased flexibility in retention opportunities and is expected to reduce discard without affecting overfished species catch levels.

Therefore, the Council recommended, and NMFS is implementing the following changes for the limited entry fixed gear fishery: (1) South of 34°27′ N. lat., increase the shortspine thornyhead limits from 2,000 lb (907 kg) per 2 months to 3,000 lb (1,361 kg) per 2 months during period 4; (2) between 40°10′ N. lat. and 37° N. lat., combine the trip limit for bocaccio of 300 lb (136 kg) per 2 months and the trip limit for minor shelf rockfish, shortbelly rockfish, and widow rockfish of 300 lb (136 kg) per 2 months into a single cumulative trip limit of 500 lb (227 kg) per 2 months for: bocaccio, minor shelf rockfish, shortbelly, and widow rockfish beginning September 1.

Open Access Sablefish Daily Trip Limits South of 36° N. Lat.

The Council considered an industry request to increase limits in the open access sablefish DTL fishery south of 36° N. lat. to allow available sablefish OY in this area to be harvested by providing fishing opportunities that would be equivalent to opportunities in recent years. In October 2006, NMFS increased the daily limits south of 36° N. lat. from 350 lb (159 kg) per day to 500 lb (227 kg) per day (71 FR 58289, October 3, 2006), which resulted in a large shift in effort by vessels that had historically operated north of 36° N. lat., forcing reductions in the daily limit to 300 lb (136 kg) per day and an introduction of a 2 month cumulative limit of 3,000 lb (1,361 kg) per month in December 2006 in order to stay within the 2006 sablefish OY in this area (71 FR 69076, November 29, 2006). The large increase in effort south of 36° N. lat. in 2006 was due, in part, to a highly restricted salmon fishing season and to the sablefish DTL fishery closure north of 36° N. lat. As a precautionary

approach, in the event that 2007 salmon fisheries were not improved from 2006, the Council recommended, and NMFS implemented decreases in the open access sablefish DTL fishery south of 40°10′ N. lat. for 2007–2008 to keep sablefish within their 2007–2008 OYs (71 FR 78638, December 29, 2006). The 2007 salmon fishery is improved from 2006 and catch in the sablefish DTL fishery north of 36° N. lat. remains open and is not currently exceeding 2007 catch projections; therefore, the magnitude of effort shifts seen in 2006 are not likely to occur in 2007. This action would not increase estimated impacts on overfished species, because estimated mortality for overfished species for the year assume that this sector will achieve its allocation. Therefore, the Council recommended and NMFS is implementing an increase in the open access sablefish DTL fishery trip limits south of 36° N. lat. from ''300 lb (136 kg) per day, or 1 landing per week of up to 700 lb (318 kg)'' to ''350 lb (159 kg) per day, or 1 landing per week of up to 1,050 lb (476 kg)'', beginning August 1.

Classification

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data, upon which these actions are based, are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to the 2007 groundfish management measures under 5 U.S.C. 553(b)(3)(B) because notice and comment would be impracticable and contrary to the public interest. Also for the same reasons, NMFS finds good cause to waive part of the 30–day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) and 5 U.S.C. 553(d)(3).

The data upon which these recommendations were based was provided to the Council and the Council made its recommendations at its June 11–15, 2007, meeting in Foster City, CA. There was not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this notice, affording the time necessary for prior notice and opportunity for public comment would be impractical and contrary to the public interest because it would prevent the Agency from managing fisheries using the best available science to approach without exceeding the OYs for federally managed species. The adjustments to management measures in this document affect commercial groundfish fisheries off Washington, Oregon, and California.

Changes to the limited entry trawl RCA must be implemented in a timely manner by August 1, 2007, to reduce the projected bycatch of darkblotched rockfish, a groundfish species that is currently subject to rebuilding requirements. Changes to the trawl RCA must be made to reduce the bycatch of darkblotched rockfish, so that the total catch of darkblotched rockfish stays within its 2007 OY, as defined in the rebuilding plan for this species. It would be contrary to the public interest to wait to implement this RCA revision until after public notice and comment, because failing to make this regulatory change by August 1 could result in higher than projected darkblotched rockfish catch, ultimately risking early closure of fisheries important to coastal communities.

Changes to the cumulative limits in the non-whiting commercial fisheries must be implemented in a timely manner to relieve a restriction by allowing fishermen increased opportunities to harvest available healthy stocks. Changes to cumulative limits for the following stocks must be implemented in a timely manner by August 1, 2007: (1) Longspine thornyhead, Dover sole, and chilipepper rockfish cumulative limits in the limited entry trawl fishery; (2) shortspine thornyheads in the limited entry fixed gear fishery; and (3) cumulative limits in the open access sablefish DTL fishery. These changes allow fishermen an opportunity to harvest higher trip limits for stocks with catch tracking behind their projected 2007 catch levels. In the limited entry fixed gear fishery, changes that combine the limits for minor shelf rockfish, widow rockfish and bocaccio must be implemented in a timely manner by September 1, 2007, to provide fishermen an opportunity to harvest available healthy stocks by allowing increased flexibility in retention opportunities. All of these cumulative limit changes are within projected mortality for overfished species. All of these actions provide increased trip limits or regulatory flexibility. Therefore, it would be contrary to the public interest to fail to relieve the current restrictions in a timely manner.

Delaying these changes would keep management measures in place that are not based on the best available data, which could risk fisheries exceeding their OY, or deny fishermen access to available harvest. Such delay would impair achievement of one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year.

List of Subjects in 50 CFR Part 660

Fisheries, and Fishing.

Dated: June 29, 2007.

James P. Burgess,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. Tables 3 (North), 3 (South), 4 (South), and 5 (South) to part 660 subpart G are revised to read as follows.

Table 3 (North) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

062007

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:						
North of 48°10.00' N. lat.	75 fm - modified 250 fm [7/]	75 fm - 250 fm	shore - 150 fm		shore - 200 fm	shore - modified 200 fm [7/]
48°10.00' N. lat. - 46°38.17' N. lat.			75 fm - 150 fm		75 fm - 200 fm	75 fm - modified 200 fm [7/]
46°38.17' N. lat. - 46°16.00 N. lat.			60 fm -150 fm		60 fm -200 fm	75 fm - modified 200 fm [7/]
46°16.00 N. lat. - 45°03.83 N. lat.			75 fm - 150 fm	75 fm - 200 fm		75 fm - modified 200 fm [7/]
45°03.83' N. lat. - 43°20.83' N. lat.			75 fm - 200 fm			75 fm - modified 200 fm [7/]
43°20.83' N. lat. - 42°40.50' N. lat.			shore - 200fm			shore - modified 200 fm [7/]
42°40.50' N. lat. -40°10.00' N. lat.			75 fm - 200 fm			75 fm - modified 200 fm [7/]

Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

1	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months		1,500 lb/ 2 months		
2	**Pacific ocean perch**	3,000 lb/ 2 months				
3	**DTS complex**					
4	Sablefish					
5	large & small footrope gear	13,000 lb/ 2 months		15,000 lb/ 2 months		13,000 lb/ 2 months
6	selective flatfish trawl gear	5,000 lb/ 2 months	8,000 lb/ 2 months	5,000 lb/ 2 months		
7	multiple bottom trawl gear [8/]	5,000 lb/ 2 months	8,000 lb/ 2 months	5,000 lb/ 2 months		
8	Longspine thornyhead					
9	large & small footrope gear	22,000 lb/ 2 months			25,000 lb/ 2 months	
10	selective flatfish trawl gear	3,000 lb/ 2 months				
11	multiple bottom trawl gear [8/]	3,000 lb/ 2 months				
12	Shortspine thornyhead					
13	large & small footrope gear	7,500 lb/ 2 months		10,000 lb/ 2 months		
14	selective flatfish trawl gear	3,000 lb/ 2 months				
15	multiple bottom trawl gear [8/]	3,000 lb/ 2 months				
16	Dover sole					
17	large & small footrope gear	80,000 lb/ 2 months		60,000 lb/ 2 months		80,000 lb/ 2 months
18	selective flatfish trawl gear	40,000 lb/ 2 months		38,000 lb/ 2 months		25,000 lb/ 2 months
19	multiple bottom trawl gear [8/]	40,000 lb/ 2 months		38,000 lb/ 2 months		25,000 lb/ 2 months

TABLE 3 (North)

Table 3 (North). Continued

20	**Whiting**					
21	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.				
22	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.				
23	**Flatfish** (except Dover sole)					
24	Arrowtooth flounder					
25	large & small footrope gear	100,000 lb/ 2 months		Arrowtooth included within other flatfish limits - - see below		
26	selective flatfish trawl gear	90,000 lb/ 2 months				
27	multiple bottom trawl gear [8/]	90,000 lb/ 2 months				
28	Other flatfish [3/], English sole, starry flounder, & Petrale sole					
29	large & small footrope gear for Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months (including arrowtooth), no more than 20,000 lb/ 2 months of which may be petrale sole.		110,000 lb/ 2 months (including arrowtooth)
30	large & small footrope gear for Petrale sole	50,000 lb/ 2 months				30,000 lb/ 2 months
31	selective flatfish trawl gear for Other flatfish[3/], English sole, & starry flounder	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 20,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 15,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months (including arrowtooth), no more than 8,000 lb/ 2 months of which may be petrale sole.
32	selective flatfish trawl gear for Petrale sole					
33	multiple bottom trawl gear [8/]	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 20,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 15,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months (including arrowtooth), no more than 8,000 lb/ 2 months of which may be petrale sole.
34	**Minor shelf rockfish[1/], Shortbelly, Widow & Yelloweye rockfish**					
35	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.				
36	large & small footrope gear	300 lb/ 2 months				
37	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish		300 lb/ month
38	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish		300 lb/ month

TABLE 3 (North) con't

Table 3 (North). Continued

39	**Canary rockfish**				
40	large & small footrope gear	CLOSED			
41	selective flatfish trawl gear	100 lb/ month			
42	multiple bottom trawl gear [8/]	CLOSED			
43	**Yellowtail**				
44	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.			
45	large & small footrope gear	300 lb/ 2 months			
46	selective flatfish trawl gear	2,000 lb/ 2 months			
47	multiple bottom trawl gear [8/]	300 lb/ 2 months			
48	**Minor nearshore rockfish & Black rockfish**				
49	large & small footrope gear	CLOSED			
50	selective flatfish trawl gear				
51	multiple bottom trawl gear [8/]	CLOSED			
52	**Lingcod** [4/]				
53	large & small footrope gear	1,200 lb/ 2 months	4,000 lb/ 2 months		
54	selective flatfish trawl gear				
55	multiple bottom trawl gear [8/]		1,200 lb/2 months		
56	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months
57	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
58	**Other Fish** [5/]				

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

032007

TABLE 3 (South)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	40°10' - 38° N. lat.	100 fm - modified 200 fm [7/]	100 fm - 150 fm				100 fm - modified 200 fm [7/]
	38° - 34°27' N. lat.	100 fm - 150 fm					
	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
	All trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**						
2	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
3	South of 38° N. lat.	40,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
6	South of 38° N. lat.	40,000 lb/ 2 months					
7	**DTS complex**						
8	Sablefish	14,000 lb/ 2 months					
9	Longspine thornyhead	22,000 lb/ 2 months					
10	Shortspine thornyhead	7,500 lb/ 2 months					
11	Dover sole	70,000 lb/ 2 months			80,000 lb/ 2 months		
12	**Flatfish** (except Dover sole)						
13	Other flatfish[3/], English sole, & starry flounder						
14	40°10' - 38° N. lat.	110,000 lb/ 2 months	Other flatfish, English sole, starry flounder & Petrale sole: 110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	Other flatfish, English sole, starry flounder, arrowtooth flounder & Petrale sole: 110,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.			110,000 lb/ 2 months (including arrowtooth)
15	South of 38° N. lat.						
16	Petrale sole	50,000 lb/ 2 months					50,000 lb/ 2 months
17	Arrowtooth flounder						
18	40°10' - 38° N. lat.	10,000 lb/ 2 months		Arrowtooth included within other flatfish limits - - see above			
19	South of 38° N. lat.						
20	**Whiting**						
21	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
22	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

Table 3 (South). Continued

						TABLE 3 (South) con't
23	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**					
24	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month				
25	large footrope or midwater trawl for Chilipepper	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months		
26	large footrope or midwater trawl for Widow & Yelloweye	CLOSED				
27	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month				
28	small footrope trawl for Chilipepper	500 lb/ month		800 lb/ month		
29	**Bocaccio**					
30	large footrope or midwater trawl	300 lb/ 2 months				
31	small footrope trawl	CLOSED				
32	**Canary rockfish**					
33	large footrope or midwater trawl					
34	small footrope trawl	100 lb/ month				
35	**Cowcod**					
36	**Minor nearshore rockfish & Black rockfish**					
37	large footrope or midwater trawl					
38	small footrope trawl					
39	**Lingcod[4/]**					
40	large footrope or midwater trawl	1,200 lb/ 2 months	4,000 lb/ 2 months			
41	small footrope trawl		1,200 lb/ 2 months			
42	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months	
43	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months		
44	**Other Fish[5/] & Cabezon**					

1/ Yellowtail is included in the trip limits for minor shelf rockfish.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 062007

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
	40°10' - 34°27' N. lat.	30 fm - 150 fm					
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
2	**Splitnose**	40,000 lb/ 2 months					
3	**Sablefish**						
4	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months					
5	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
6	**Longspine thornyhead**	10,000 lb / 2 months					
7	**Shortspine thornyhead**						
	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
	South of 34°27' N. lat.	2,000 lb/ 2 months			3,000 lb/ 2 months	2,000 lb/ 2 months	
8	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
9	**Arrowtooth flounder**						
10	**Petrale sole**						
11	**English sole**						
12	**Starry flounder**						
13	**Other flatfish[1/]**						
14	**Whiting**	10,000 lb/ trip					
15	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and after August 31, Bocaccio**						
16	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED		200 lb/ 2 months	500 lb/ 2 months (including Bocaccio)	
	South of 34°27' N. lat.	3,000 lb/ 2 months			3,000 lb/ 2 months		
18	**Chilipepper rockfish**	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
19	**Canary rockfish**	CLOSED					
20	**Yelloweye rockfish**	CLOSED					
21	**Cowcod**	CLOSED					
22	**Bocaccio**						
23	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months	300 lb/ 2 months	Bocaccio included under Minor shelf rockfish, shortbelly, & widow limits -- See above	
24	South of 34°27' N. lat.	300 lb/ 2 months		300 lb/ 2 months			

TABLE 4 (South)

Table 4 (South). Continued

TABLE 4 (South)

25	**Minor nearshore rockfish & Black rockfish**							
26	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
27	Deeper nearshore							
28	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		600 lb/ 2 months	700 lb/ 2 months	
29	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
30	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	800 lb/ 2 months		600 lb/ 2 months	
31	**Lingcod**[3/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
32	**Pacific cod**	1,000 lb/ 2 months						
33	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
34	**Other fish**[4/] **& Cabezon**	Not limited						

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.
3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394, except that the 20-fm depth contour off California is defined by the depth contour and not coordinates.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 062007

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
	40°10' - 34°27' N. lat.	30 fm - 150 fm					
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[1/] & Darkblotched rockfish**						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 700 lb, not to exceed 2,100 lb/ 2 months					
7	South of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 700 lb				350 lb/ day, or 1 landing per week of up to 1,050 lb	
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Starry flounder**						
16	**Other flatfish[2/]**						
17	**Whiting**	300 lb/ month					
18	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
19	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED		200 lb/ 2 months	300 lb/ 2 months	
20	South of 34°27' N. lat.	750 lb/ 2 months			750 lb/ 2 months		
21	**Canary rockfish**	CLOSED					
22	**Yelloweye rockfish**	CLOSED					
23	**Cowcod**	CLOSED					
24	**Bocaccio**						
25	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED		100 lb/ 2 months	200 lb/ 2 months	
26	South of 34°27' N. lat.	100 lb/ 2 months			100 lb/ 2 months		

TABLE 5 (South)

Table 5 (South). Continued

27	**Minor nearshore rockfish & Black rockfish**							
28	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
29	Deeper nearshore							
30	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		600 lb/ 2 months	700 lb/ 2 months	
31	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
32	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	800 lb/ 2 months		600 lb/ 2 months	
33	**Lingcod**[3/]	CLOSED		400 lb/ month				CLOSED
34	**Pacific cod**	1,000 lb/ 2 months						
35	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
36	**Other Fish**[4/] **& Cabezon**	Not limited						
37	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**							
38	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**							
39	40°10' - 38° N. lat.	100 fm - modified 200 fm [6/]	100 fm - 150 fm				100 fm - modified 200 fm [6/]	
40	38° - 34°27' N. lat.	100 fm - 150 fm						
41	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands						
42		Groundfish: 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).						
43	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*							
44	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.						

TABLE 5 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at §§ 660.391-660.394, except that the 20-fm depth contour off California is defined by the depth contour and not coordinates.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 07–3262 Filed 7–3–07; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 128
Thursday, July 5, 2007

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS–2006–0091]

Amendments to Treatments for Plant Pests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the treatment of plant pests by removing two treatment options that we now believe to be ineffective at neutralizing their target plant pests. A review of these treatments found these options to be ineffective. We are also proposing to remove two treatment schedules that are no longer authorized for use and to clarify the fruits and vegetables on which two methyl bromide treatments may be used. These changes would ensure that ineffective or unauthorized treatments are not used and clarify the regulations.

DATES: We will consider all comments that we receive on or before September 4, 2007.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0091 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0091, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0091.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager-Treatments, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The phytosanitary treatments regulations contained in 7 CFR part 305 (referred to below as the regulations) set out standards and schedules for treatments required in 7 CFR parts 301, 318, and 319 for fruits, vegetables, and articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States.

In this document, we are proposing to:

- Amend two treatments to remove options that we now believe to be ineffective at neutralizing their target plant pests;
- Remove two treatment schedules that are no longer authorized for use; and
- Clarify the fruits and vegetables on which two methyl bromide treatments may be used.

These changes are discussed in more detail directly below.

Temperature Requirement for Conducting Methyl Bromide Treatment MB T101–j–2–1

In the approved treatments regulations in § 305.2(h)(2), fumigation according to methyl bromide treatment schedule MB T101–j–2–1, in accordance with the methyl bromide treatment regulations in § 305.6, is approved as a treatment for *Anastrepha* spp. fruit flies in grapefruit, orange, and tangerine from Mexico and for *Anastrepha ludens* (Mexican fruit fly) in grapefruit, orange, and tangerine moved interstate from areas within the United States that are quarantined due to the presence of Mexican fruit fly. The schedule for this fumigation treatment in § 305.6 currently requires that the treatment be conducted at a temperature between 70 and 85 °F.

A recent discovery of a live larva of Mexican fruit fly in citrus that was being moved interstate from an area within the United States that had been quarantined for the Mexican fruit fly and had been treated with MB T101–j–2–1 prompted the Animal and Plant Health Inspection Service (APHIS) to reevaluate the research that had been used to formulate this treatment. The reevaluation revealed that, in order to effectively neutralize Mexican fruit fly, the treatment should be performed at a temperature of 80 °F or above. Accordingly, we are proposing to amend the entry for this treatment in § 305.6(a) to indicate that it may only be performed at a temperature of 80 °F or above. The commodities for which this treatment is an approved treatment would not change.

Cold Treatment Options in Combination Treatment MB&CT T108–b

In the approved treatments regulations in § 305.2(h)(2)(i), the methyl bromide/cold treatment combination treatment MB&CT T108–b, performed in accordance with the combination treatment requirements in § 305.10, is approved as a treatment for *Austrotortrix* spp. and *Epiphyas* spp., *Bactrocera tryoni*, *Ceratitis capitata* (Mediterranean fruit fly, or Medfly), and other fruit flies in grape from Australia and for Medfly in apple, grape, and pear moved interstate from areas within the United States that are quarantined due to the presence of Medfly. The schedule listed for MB&CT T108–b in § 305.10 currently provides two options for conducting the cold treatment portion of the treatment: An option in which the fruit is held at 33 °F or below for 21 days, and an option in which the fruit is held between 48 °F and 56 °F for 6 days.

A review by APHIS has determined that there is not adequate scientific justification to conclude that the pests for which MB&CT T108–b is an approved treatment can be neutralized if the option of holding the fruit between 48 °F and 56 °F for 6 days is used. Accordingly, we are proposing to remove this option from the cold treatment schedule in MB&CT T108–b. The other options available for this MB&CT treatment and the commodities for which this treatment is an approved treatment would not change.

Treatments for Aircraft Using the Pesticide Resmethrin

In the approved treatment regulations in § 305.2(g), two treatments are listed that are approved for use on aircraft to treat for fruit flies and soft-bodied insects: The aerosol treatments T409–c–1 and T409–c–3. As described in the aerosol spray for aircraft treatment schedules regulations in § 305.9(b), both of these treatments require the use of resmethrin, a pesticide.

The U.S. Environmental Protection Agency (EPA) issues labels for pesticides such as resmethrin that set out requirements for their use, including approved uses. Resmethrin's EPA label does not list aerosol application to aircraft as an approved use. APHIS may secure emergency approval to use pesticides in a manner that is not specified on the EPA label, but we have not done so for these two treatments. Thus, they cannot currently be legally administered. Accordingly, we are proposing to remove treatment schedules T409–c–1 and T409–c–3 from the aerosol spray for aircraft treatment schedules regulations. We would also remove the entry for fruit flies and soft-bodied insects in the table listing approved treatments for aircraft (among other equipment) in § 305.2(g).

If this change is finalized, no treatment would be approved in the regulations to neutralize fruit flies and other soft-bodied insects that are associated with aircraft. To our knowledge, neither of the treatments we are proposing to remove has been used in many years, and aircraft are not being treated for fruit flies and other soft-bodied insects. We are not proposing to add a substitute treatment for fruit flies and other soft-bodied insects, because presently a treatment is unnecessary. If we determine that such a treatment is necessary, we will add one to the regulations through subsequent rulemaking.

Clarifying the Fruits and Vegetables on Which Two Methyl Bromide Treatments May Be Used

In the approved treatment regulations in § 305.2(h)(2)(i), fumigation according to methyl bromide treatment schedule MB T104–a–1, in accordance with the methyl bromide treatment regulations in § 305.6, is listed as an approved treatment for hitchhikers or surface pests, except mealybugs, for all imported fruits and vegetables. Similarly, fumigation according to methyl bromide treatment schedule MB T104–a–2 is listed as an approved treatment for mealybugs for all imported fruits and vegetables. However, only some fruits and vegetables are approved by EPA to be treated with methyl bromide under the Federal Insecticide, Fungicide, and Rodenticide Act. These fruits and vegetables are typically approved for treatment either on the EPA label for methyl bromide or through an exemption under Section 18 of the Act. (EPA makes lists of commodities that it has approved for treatment with methyl bromide available on its Web site at *http://www.epa.gov/pesticides/*.) The current APHIS regulations are ambiguous and can be read as indicating that methyl bromide fumigation is approved for use on all fruits and vegetables, which is incorrect.

Therefore, we are proposing to update the commodity entries in the table in § 305.2(h)(2)(i) for MB T104–a–1 and MB T104–a–2. Rather than indicating simply that the treatments are approved for all imported fruits and vegetables, these entries would instead indicate that the treatments are approved for those imported fruits and vegetables that are approved for treatment with methyl bromide under the Federal Insecticide, Fungicide, and Rodenticide Act. This proposed clarification reflects the requirements in § 305.5(c)(1), which states that all chemical applications must be administered in accordance with an EPA-approved pesticide label and the APHIS-approved treatment schedule prescribed in part 305, and that if EPA cancels approval for the use of a pesticide on a commodity, then the treatment schedule prescribed in part 305 is no longer authorized for that commodity.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are proposing to amend the regulations for the treatment of plant pests by removing two treatment options that we now believe to be ineffective at neutralizing their target plant pests. A review of these treatments found these options to be ineffective. We are also proposing to remove two treatment schedules that are no longer authorized for use, to clarify the fruits and vegetables on which two methyl bromide treatments may be used, and to clearly prohibit the use of unauthorized chemical treatments. These changes would ensure that ineffective or unauthorized treatments are not used and clarify the regulations.

Removing treatment schedules T409–c–1 and T409–c–3 would not be expected to have any economic effects because, to our knowledge, these treatments have not been used for many years. Clarifying that treatment schedules MB T104–a–1 and MB T104–a–2 are approved for only those imported fruits and vegetables that are listed on the EPA label for methyl bromide or otherwise authorized for treatment by EPA would not be expected to have any economic effects because it simply clarifies the circumstances under which APHIS will perform the treatments. Therefore, this economic analysis concentrates on the potential economic effects of our proposal to amend two treatment options for fruits and vegetables.

We are proposing to amend methyl bromide treatment schedule MB T101–j–2–1 to indicate that it may only be performed at a temperature of 80 °F or above. The commodities for which this treatment is an approved treatment would not change. The treatment schedule is approved for *Anastrepha* spp. fruit flies in grapefruit, orange, and tangerine from Mexico and for *Anastrepha ludens* (Mexican fruit fly) in grapefruit, orange, and tangerine moved interstate from areas within the United States that are quarantined due to the presence of Mexican fruit fly.

We are also proposing to amend combination cold treatment-methyl bromide treatment schedule MB&CT T108–b to remove the cold treatment option of holding the fruit between 48 °F and 56 °F for 6 days. The other options available for this MB&CT treatment and the commodities for which this treatment is an approved treatment would not change. The treatment schedule is approved for *Austrotortrix* spp., *Epiphyas* spp., *Bactrocera tryoni*, Medfly, and other fruit flies in grape from Australia and for Medfly in apple, grape, and pear moved interstate from areas within the

United States that are quarantined due to the presence of Medfly.

Depending on the actual cost increases that occur because of the changes to the treatment schedules for MB T101–j–2–1 and MB&CT T108–b, foreign suppliers or domestic suppliers located in quarantined areas may experience a cost increase, and consequently the quantity of fruit or vegetables shipped could decrease. This decrease in the quantity shipped could result in a price increase, benefiting U.S. producers and suppliers located outside quarantined areas.

In reality, negative effects of the proposed changes in treatment requirements would be negligible; any changes in treatment costs associated with these amendments to the treatment schedules would represent a small fraction of the prices of the fruits and vegetables. Additionally, import quantities affected are small to nonexistent. Grapefruit, orange, and tangerine imports from Mexico represent less than one-half of 1 percent of domestic supply, and there are no records of apple, grape, or pear imports from Australia.

Domestically, this proposed rule would amend approved treatments for regulated articles moved interstate from areas quarantined due to Medfly. There are currently no areas in the United States quarantined due to the presence of Medfly. Because the proposal would not prohibit movement of regulated articles, if areas are quarantined in the future due to the presence of this pest, the effect on entities within those areas that move regulated articles interstate would be minimized by the continued availability of various treatment options that, in most cases, would allow these small entities to continue to move regulated articles interstate with very little change in cost.

If the proposed changes affect treatment costs or shipping expenses, U.S. entities that could be affected include producers of Medfly host crops, many of which are categorized within the following North American Industry Classification System subsectors: NAICS 111310, Orange Groves; NAICS 111320, Citrus (except Orange) Groves; NAICS 111331, Apple Orchards; NAICS 111332, Grape Vineyards; NAICS 111334, Berry (except Strawberry) Farming; NAICS 111335, Tree Nut Farming; NAICS 111336, Fruit and Tree Nut Combination Farming; and NAICS 111339, Other Noncitrus Fruit Farming. Other entities that could be affected are fruit and vegetables wholesalers (NAICS 422480), supermarkets and other grocery stores (NAICS 445110), warehouse clubs and superstores (NAICS 452910), and fruit and vegetable markets (NAICS 445230).

Other than warehouse clubs and superstores, the vast majority of the businesses that compose these industries are small entities. The Small Business Administration (SBA) classifies Medfly host crop operations as small entities if their annual receipts are not more than $750,000.[1] According to the 2002 Census of Agriculture, there were 446 operations that were engaged in the production of citrus and noncitrus fruits. Over 99 percent of these entities were designated as small entities. The SBA classifies fresh fruit and vegetable merchant wholesalers (NAICS code 422480) as small entities if they employ 100 or fewer employees. According to the 2002 Economic Census there were 4,644 of these entities nationally, with 484 (or 10.4 percent) of them considered to be large. SBA classifies supermarkets and other grocery stores (NAICS 445110) as small entities if their annual receipts are not more than $25 million. There were 56,577 supermarkets and other groceries in 2002. Of these, only 3,477 or 6.1 percent are considered to be large. Fruit and vegetable markets (NAICS code 445230) are considered small if their annual sales are not more than $6.5 million. In 2002, the most recent year for which data are available, the census reported 2,257 fruit and vegetable markets.[2] Approximately 96 percent of these are considered to be small entities by SBA standards. The census also reported 2,761 warehouse clubs and superstores (NAICS 452910), which are classified as small entities if their annual sales are not more than $25 million. Of the above total, 2,593, or 93.9 percent, are classified as large entities.

The majority of entities that could be affected by the rule are small entities. However, any effects would be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects for 7 CFR part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 7 CFR part 305 as follows:

PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for 7 CFR part 305 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 305.2 would be amended as follows:

a. In the table in paragraph (g), by removing, in the entry for Aircraft, the words ''Fruit flies and soft-bodied insects'' in the Pest column and ''Aerosol T409–c–1 or Aerosol T409–c–3.'' in the Treatment column.

b. In the table in paragraph (h)(2)(i), under All, by revising the entry for ''All imported fruits and vegetables'' and by adding a new entry for ''All imported fruits and vegetables approved for treatment with methyl bromide under the Federal Insecticide, Fungicide, and Rodenticide Act'' to read as set forth below.

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

[1] SBA, Small business Size Standards matched to North American Industry Classification System 2002, Effective January 2006 (*http://www.sba.gov/size/sizetable2002.html*).

[2] U.S. Census Bureau, 2002 Economic Census Geographic Area Series: Manufacturing and Wholesale Trade, Revised January 2006 (*http://www.census.gov/econ/census02/guide/geosumm.htm*).

Location	Commodity	Pest	Treatment schedule
All	All imported fruits and vegetables	Most	Quick freeze T110.
	All imported fruits and vegetables approved for treatment with methyl bromide under the Federal Insecticide, Fungicide, and Rodenticide Act.	Hitchhiker pests or surface pests, except mealybugs.	MB T104–a–1.
		Mealybugs	MB T104–a–2.
*	*	*	*

* * * * *

3. In § 305.6, in the table in paragraph (a), the entry for T101–j–2–1 would be revised to read as follows.

§ 305.6 Methyl bromide fumigation treatment schedules.

(a) * * *

Treatment schedule	Pressure	Temperature (°F)	Dosage rate (lb/1,000 cubic feet)	Exposure period (hours)
*	*	*	*	*
T101–j–2–1	NAP	80 or above	2.5	2
*	*	*	*	*

4. Section 305.9 would be amended as follows:

a. The section heading would be revised to read as set forth below.

b. Paragraph (b), including the table, would be revised to read as set forth below.

§ 305.9 Aerosol spray for aircraft treatment schedule.

* * * * *

(b) *Aerosol schedule.*

Treatment schedule	Aerosol	Rate
T–409b	d-phenothrin (10%)	8g/1,000 ft^3

5. In § 305.10, in the table in paragraph (a)(3), the entry for T–108b would be revised to read as follows:

§ 305.10 Treatment schedules for combination treatments.

(a) * * *

(3) * * *

Treatment schedule	Type of treatment	Temperature (°F)	Dosage rate (lb/1,000 cubic feet)	Exposure period (hours)
*	*	*	*	*
T108–b	MB	50 or above	1.5	2 hours
		40–49	2	2 hours
	CT	33 or below		21 days
*	*	*	*	*

* * * * *

Done in Washington, DC, this 28th day of June 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–13036 Filed 7–3–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–124–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We are reopening the public comment period on a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Since the close of the comment period, Virginia revised its revegetation standards for success for areas planted with a mixture of herbaceous and wood species by withdrawing one amendment and adding a new amendment. The amendments are intended to render the State's regulations consistent with SMCRA.

DATES: We will accept written comments on the proposal until 4 p.m. (local time) on July 20, 2007.

ADDRESSES: You may submit comments, identified by ''VA–124–FOR'', by any of the following methods:

- *E-mail: tdieringer@osmre.gov*. Include ''VA–124–FOR'' in the subject line of the message.
- *Mail/Hand Delivery:* Mr. Tim Dieringer, Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219.

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

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting:

Mr. Tim Dieringer, Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (276) 523–4303. E-mail: *tdieringer@osmre.gov*.

Mr. Gavin Bledsoe, Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (276) 523–8100. E-mail: *gavin.bledsoe@dmme.virginia.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Dieringer, Director, Knoxville Field Office; Telephone: (276) 523–4303. E-mail: *tdieringer@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Description of the Proposed Amendment

By letter dated February 13, 2007 (Administrative Record Number VA–1059), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that the program amendment reflects revisions of the Virginia Coal Surface Mining Reclamation Regulations concerning the distribution of topsoil and subsoil materials, revegetation standards for success, and to allow approval of natural stream restoration channel design, as developed in consultation with the Army Corps of Engineers.

We announced receipt of the proposed amendment in the April 9, 2007, **Federal Register** (72 FR 17452).

By electronic mail dated April 18, 2007, (Administrative Record Number VA–1074), the DMME stated that it wished to withdraw the changes it previously made to 4 VAC 25–130–816.116(a)(2) and 816.117(a)(2) due to an error. The amendments are to occur at sections 4 VAC 25–130–816.116(b)(3)(v)(C) and 817.116(b)(3)(v)(C) by changing its success standard for areas planted with a mixture of herbaceous and woody species from 90% to 80%.

In its initial amendment to 4 VAC 25–130–816.116/817(b)(3)(v)(C), Virginia deleted its ''90%'' success standard for areas planted with a mixture of herbaceous and woody species and replaced it with a ''70%'' success standard for areas planted with a mixture of herbaceous and woody species.

With this new amendment, 4 VAC 25–130–816/817.116(b)(3)(v)(C) provides as follows:

> Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of 80% and an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Big Stone Gap Area Office may not be logged in.

Electronic Comments

Please submit Internet comments as an E-mail or Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. ''VA–124–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Big Stone Gap Area office at (276) 523–4303.

Availability of Comments

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

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 31, 2007.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

[FR Doc. E7–12977 Filed 7–3–07; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–8335–8]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to partially delete the Uravan Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a notice of intent to partially delete approximately 7 acres within the Uravan Superfund Site, located in Montrose County, Colorado, from the National Priorities List (NPL) and requests public comments on this notice of intent. Specifically, EPA intends to delete a one mile section of Colorado State Highway 141, comprised of a right-of-way up to 60 feet in width between mile posts 75 and 76.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Colorado, through the Colorado Department of Public Health and Environment, have determined that all appropriate response actions under CERCLA, have been completed for the 7.27 acres. However, this deletion does not preclude future actions under Superfund.

DATES: Comments concerning the proposed partial deletion of this Site must be received by August 6, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail:* Rob Henneke, Community Involvement Coordinator, at *henneke.rob@epa.gov.*
- *Fax:* 303–312–6961 (Attention: Rob Henneke, Community Involvement Coordinator).
- *Mail:* Rob Henneke, Community Involvement Coordinator, U.S. EPA (80C–PI), 1595 Wynkoop, Denver, Colorado, 80202–1129.
- *Hand delivery:* Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado. Such deliveries are only accepted during 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–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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 *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA, Region 8 Records Center, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6473. Hours: M–F, 8 a.m. to 4 p.m.

Colorado Department of Public Health and the Environment, Records Center, Building B, Second Floor, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530. Hours: M–F, 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rebecca Thomas, Project Manager, U.S. EPA (8EPR-SR), 1595 Wynkoop, Denver, Colorado 80202–1129; e-mail (*thomas.rebecca@epa.gov*); phone (303) 312–6552, or toll free 1–800–227–8917, extension 6552.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of partial deletion of the Uravan Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to partially delete or the direct final notice of partial deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of partial deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to partially delete. We will not institute a second comment period on this notice of intent to partially delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the rules section of this **Federal Register**.

For additional information, see the Direct Final Notice of Deletion which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental Protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: June 26, 2007.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. E7–13060 Filed 7–3–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–2651; MB Docket No. 05–191; RM–11243]

Radio Broadcasting Services; Elberton and Union Point, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: In response to a *Notice of Proposed Rule Making* (''Notice''), this *Report and Order* dismisses a rulemaking petition requesting that Channel 286A, FM Station WEHR, Elberton, Georgia, be upgraded to Channel 286C2 and reallotted to Union Point, Georgia, and the license of Station WEHR be modified accordingly. Georgia-Carolina Radiocasting Company, LLC (''GCR''), the licensee of Station WEHR, requested Commission approval for the withdrawal of its underlying Petition for Rule Making for MB Docket No. 05–191. GCR filed a declaration that neither it nor any of its principals has been offered or received any consideration in connection with the withdrawal of its Petition for Rule Making in this proceeding.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–191, adopted June 13, 2007, and released June 15, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this *Report and Order* to GAO pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule is dismissed.)

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–12860 Filed 7–3–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Casey's June Beetle (Dinacoma caseyi) as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list Casey's June beetle (*Dinacoma caseyi*) as endangered under the Endangered Species Act of 1973, as amended (Act). The petition also asked that critical habitat be designated for the species. After review of all available scientific and commercial information, we find that listing is warranted. Currently, however, listing of Casey's June beetle is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, Casey's June beetle will be added to our candidate species list. We will develop a proposed rule to list this species as our priorities allow. Any determination on critical habitat will be made during development of the proposed listing rule.

DATES: The finding announced in this document was made on July 5, 2007.

ADDRESSES: Supporting documents for this finding are available for inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92011. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**) (telephone 760–431–9440; facsimile 760–431–5901). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 et seq.) requires that, for any petition to revise the List of Endangered and Threatened Wildlife or the List of Endangered and Threatened Plants that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) Not warranted, or (b) warranted, or (c) warranted but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Such 12-month findings are to be published promptly in the **Federal Register**. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded shall be treated as though resubmitted on the date of such finding, and requiring a subsequent finding to be made within 12 months.

Previous Federal Action

On May 12, 2004, we received a petition, dated May 11, 2004, from David H. Wright, Ph.D.; the Center for Biological Diversity; and the Sierra Club requesting the emergency listing of Casey's June beetle (*Dinacoma caseyi*) as endangered in accordance with section 4 of the Act. On October 4, 2005, the Center for Biological Diversity filed a complaint against us in the U.S. District Court for the Central District of California challenging our failure to make the required 90-day and, if appropriate, 12-month finding on their petition to emergency list Casey's June beetle under section 4 of the Act. We reached a settlement agreement with the plaintiffs on March 28, 2006, in which we agreed to submit to the **Federal Register** a 90-day finding by July 27, 2006, and to complete and submit to the **Federal Register**, if a substantial finding is made, a 12-month finding by June 30, 2007. On August 8, 2006, we published a 90-day petition finding (71 FR 44960) in which we concluded that emergency

listing was not necessary, but that the petition provided substantial information indicating that listing of Casey's June beetle may be warranted, and we initiated a status review. This notice constitutes the 12-month finding on the May 12, 2004, petition to list Casey's June beetle as endangered.

Taxonomy

Casey's June beetle belongs to the scarab family (Scarabidae). The genus *Dinacoma* includes two described species, *D. caseyi* and *D. marginata* (Blaisdell 1930, pp. 171–176). Delbert La Rue, a researcher experienced with the genus *Dinacoma* and a taxonomic expert stated, ''*Dinacoma caseyi* is a distinct species morphologically and comprises its own species group—the *caseyi* complex—the other [species group] being the *marginata* complex which includes the bulk/remainder of the genus'' (La Rue 2006, p. 1). The Casey's June beetle was first collected in the City of Palm Springs, California, in 1916, and was later described by Blaisdell (1930, pp. 174–176) based on male specimens. This species measures 0.55 to 0.71 inches (in) (1.4 to 1.8 centimeters (cm)) long, with dusty brown or whitish coloring, and brown and cream longitudinal stripes on the elytra (wing covers and back).

Recently, entomologists discovered two apparently new species or subspecies of *Dinacoma*, collected respectively from near the city of Hemet, California, and in the northwest portion of Joshua Tree National Park, California, at Covington Flats (La Rue 2006, p. 2). To date, these specimens of *Dinacoma* have not been formally described in the scientific literature, but expert evaluation places them in the other *Dinacoma* species group (*marginata* complex) (La Rue 2006, p.1). La Rue (2006, p. 2) stated that *Dinacoma caseyi* is the most morphologically divergent and distinct species in the genus. The new specimens collected from the Hemet area are paler than Casey's June beetle specimens and possess morphologically different genitalia (Anderson 2006a, p.1). Furthermore, the Little San Bernardino Mountains geographically isolate the new *Dinacoma* Joshua Tree population from all other known *Dinacoma* species.

Biology

Based on surveys conducted to assess the species' presence, both male and female Casey's June beetles emerge from underground burrows sometime between late March and early June, with abundance peaks generally occurring in April and May (Duff 1990, p. 3; Barrows 1998, p. 1). Females are always observed on the ground and are considered flightless (Duff 1990, p. 4; Frank Hovore and Associates 1995, p. 7; Hovore 2003, p. 3). La Rue (2006, p.1) stated that ''Female *Dinacoma* are very rare in collections. Females display an accentuated sexual dimorphism characterized by an enlarged abdomen, reduced legs and antennae, and metathoracic wing reduction and venation. These characters are likely adaptations to flightlessness and a fossorial biology.'' During the active flight season, males emerge from the ground and begin flying near dusk (Hovore 2003, p. 3). Males are reported to fly back and forth or crawl on the ground where a female beetle has been detected (Duff 1990, p. 3). Cornett (2003, p. 5) theorized that after emergence, females remain on the ground and release pheromones to attract flying males. After mating, females return to their burrows or dig a new burrow and deposit eggs. Excavations of adult emergence burrows revealed pupal exuviae (casings) at depths ranging from approximately 4 to 6 in (10 to 16 cm) (Frank Hovore and Associates 1995, p. 6).

The larval cycle for the species is likely 1 year, based on the absence of larvae (grubs) in burrows during the adult flight season (La Rue 2004, p. 1). The food source for Casey's June beetle larvae while underground is unknown, but other species of June beetle are known to eat ''plant roots or plant detritus and associated decay organisms'' (La Rue 2004, p.1). La Rue (2006, pp.1–2) stated, ''[Casey's June beetle] exhibits no specific host preferences, and larvae likely consume any available organic resources—including [layered organic debris]—encountered within the alluvial habitat.'' Specific host plant associations for Casey's June beetle are not known. Although visual surveys have detected a concentration of emergence burrows in the vicinity of a number of species of woody shrub in Palm Canyon Wash, this may be due to low soil disturbance by vehicles, foot traffic, and horses near woody vegetation (Hovore 2003, p. 3).

Habitat

La Rue (2006, p.1) stated that all *Dinacoma* populations are ecologically associated with alluvial sediments. Alluvial sediments occurring in or contiguous with coastal scrub, montane chaparral, and desert dry washes (ephemeral watercourses) are indicative of the *marginata* complex habitat, while bases of desert alluvial fans, and the broad, gently sloping, depositional surfaces formed at the base of the Santa Rosa mountain ranges in the dry Coachella Valley region by the overlapping of individual alluvial fans (bajada) are indicative of the *caseyi* complex habitat (La Rue 2006, p. 1).

Casey's June beetle is most commonly associated with Carsitas series soil (CdC), described by the United States Department of Agriculture (USDA) (USDA on-line GIS database, 2000) as gravelly sand on 0 to 9 percent slopes. This soil series is associated with alluvial fans, rather than areas of aeolian or windblown sand deposits. Hovore (2003, p. 2) described soils where Casey's June beetle occurs or occurred historically as, ''* * * almost entirely carsitas series, of a CdC type, typically gravelly sand, single grain, slightly effervescent, moderately alkaline (pH 8.4), loose, non-sticky, non-plastic, deposited on 0 to 9 percent slopes. On alluvial terraces and where they occur within washes, these soils show light braiding and some organic deposition, but [most years] do not receive scouring surface flows.'' Although Casey's June beetle has primarily been found on CdC soils, the beetle is also associated with Riverwash (RA), and possibly Carsitas cobbly sand (ChC), soils in the Palm Canyon Wash area (Anderson and Love 2007, p. 1). Its burrowing habit would suggest the Casey's June beetle needs soils that are not too rocky or compacted and difficult to burrow in.

Hovore (2003, p.11) and Cornett (2004, p. 14) hypothesized that upland habitats provide core refugia from which the species recolonizes wash habitat after intense flood scouring events (approximately every 10 years), and are required for long-term survival of the species. Most extant upland habitat in the range of Casey's June beetle has been developed as golf courses or suburban housing (Cornett 2004, p. 11). Although relatively high numbers of Casey's June beetles (70 individuals in the first 15 minutes, Powell 2003, p. 4; average 8.5 per night, Simonsen-Marchant and Marchant 2000, p. 5; 2001, p. 9) have been collected downstream from remaining upland habitat in Palm Canyon Wash, occupancy in this area is likely due to movement of sediment and larvae by water flow as hypothesized by Hovore (2003, p. 11). Occupied wash habitat downstream from all occupied upland habitats (from Smoke Tree Ranch to Gene Autry Trail, see distribution discussion below) is likely a long-term population ''sink'' for Casey's June beetle (only receiving female immigrants, not producing colonizers for upland habitat). Although wash habitat isolated from upland refugia may contribute relatively little to the

species' long-term survival under current circumstances, it is still important because it is apparently occupied by a relatively large proportion of the remaining population, and would be an important source of individuals for future reintroduction and augmentation activities.

With regard to current habitat conditions, Cornett (2004, p. 14) offered a hypothesis based on higher number of specimens collected or observed during surveys within the more developed areas compared to undeveloped areas within the gated Smoke Tree Ranch residential community (Smoke Tree Ranch). Cornett (2004, p. 14) hypothesized that the unique landscape of Smoke Tree Ranch may increase habitat quality of Casey's June beetle in this drier upland area with widely spaced homes, abundant native vegetation on vacant lots, and some irrigation. This hypothesis, if supported by future research, may hold the key to effective management for Casey's June beetle in remaining, less suitable upland habitat where the species may have been extirpated. Alternate hypotheses, such as increased collection sizes due to attraction of males to residential lights, should also be investigated. Considering Cornett's (2004, p. 14) above hypothesis, and the potential for high species density (however temporary) in Palm Canyon Wash, all remaining habitat areas with CdC or RA type soils in southern Palm Springs are considered important for species' conservation.

Range and Extant Distribution

Most locality information on Casey's June beetle specimens in collections specifies ''Palm Springs,'' or simply Riverside County (Duff 1990, p. 2; O'Brian 2007, p.1; Ratcliff 2007, p. 1; Wall 2007, p.1). Nineteen of 21 specimens in the Los Angeles County Natural History Museum (LACNHM; 1940 to 1989) were labeled as being from the city of Palm Springs. Other early collection records identify ''Palm Desert'' (''old record''; Duff 1990, p. 3), ''Indian Wells'' (2 specimens in the LACNHM from 1953), and ''Palm Canyon'' (''old record''; Duff 1990, p. 3), all in the western Coachella Valley. Duff (1990, p. 2) described two primary areas where the beetle was extant in Palm Springs, west of the city near Tahquitz Creek (''specific localities: Jct. Palm Canyon Drive and Tahquitz Way; Jct. Palm Canyon Drive and Sunny Dunes Road'') and south of the city near the intersection of Bogert Trail and South Palm Canyon Drive. Seven specimens in the LACNHM were labeled as having been collected near the intersection of Bogert Trail and South Palm Canyon Drive (1987, 1988, and 1989). The Bogert Trail/South Palm Canyon Drive collections were made within the Agua Caliente Tribe of Cahuilla Indians (Tribe) Reservation. Recently, numerous collections and observations have been made within Smoke Tree Ranch and other areas in, or adjacent to, Palm Canyon Wash south of Gene Autry Trail, in the City of Palm Springs. The Bogert Trail site and Smoke Tree Ranch have been commonly used as reference sites by surveyors (Duff 1990, p. 7; Hovore 1997a, p. 3; 1997b, p. 1; Barrows and Fisher 2000, p. 1; Cornett 2000, p. 9; Cornett 2003, p. 5; Hovore 2003, p. 4; Cornett 2004, p. 3). Hovore (Frank Hovore and Associates 1995, p. 3) stated that the Casey's June beetles collected by University of California-Long Beach (UCLB) students ''within the past 20 years'' were labeled ''Dead Indian Canyon'' (near the cities of Palm Desert and Indian Wells, south of Palm Springs); however, Hovore (2006b, p. 1) subsequently explained that this information is questionable due to incomplete specimen label information and contradictory information provided by the former UCLB curator. Because Palm Canyon (in Palm Springs) is joined by the smaller Murray, Andreas, and Wentworth Canyons, collectively referred to as the ''Indian Canyons,'' (for example, Barrows 1998, p. 1), we believe this may be the correct collection locality for the UCLB specimens.

The historical range of Casey's June beetle cannot be determined with any certainty, given the lack of specific locality information for many of the collection records. Frank Hovore and Associates (1995, p. 4) described the possible extent of the species' historical range as ''somewhere around Chino Canyon floodplain (or at most northwest to the Snow Creek drainage), south to around Indian Wells.'' Within this general geographic area from north to south of Palm Springs (Riverside County, California), the species is assumed to have occurred on alluvial fan bases flowing from the Santa Rosa Mountains, at or near the level contour line, where finer silts and sand are deposited. However, this purported range is ''based on inference and fragmentary data'' (Frank Hovore and Associates 1995, p. 4).

Given the lack of collection records, efforts have been made to determine the extant (remaining) distribution of Casey's June beetle in its purported historical range. Barrows and Fisher (2000, p.1) conducted trapping on two separate evenings in Dead Indian Canyon in Palm Desert, southeast of Palm Springs, but the species was not detected. The University of California–Riverside (UCR) conducted more than 10 years of year-round surveys for a variety of species, including Casey's June beetle, at the Boyd Deep Canyon Preserve in Palm Desert, California (also near Indian Wells, and including portions of Dead Indian Canyon). No Casey's June beetles were found during any of the UCR surveys (Anderson 2006a, p. 1). Although the May 11, 2004, petition references a ''Snow Creek'' collection site northwest of Palm Springs, we were not able to obtain any substantiating records for that location. A single-night survey conducted by Powell (2003, p. 1) near Snow Creek failed to find the species, although the beetle was confirmed to be active at Smoke Tree Ranch in Palm Springs at the time.

La Rue (2006, p. 1) has collected and worked extensively with *Dinacoma* spp. in southern California since the 1980s, but has not collected Casey's June beetle outside of its current known range in the City of Palm Springs. La Rue (2006, p. 2) stated:

> Many collectors, researchers, ecologists, and others * * * have surveyed for *D. caseyi* throughout the Coachella Valley for years without finding additional populations other than those still extant in and around Palm Springs. There are several factors that contribute to this isolation, a few being: (1) Topographically, the City of Palm Springs is protected from high wind events (dessication [sic] of necessary substrate) [by] the precipitous San Jacinto [Santa Rosa Mountains]; (2) the area where *D. caseyi* occurs in the City of Palm Springs receives a higher amount of annual precipitation because of its proximity to the base of the San Jacinto/Santa Rosa Mtns [Mountains]. Orographic lift [when an air mass is forced from low to higher elevations, it expands, cools, and can no longer hold moisture] will deplete most moisture from winter storms originating from the Pacific; what little remains falls in the Palm Springs area and rarely further into the Coachella Valley. Summer monsoonal patterns are insignificant. (3) As mentioned above, *Dinacoma* are restricted to alluvial sediments. Re: *D. caseyi*; these conditions only occur at the base of steep narrow canyons of the San Jacinto/Santa Rosa [Mountains].

Cornett (2004, p. 8) sampled more than 60 locations in Palm Springs to determine the current range of Casey's June beetle. Light traps were used to attract flying males and placed in relatively undisturbed flatlands likely to support Casey's June beetle. Traps were opened by 6:30 p.m. and remained open until at least 10 p.m. Eight traps were opened each evening, and each trapping station was used at least two times. To gauge trapping success, at least one trap was opened at Smoke Tree Ranch each

trapping session, where beetles have been reliably collected since occupancy was documented in 1998 (Barrows 1998, p. 1). Based on the survey results, Cornett (2004, p. 13), in agreement with Hovore (2003, p. 7), concluded that Casey's June beetle is currently restricted to southern Palm Springs in the vicinity of Palm Canyon and Palm Canyon Wash.

Despite recent attempts to document Casey's June beetle in areas throughout the purported historic range, all recent (1990s or later) Casey's June beetle collection locations are from sites near South Palm Canyon Drive, Bogert Trail, Smoke Tree Ranch, and portions of Palm Canyon Wash south of Gene Autry Trail in Palm Springs (Duff 1990, pp. 2–3; Simonsen-Marchant and Marchant 2000, p. 5 and 2001, p. 8; Hovore 2003, p. 7; Powell 2003, p. 1; Cornett 2000, p. 13 and 2004, p. 8; Yanega 2007, pp. 1–3). For example, one group of collectors associated with UCR who checked ''as many sites as possible'' for Casey's June beetle in Palm Springs, were apparently only able to collect specimens in the vicinity of Smoke Tree Ranch stables, adjacent to Palm Canyon Wash (Porcu 2003, p. 8). Localized distributions are typical for species of June beetles (superfamily Scarabaeoidea) with flightlessness in one or both sexes (Hovore 2006a, p. 1). We believe only one Casey's June beetle population remains, occupying the extant, contiguous habitat in southern Palm Springs.

Cornett (2004, p. 11) estimated the range of Casey's June beetle to cover approximately 800 acres (ac) (324 hectares (ha)). As discussed in our August 8, 2006, 90-day finding (71 FR 44960), based on our GIS mapping of Cornett's (2004, p. 13) distribution map, his estimated Casey's June beetle range was approximately 707 ac (286 ha) as opposed to approximately 800 ac (324 ha) (Cornett 2004, p. 11). To this we added another 51 ac (21 ha) of north Palm Canyon Wash between East Palm Canyon Drive and South Gene Autry Trail, resulting in an approximately 758-ac (307-ha) range for Casey's June beetle in the Palm Springs area (71 FR 44960). Subsequent analysis for this 12-month finding (see discussion below) indicates additional CdC and RA soils in Palm Canyon should also have been included in this range estimate. Because Cornett's (2004, p. 11) 800-ac (324-ha) range estimate included such large, peripheral, non-habitat features as the entire golf course between East Murray Canyon Drive and Bogert Trail, a more useful ''range'' description is the qualitative, habitat-based description given by Hovore (2003, p. 7): ''* * * from the lot at Bogert Trail and South Palm Canyon Drive east into, and across, Palm Canyon wash onto the upland terrace adjacent to the wash, and then downstream [northeast] within the wash and on the upland terrace deposits (CdC soils) through [Smoke Tree] Ranch to Highway 111, and then just within the wash through Seven Lakes Country Club to at least Gene Autry [Trail] * * *.'' For the remainder of this finding, our discussion of the species' current distribution will not consider a greater ''range,'' and will be limited to the amount of remaining undeveloped habitat (occupancy distribution) that does not include residential areas where soils have been graded, developed, or landscaped. Such areas are not currently habitable by the species.

To define the current distribution of extant Casey's June beetle habitat within our revised range description above, we used GIS soil data from the USDA (USDA on-line GIS database, 2000; CdC and RA soil series; see Habitat section above), 2005 satellite imagery, field surveys (Anderson 2006b, pp. 1–35), and collection data from Cornett (2000, p. 9; 2004, p. 8), Powell (2003, p. 1), Simonsen-Marchant and Marchant (2000, p. 5; 2001, p. 6), Barrows (1998, p. 1), and Hovore (2003, p. 7; 1997a, p. 2; 1997b, p. 4). All undeveloped CdC and RA soils within the area described above were considered extant habitat. To account for potential occupancy in undeveloped lots within the otherwise developed suburban housing area at Smoke Tree Ranch (Cornett 2004, p. 14; see Habitat section above), we included half the total area of the Smoke Tree Ranch development block (65 ac (26 ha)) in our extant habitat area estimate. Smoke Tree Ranch is the only suburban area within the distribution of Casey's June beetle that contains scattered undeveloped lots throughout the development. Our final analysis resulted in an estimate of 576 ac (233 ha) of extant undeveloped habitat in 2006 (Anderson and Love 2007, pp. 1–2). Extant habitat is limited to Palm Canyon Wash, Smoke Tree Ranch, and CdC soils in Palm Canyon south of East Murray Canyon Drive. Based on 1995 or more recent collection data (Cornett 2000, p. 9 and 2004, p. 8; Powell 2003, p. 1; Simonsen-Marchant and Marchant 2000, p. 3 and 2001, p 6; Barrows 1998, p. 1; Hovore 2003, p. 7 and 1997a p. 2 and 1997b, p. 4), and CdC or RA soils that were contiguous as recently as 1995 with habitat where Casey's June beetle was collected (Anderson and Love 2007, pp. 1–2), we consider all extant habitat within the species' distribution to be occupied or likely occupied.

Although recent surveys have not recorded Casey's June beetles in extant habitat west of South Palm Canyon Drive or south of Acanto Drive in Palm Springs (Barrows 1998, p. 1; Simonsen-Marchant and Marchant 2000, p. 5 and 2001, p. 6; Cornett 2004, pp. 8 and 13), low-density populations may be hard to detect. Barrows (1998, p. 1) reported observing numerous Casey's June beetle emergence holes ''* * * just beyond the entrance gate to the Indian Canyons, indicating with some probability their recent occurrence there.'' Hovore (1997a, p. 2) also reported ''a few'' potential Casey's June beetle emergence holes ''in a small CdC soil area along the toll road.'' Hovore (Frank Hovore and Associates 1995 p. 5; Hovore 1997a, p. 3 and 1997b, p. 4) also documented occupancy in currently undeveloped habitat west of South Palm Canyon Drive. Hovore (Frank Hovore and Associates 1995, p. 5) specifically described Casey's June beetle occupancy distribution on the west side of South Palm Canyon Drive as, ''* * * in a narrow strip along the west side of South Palm Canyon Drive from about the junction with Bogert Trail to [Acanto Drive], and extends only about 20–30 meters away from the roadway.''

Status and Trends

We do not have population estimates for the beetle or information showing decline in numbers. Surveys conducted for this species have been site-specific or primarily conducted to demonstrate presence or absence. For this reason, we focused our analysis of the decrease in the amount of extant habitat and the documented habitat loss over specific time periods.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife. In making this finding, we summarize below information regarding the status and threats to this species in relation to the five factors in section 4(a)(1) of the Act. In making our 12-month finding, we considered all scientific and commercial information in our files, including information received during the comment period that ended October 10, 2006 (71 FR 44960).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

We analyzed suburban development within southern Palm Springs from

2003 to 2007 to determine habitat impacts of completed and pending projects as cited in the petition and referenced in the August 8, 2006, 90-day finding (71 FR 44960). We were not able to identify all projects cited in the petition (and the 90-day finding), as the petitioners did not provide specific geographic descriptions, and cited acreages did not exactly match calculations in our most recent analysis. However, based on site visits and satellite imagery, we identified at least five projects that have removed or impacted occupied and likely occupied habitat, within the distribution described above, in the past 3 years: (1) The 39-ac (16-ha) Monte Sereno project north of Bogart Trail adjacent to Palm Canyon Wash (Tribal lands); (2) the 2-ac (1-ha) Desert Water Agency wells and pipeline project in the Smoke Tree Ranch development; (3) at least 7-ac (3-ha) of the Smoke Tree Ranch Cottages development (''Casitas'' development cited in the 90-day finding); (4) the 17-ac (7-ha) Smoketree Commons shopping area; and (5) the 34-ac (14-ha) Alta project north of Acanto Drive and west of Palm Canyon Wash (Tribal lands). These projects have resulted in the loss of, or impacts to, approximately 99 ac (40 ha) of occupied and likely occupied Casey's June beetle habitat from 2003 to 2006. Hovore (2003, p. 4) hypothesized that the destruction and isolation of occupied habitat caused by projects 1 and 5 above ''* * * overall may reduce the known range and extant population of the species by about one third.''

We conducted an additional analysis (Anderson and Love 2007, pp. 1–2) using available aerial photographs (from 1991), satellite imagery (from 1996, 2003, and 2005), and 2006 field surveys (Anderson 2006b, pp. 1–36) to determine rates of habitat loss in southern Palm Springs over the past 16 years. From 1991 to 2006, Casey's June beetle experienced an approximate 25 percent reduction in contiguous, undeveloped habitat from 770 ac (312 ha) in 1991 to 576 ac (233 ha) in 2006. Habitat loss has been greatest in recent years: at a rate of 2 percent per year from 1991 to 1996, at a rate of 1 percent per year from 1996 to 2003, and at a rate of 5 percent per year from 2003 to 2006. At this recent rate, all habitat remaining for Casey's June beetle would disappear in about twenty years (the foreseeable future).

Since publication of the August 8, 2006, 90-day finding (71 FR 44960), we have become aware of another project that will destroy or impact extant Casey's June beetle habitat. The 80- to 100-ac (32- to 40-ha) Alturas residential sub-division development project (also referred to as Eagle Canyon) is currently planned on Tribal lands (Davis 2007, p. 1; Park 2007, p. 1) in the area containing CdC soils west of South Palm Canyon Drive, and near Bogert Trail and Acanto Drive. This project has completed the environmental review process (CEQA), and is in the process of obtaining a grading permit (tentative tract number 30047). Our analysis (Anderson and Love 2007, pp. 1–3) determined that this project would alter the drainage system maintaining soil moisture levels in approximately 54 ac likely to be occupied by Casey's June beetle, including extant habitat near the section of Bogert Trail and South Palm Canyon Drive where occupancy was documented by Hovore (Frank Hovore and Associates 1995, p. 5; Hovore 1997a, p. 2 and 1997b, p. 4). The Alturas project would also directly impact CdC soils likely to be occupied, and by disrupting the water source maintaining suitable soil moisture levels, potentially decrease the 576 ac (233 ha) of remaining extant, suitable habitat by 9 percent. Surveys are currently being conducted adjacent to the Alturas project, where occupancy was previously documented, to determine likelihood of current habitat occupancy (Osborne 2007, p. 1; Park 2007, p. 1).

All habitat loss calculations above included wash habitat where Casey's June beetle may not be able to maintain occupancy following severe flood events (Cornett 2004, p. 14; Hovore 2003, p.11). Of the total 576 ac (233 ha) estimated remaining habitat, only 328 ac (133 ha) is upland habitat (excluding habitat that will be impacted by the Alturas project). According to Coachella Valley General Plan data (Riverside County 1999), all remaining upland habitat within Smoke Tree Ranch and on Tribal land north of Acanto Drive was projected to be developed at a density of 2 homes per acre by the year 2020. Although the projected land use designation code (''58'') for undeveloped habitat south of Acanto Drive was not defined in the documents available to us (Riverside County 1999), they have the same code as adjacent, already developed land (that is, East Bogert Trail area). Land use projections (Riverside County 1999) indicate most of the 328 ac (133 ha) remaining upland Casey's June beetle habitat could be eliminated by development within 12 years.

The development threat is greatest in upland CdC soil habitat areas that are believed to be key refugia for Casey's June beetle (see Habitat section above); however, development threats are not limited to upland habitat. For example, entire sections of Palm Canyon Wash east of occupied habitat near Gene Autry Trail have been converted to golf course landscaping (Anderson and Love 2007, p. 3). La Rue (2006, p. 2) emphasized the magnitude of development threats to *Dinacoma* population survival: ''Most *Dinacoma* have a limited range because of unprecedented habitat destruction and modification for recreational, residential and urban development resulting in serious distributional fragmentation throughout [their] former range. Consequently, several populations [of the genus *Dinacoma*] have been extirpated, especially those that once existed in Los Angeles County (*e.g.*, Glendale, Eaton Canyon).''

Analysis of aerial photography in Palm Canyon Wash indicates numerous land-disturbance activities affecting occupied wash habitat managed by the Riverside County Flood Control and Water Conservation District. In the vicinity of the State Route 111 bridge and Araby Drive, there appears to be road maintenance and flood control activities, as well as unregulated off-road vehicle disturbance. Cornett (2003, p. 12) noted similar off-road vehicle impacts during Casey's June beetle surveys on a nearby site adjacent to Whitewater Wash and the Palm Springs Airport. Any activities that compact or disturb soils when adult beetles are active, or affect soils to a depth where immature stages or resting adults are found, may affect the species' persistence in such areas.

Casey's June beetle habitat in Palm Springs has been increasingly fragmented by development in recent years (see above development discussion). Fragmentation of habitat compromises the ability of the species to disperse and establish new, or augment declining, populations, because females are flightless and males alone cannot establish new populations (Frank Hovore and Associates 1995, p. 7). Hovore (2003, p. 3) indicated that population movement would be ''slow and indirect,'' and suggested the population structure for Casey's June beetle in any given area could be described as multiple mini-colonies or ''clusters of individuals around areas of repeated female emergence.'' This would, in Hovore's (2003, p. 4) assessment, make the species susceptible to extirpation resulting from land use changes that would remove or alter surface features. Although fragmentation of habitat within a population distribution still allows mixing of genes by male flight, it would preclude recolonization of a site should all flightless female individuals be eliminated.

Summary of Factor A

Since 1991, urban development and construction have removed 25 percent of remaining habitat. From 2003 to 2006, habitat loss for the beetle has occurred at a rate of 5 percent per year. Because development trends are continuing (see above discussion of Alturas project approved by the City of Palm Springs, 9 percent loss in 2007), additional habitat for the beetle will be lost. The estimated amount of contiguous, undeveloped habitat currently available for the species is approximately 576 ac (233 ha) with some of these areas serving as biological ''sinks'' for the species. Based on development trends, the most important habitat for species persistence (alluvial uplands with CDC soil), is the habitat most likely to be lost to future development. Therefore, projected development of remaining upland habitat by the year 2020 would result in almost certain extinction of the species. Based on recent, current, and likely future habitat loss trends, the loss of historically occupied locations, reduced and limited distribution, habitat fragmentation, and land use changes associated with urbanization, we find that Casey's June beetle is threatened with extinction by destruction, modification, and curtailment of its habitat and range.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational purposes

We are not aware of any information regarding overutilization of Casey's June beetle for commercial, recreational, scientific, or educational purposes and do not consider this a threat at this time.

Factor C. Disease or Predation

We are not aware of any information regarding threats of disease or predation to the Casey's June beetle and do not consider this a threat at this time.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms that could provide some protection for Casey's June beetle include: (1) Federal laws and regulations, such as the National Environmental Policy Act; (2) State laws and regulations; and (3) local land use processes and ordinances. However, these regulatory mechanisms have not prevented continued habitat fragmentation and modification. There are no regulatory mechanisms that specifically or indirectly address the management or conservation of functional Casey's June beetle habitat. There are no regulatory protections for any other species that may provide incidental benefit to Casey's June beetle. We discuss existing regulatory mechanisms below.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347), as amended, requires Federal agencies to describe the proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. The resulting documents are primarily disclosure documents, and NEPA does not require or guide mitigation for impacts. Projects that are covered by certain ''categorical exclusions'' are exempt from NEPA biological evaluation. However, Federal agencies are not required to select the alternative having the least significant environmental impacts. A Federal agency may select an action that will adversely affect sensitive species provided that these effects were known and identified in a NEPA document.

State

The California Environmental Quality Act (CEQA 1970, as amended) requires disclosure of potential environmental impacts of public or private projects carried out or authorized by all non-Federal agencies in California. CEQA guidelines require a finding of significance if the project has the potential to ''reduce the number or restrict the range of an endangered, rare or threatened species'' (CEQA Guideline 15065). The lead agency can either require mitigation for unavoidable significant effects, or decide that overriding considerations make mitigation infeasible (CEQA Guideline 21002), although such overrides are rare. CEQA can provide some protections for a species that, although not listed as threatened or endangered, meets one of several criteria for rarity (CEQA Guideline 15380). For example, the Monte Sereno project (see specific project description (1) under Factor A above) impacted approximately 39 ac (16 ha) of occupied habitat. Impacts to Casey's June beetle were expected to be mitigated by payment of $600 per acre (total of $24,780) to the City of Palm Springs or a habitat conservation entity designated by the city for 41.3 ac (16.7 ha) of ''potential'' Casey's June beetle habitat (Dudek and Associates 2001, p. 24). However, no specific use of the funds for mitigation was specified (Dudek and Associates 2001, p. 24), and to our knowledge, no appropriate habitat has been conserved for Casey's June beetle to offset the Monte Sereno project impacts.

Examples of the limitation of CEQA to protect Casey's June beetle can also be found with Smoke Tree Ranch properties. In 2006, the City of Palm Springs issued a mitigated negative CEQA declaration for Smoke Tree Ranch Cottages (see specific project description (3) under Factor A above) (City of Palm Springs 2006, p. 2), finding ''no significant impact'' to Casey's June beetle, even though at least 7 ac (3 ha) of habitat was to be developed that Cornett's study (2004, pp. 18–27) identified as occupied. Another example includes the Smoketree Commons shopping center (see specific project description (4) under Factor A above). The project's Environmental Impact Review (EIR; Pacific Municipal Consultants 2005, p. 9) stated that the City of Palm Springs was responsible for enforcing and monitoring Casey's June beetle mitigation measures prior to issuance of a grading permit, including recording a conservation easement and developing a management plan for Casey's June beetle on conserved habitat. An easement was established; however, no management plan was drafted prior to issuance of the grading permit, and no monitoring or management activities are assured (Ewing 2007, p. 1).

We were unable to obtain copies of the Alturas development project EIR for review (see Factor A above, and Tribal discussion below) from the City of Palm Springs Planning Department or the author (Terra Nova Consulting). The project has completed the environmental review, and the project proponent has a tentative tract number with the City of Palm Springs (tentative tract number 30047).

The California Endangered Species Act (CESA) provides protections for many species of plants, animals, and some invertebrate species. However, insect species, such as the Casey's June beetle, are afforded no protection under the CESA. This is a further example of an existing regulatory mechanism that does not provide for the protection of the Casey's June beetle or its habitat.

Tribal

Reservation lands of the Agua Caliente Tribe encompass 257 ac (104 ha), approximately 45 percent of estimated extant Casey's June beetle habitat (RA and CdC soils; Anderson and Love 2007, pp. 1–3). All post–1996 development of occupied habitat, with the exception of the 17–ac (7–ha) Smoke Tree Commons project, has occurred on Tribal reservation land (see Factor A above). Because the remaining 163 ac (66 ha) of upland habitat (CdC soils) on Tribal reservation lands are relatively

flat and adjacent to or surrounded by recent development (Anderson and Love 2007, pp. 1–3), some of these lands are currently approved for development (Alturas project discussed above), and will likely continue to be targeted for development in the future.

While development on Tribal lands is sometimes subject to NEPA (42 U.S.C. 4321–4347), impacts to Casey's June beetle may not always be considered during the NEPA process. The inadequacy of NEPA to protect occupied Casey's June beetle habitat is demonstrated by the extent of development that has occurred over the past 5 years on Tribal lands in occupied habitat (see Factor A above).

In a letter to the Carlsbad Fish and Wildlife Office's Field Supervisor dated October 10, 2006, the Tribe stated that they had " * * * enacted a Tribal Environmental Policy Act to, among other things, ensure protection of natural resources and the environment. See Tribal Ordinance No. 28 at I.B., (2000)." We have reviewed the referenced Tribal Environmental Policy Act (Tribal Act) (Tribe 2000) and found the Tribal Act to be general, stating that the Tribe is the lead agency for preparing environmental review documents, and that Tribal policy is to protect the natural environment, including "all living things." According to the Tribal Act (Tribe 2000, p. 4), the Tribe will consult with any Federal, State, and local agency that has special expertise with respect to environmental impacts. Occupancy of the Bogert Trail site in the vicinity of South Palm Canyon Drive on Tribal land (Duff 1990, pp. 2–3, 4; Barrows and Fisher 2000, p. 1; Cornett 2004, p. 3; Hovore 1997b, p. 4; Hovore 2003, p. 4) has been greatly reduced, if not eliminated, by development since our receipt of the petition in 2004 (see Factor A above). The Alta and Monte Serano development projects eliminated most of the species' upland habitat outside of Smoke Tree Ranch estimated to be occupied in 2003. Frank Hovore (2003, p. 4) estimated that grading for the Alta project near South Palm Canyon Drive in May 2003 reduced the extant Casey's June beetle population size by "about one-third."

The Service was not consulted regarding Casey's June beetle prior to the recent development of the Alta and Monte Serano projects in occupied Casey's June beetle habitat; therefore, the Tribal Act does not appear to effectively protect the species' habitat. The Chief Planning and Development Officer for the Tribe (Davis 2007, p. 1) affirmed that the Tribal Act does not apply to all Tribal reservation lands; for example, the currently planned Alturas development project (see Factor A above) is not covered, because it is "fee land." Although environmental review documents (CEQA EIRs) were prepared by consultants and reviewed by the City of Palm Springs, the Tribe did not participate in the review or comment with regard to Casey's June beetle (Davis 2007, p. 1). The Service will continue to work with the Tribe to obtain any other information that illustrates how Tribal actions or policies would help conserve Casey's June beetle habitat and protect the species; however, we have not documented the protection of occupied Casey's June beetle habitat from development on Tribal reservation lands.

Habitat Conservation Plans (HCPs)

Some non-Federal lands within the purported historical range of Casey's June beetle are proposed for management under the Coachella Valley Association of Governments Habitat Conservation Plan (MSHCP). A supplemental Environmental Impact Statement (EIS)/EIR on the revised plan was made available to the public March 30, 2007 (72 FR 15148), and the public comment period closed May 29, 2007. Although Casey's June beetle was initially considered for coverage under the MSHCP, the March 2007 release of the final MSHCP, final EIR, and final implementing agreement did not include Casey's June beetle as a covered species. Because it is not a covered species, the MSHCP will not provide for protection or conservation of Casey's June beetle.

We continue to work with the Tribe on a HCP proposed to cover other imperiled species that may be impacted by development activities on Tribal land. At a meeting on March 7, 2007, the Tribe indicated a willingness to consider including Casey's June beetle in their plan; however, the current draft Tribal HCP does not include coverage of Casey's June beetle. Therefore, we currently do not anticipate conservation measures benefiting Casey's June beetle to result from this HCP. However, we have analyzed inclusion of Casey's June beetle as a covered species in the Tribal HCP as one of multiple alternatives in the draft EIS, which will be available for public review and comment during the summer of 2007. Because Casey's June beetle is not included as a covered species at this time, we do not consider the draft Tribal HCP will provide a conservation benefit to Casey's June beetle.

Candidate Conservation Agreements

Given the non-inclusion of Casey's June beetle in the final Coachella Valley MSHCP and draft Agua Caliente Tribal HCP, the Service has been working with Smoke Tree Ranch to develop a Candidate Conservation Agreement with Assurances (CCAA) to address Casey's June beetle conservation. As indicated in comprehensive scientific survey report range estimates (Simonsen-Marchant and Marchant 2001, p. 6; Cornett 2004, p. 13), Smoke Tree Ranch supports a substantial portion of known occupied Casey's June beetle habitat, including a portion of the property currently identified in Smoke Tree Ranch codes, covenants, and restrictions as "open space." The Service will continue to work cooperatively with Smoke Tree Ranch to complete and implement a CCAA for Casey's June beetle. The use of a CCAA can be an effective tool to conserve species in the absence of listing as threatened or endangered under the Act. For example, a CCAA can limit the use of bug-zappers or pesticides near occupied habitat or can mandate monitoring and adaptive management. However, until such time as a CCAA is completed, current regulatory mechanisms at Smoke Tree Ranch are inadequate to ensure conservation of the species. This CCAA will not be completed before the publication of this 12-month finding.

Summary of Factor D

Removal of occupied habitat by projects in the Bogert Trail area after the 2004 submission of the petition to list Casey's June beetle as endangered, and other recent and proposed development in occupied habitat, demonstrates existing regulatory mechanisms are not adequate to protect remaining occupied and essential Casey's June beetle habitat. Therefore, we find that the inadequacy of existing regulatory mechanisms presents a threat to the survival of Casey's June beetle.

Factor E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The one known remaining Casey's June beetle population in south Palm Springs also may be threatened by other natural or anthropogenically influenced factors, primarily increased intensity and frequency of scouring events in wash habitat. However, there is little species-specific scientific information describing the potential for these threats, and these issues should be the subject of future research.

Urban development adjacent to natural creek beds or washes

concentrates stream flow by constraining channel width, thereby increasing the speed of water flowing past a given location (hydrograph; cubic feet per second) (Leroy *et al.*, p. 772). Therefore, although no relevant hydrographic data is available for occupied areas of Palm Canyon Wash prior to 1988 (existing levees were already constructed; Anderson 2007, p. 9), it can be assumed that development adjacent to Palm Canyon Wash and associated flood-control levees has increased the intensity of scouring events believed by Hovore (2003, p. 11) and Cornett (2004, p. 14) to temporarily eliminate Casey's June beetles within Palm Canyon Wash. As a result, increased impacts of flood scouring to the one remaining population, already impacted and threatened by development, must be considered a significant contributing factor to the species' extinction probability.

Casey's June beetle is sensitive to changes in climate factors such as wind, temperature (for example, drying of alluvial soils), precipitation, and catastrophic flood events (Noss *et al.* 2001, p. 42; La Rue 2006, p. 2). As discussed above, increased intensity and frequency of flooding and scouring events in Palm Canyon Wash is of particular concern for Casey's June beetle. The frequency of heavy precipitation events has increased over most land areas (typically post-1960), consistent with warming and observed increases of atmospheric water vapor, and it is ''very likely'' (90 percent confidence) that heavy precipitation will become even more frequent (IPCC 2007, pp. 2 and 8–9). A review of literature and historic climate data (Anderson 2007, pp. 1–6) indicates Coachella Valley precipitation, peak stream flow (hydrograph; cubic feet per second) in Palm Canyon, and other weather patterns since 1950 have been locally consistent with global patterns reported by the IPCC (2007 p. 2, pp. 8–9 and 15). Therefore, it is likely that the severity and frequency of heavy precipitation events will increase in the area.

Summary of Factor E

The one remaining Casey's June beetle population in southern Palm Springs is likely threatened with extirpation in part by increased intensity and frequency of catastrophic flood events. We, therefore, find that other natural or manmade factors affecting the continued existence of the species present a likely threat to the survival of Casey's June beetle.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the petition, available published and unpublished scientific and commercial information, and information submitted to us during the public comment period following the publication of our 90-day petition finding. This 12-month finding reflects and incorporates information we received during the public comment period, or obtained through consultation, literature research, and field visits, and responds to significant issues. We also consulted with recognized Casey's June beetle experts. On the basis of this review, we find that the listing of Casey's June beetle is warranted, due to threats associated with urban development, the inadequacy of existing regulatory mechanisms, and other natural and manmade factors. However, listing of Casey's June beetle is precluded at this time by pending proposals for other species with higher listing priorities based on taxonomic uniqueness (that is, the only species described for the genus).

In making this finding, we recognize that there have been declines in the distribution and abundance of Casey's June beetle, primarily attributed to suburban development and habitat alteration (Factor A). From 1991 to 2006, Casey's June beetle experienced an estimated 25 percent reduction in contiguous, undeveloped habitat from 770 ac (312 ha) in 1991 to 576 ac (233 ha) in 2006. Habitat loss has been greatest in recent years. From 1991 to 1996, habitat was lost at a rate of 2 percent per year; from 1996 to 2003, at a rate of 1 percent per year; and from 2003 to 2006, at a rate of 5 percent per year. An additional 9 percent of apparent key refugia habitat will be impacted by development in 2007. At this rate, we could expect all remaining habitat will be lost within 20 years. Recent trends and projected development information indicate that all Casey's June beetle habitat continues to be threatened with further loss, degradation, and fragmentation, resulting in a negative impact on species' distribution and abundance. Federal (NEPA) and State (CEQA) regulations have not been adequate to prevent or minimize the loss of occupied habitat, as evidenced by recent development projects in occupied habitat. Although protections for occupied habitat under a Smoke Tree Ranch CCAA and a Tribal HCP are under consideration, these agreements have not been finalized (Factor D). Increased intensity and frequency of scouring events in wash habitat are threats that have likely contributed to decline of the species (Factor E). Since this finding is warranted but precluded, we do not need to specifically determine whether it is appropriate to perform a ''significant portion of the range'' analysis for this species. However, due to the restricted nature of Casey's June beetle's range, we generally consider all of the remaining range to be significant for the conservation of this species. Because of a small and restricted population distribution, and because of threats described above, Casey's June beetle should be listed as threatened or endangered throughout its entire range. We will review whether to list as threatened or endangered during the proposed listing rule process.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; resubmitted petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given

year also is influenced by the complexity of those listing actions, that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12-month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis, to $305,000 for another species that is wide-ranging and involved a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act, or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year since then, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding whether, when making a 12-month petition finding, we would prepare and issue a listing proposal or make a ''warranted but precluded'' finding for a given species. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [i.e., for a lower-ranking species] unwise.'' Taking into account the information presented above, in FY 2007, the outer parameter within which ''expeditious progress'' must be measured is that amount of progress that could be achieved by spending $5,193,000, which is the amount available in the Listing Program appropriation that is not within the critical habitat subcap.

Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. However, through court orders and court-approved settlements, Federal district courts have mandated that we must complete certain listing activities with respect to specified species and have established the schedules by which we must complete those activities. The species involved in these court-mandated listing activities are not always those that we have identified as being most in need of listing. As described below, a large majority of the $5,193,000 appropriation available in FY 2007 for new listings of species is being consumed by court-mandated listing activities; by ordering or sanctioning these actions, the courts essentially determined that these were the highest priority actions to be undertaken with available funding. Copies of the court orders and settlement agreements referred to below are available from the Service and are part of our administrative record.

The FY 2007 appropriation of $5,193,000 for listing activities (that is, the portion of the Listing Program funding not related to critical habitat designations for species that already are listed) is fully allocated to fund work in the following categories of actions in the Listing Program: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related and administrative- and program-management functions; and a few high-priority listing actions. The allocations for each specific listing action are identified in the Service's FY 2007 Allocation Table. While more funds are available in FY 2007 than in previous years to work on listing actions that were not the subject of court-orders or court-approved settlement agreements, based on the available funds and their allocation for these purposes, only limited FY 2007 funds are available for work on proposed listing determinations for the following high-priority candidate species: two Oahu plants (*Doryopteris takeuchii*, *Melicope hiiakae*), seven Kauai plants (*Chamaesyce eleanoriae*, *Charpentiera densiflora*, *Melicope degeneri*, *Myrsine mezii*, *Pritchardia hardyi*, *Psychotria grandiflora*, *Schiedea attenuata*) and four Hawaiian damselflies (*Megalagrion nesiotes*, *Megalagrion leptodemas*, *Megalagrion oceanicum*, *Megalagrion pacificum*). These species have all been assigned a listing priority number (LPN) of 2.

Our decision that a proposed rule to list Casey's June beetle is warranted but precluded includes consideration of its listing priority. In accordance with guidance we published on September 21, 1983, we assign a LPN to each candidate species (48 FR 43098). Such a priority ranking guidance system is required under section 4(h)(3) of the Act (16 U.S.C. 1533(h)(3)). Using this guidance, we assign each candidate a LPN of 1 to 12, depending on the magnitude of threats, imminence of threats, and taxonomic status; the lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). The threats described above for Casey's June beetle occur across its entire range, resulting in a negative impact on the species' distribution and abundance. We assigned Casey's June beetle an LPN of 2, based on threats that were of a high magnitude and imminent, and on its taxonomic status as a species. We currently have more than 120 species with an LPN of 2 (see Table 1 of the September 12, 2006, Notice of Review; 71 FR 53756). As such, the 1983 listing priority number system is not adequate to differentiate sufficiently among species based on their degree of extinction risk. Therefore, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: IUCN Red list status/rank, Heritage rank (provided

by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations comprise a list of approximately 40 candidate species (''Top 40'') that have the highest priority to receive funding to work on a proposed listing determination. For the next two years, we have funded proposed listings for species in the Top 40. Casey's June beetle is precluded by those species we have funded.

As explained above, a determination that listing is warranted but precluded also must demonstrate that expeditious progress is being made to add and remove qualified species to the Lists. (We note that in this finding we do not discuss specific actions taken on progress towards removing species from the Lists because that work is conducted using appropriations for our Recovery program, a separately budgeted component of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our ''precluded'' finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Our expeditious progress in FY 2007 in the Listing Program, up to the date of making this 12-month finding for Casey's June beetle, included preparing and publishing the following:

FY 2007 COMPLETED LISTING ACTIONS AS OF 06/6/2007

Publication date	Title	Species/actions	FR Pages
10/11/2006	Withdrawal of the Proposed Rule to List the Cow Head Tui Chub (*Gila biocolor vaccaceps*) as Endangered.	Final withdrawal, Threats eliminated.	71 FR 59700–59711.
10/11/2006	Revised 12-Month Finding for the Beaver Cave Beetle (*Pseudanophthalmus major*); Not Warranted.	Notice of 12-month petition finding, Not warranted.	71 FR 59711–59714.
11/14/2006	12-Month Finding on a Petition to List the Island Marble Butterfly (*Euchloe ausonides insulanus*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	71 FR 66292–66298.
11/14/2006	90-Day Finding for a Petition to List the Kennebec River Population of Anadromous Atlantic Salmon as Part of the Endangered Gulf Of Maine Distinct Population Segment.	Notice of 90-day petition finding, Substantial.	71 FR 66298–66301.
11/21/2006	90-Day Finding on a Petition To List the Columbian Sharp-Tailed Grouse as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 67318–67325.
12/5/2006	90-Day Finding on a Petition To List the Tricolored Blackbird as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 70483–70492.
12/6/2006	12-Month Finding on a Petition To List the Cerulean Warbler (*Dendroica cerulea*) as Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	71 FR 70717–70733.
12/6/2006	90-Day Finding on a Petition To List the Upper Tidal Potomac River Population of the Northern Water Snake (*Nerodia sipedon*) as an Endangered Distinct Population Segment.	Notice of 90-day Petition Finding, Not substantial.	71 FR 70715–70717.
12/14/2006	90-Day Finding on a Petition to Remove the Uinta Basin Hookless Cactus From the List of Endangered and Threatened Plants; 90-Day Finding on a Petition To List the Pariette Cactus as Threatened or Endangered.	Notice of 5-year Review, Initiation. Notice of 90-day petition finding, Not substantial. Notice of 90-day petition finding, Substantial.	71 FR 75215–75220.
12/19/2006	Withdrawal of Proposed Rule to List *Penstemon grahamii* (Graham's beardtongue) as Threatened With Critical Habitat.	Notice of withdrawal, More abundant than believed, or diminished threats.	71 FR 76023–76035.
12/19/2006	90-Day Finding on Petitions to List the Mono Basin Area Population of the Greater Sage-Grouse as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 76057–76079.
1/9/2007	12-Month Petition Finding and Proposed Rule To List the Polar Bear (*Ursus maritimus*) as Threatened Throughout Its Range; Proposed Rule.	Notice of 12-month petition finding, Warranted. Proposed Listing, Threatened	72 FR 1063–1099.
1/10/2007	Endangered and Threatened Wildlife and Plants; Clarification of Significant Portion of the Range for the Contiguous United States Distinct Population Segment of the Canada Lynx.	Notice of Guidance	72 FR 1186–1189.
1/12/2007	Withdrawal of Proposed Rule To List *Lepidium papilliferum* (Slickspot Peppergrass) Proposed rule; withdrawal.	Notice of withdrawal, More abundant than believed, or diminished threats.	72 FR 1621–1644.
2/2/2007	12-Month Finding on a Petition To List the American Eel as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	72 FR 4967–4997.
2/8/2007	Final Rule Designating the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment; Removing the Western Great Lakes Distinct Population Segment of the Gray Wolf From the List of Endangered and Threatened Wildlife.	Final Deferred date Final Delisting, Recovered Final Listing, Endangered	72 FR 6051–6103.
2/13/2007	90-Day Finding on a Petition To List the Jollyville Plateau Salamander as Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 6699–6703.

FY 2007 COMPLETED LISTING ACTIONS AS OF 06/6/2007—Continued

Publication date	Title	Species/actions	FR Pages
2/13/2007	90-Day Finding on a Petition To List the San Felipe Gambusia as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 6703–6707.
2/14/2007	90-Day Finding on A Petition to List *Astragalus debequaeus* (DeBeque milkvetch) as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 6998–7005.
2/21/2007	90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered and Initiation of a 5-Year Review.	Notice of 5-year Review, Initiation. Notice of 90-day petition finding, Not substantial.	72 FR 7843–7852.
3/8/2007	90-Day Finding on a Petition To List the Monongahela River Basin Population of the Longnose Sucker as Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 10477-10480.
3/29/2007	Final Rule Designating the Greater Yellowstone Area Population of Grizzly Bears as a Distinct Population Segment; Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List as Endangered the Yellowstone Distinct Population Segment of Grizzly Bears.	Final delisting, Recovered Final listing, Threatened.	72 FR 14865–14938.
03/29/2007	90-Day Finding on a Petition To List the Siskiyou Mountains Salamander and Scott Bar Salamander as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 14750-14759.
04/04/2007	Adding Four Marine Taxa to the List of Endangered and Threatened Wildlife (Southern Distinct Population Segment (DPS) of green sturgeon (*Acipenser medirostris*), staghorn (*Acropora cervicornis*) and elkhorn (*Acropora palmata*) corals, and the Southern Resident killer whale DPS (Orcinus orca)).	Final listing, Endangered; Final listing, Threatened.	72 FR 16284–16286.
04/24/2007	Revised 12-Month Finding for Upper Missouri River Distinct Population Segment of Fluvial Arctic Grayling.	Notice of 12-month petition finding, Not warranted.	72 FR 20305-20314.
05/02/2007	12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (*Euphilotes pallescens* ssp. *arenamontana*) as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	72 FR 24253–24263.
05/30/2007	90-Day Finding on a Petition To List the Mt. Charleston Blue Butterfly as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 29933–29941.

Our expeditious progress also includes work on listing actions for 29 species for which decisions have not been completed as of the date we made this 12-month finding for Casey's June beetle. These actions are listed below; we are conducting work on those actions in the top section of the table pursuant to a deadline set by a court and on all other actions pursuant to meeting statutory timelines, that is, timelines required under the Act:

LISTING ACTIONS FUNDED BUT NOT YET COMPLETED IN FY2007

Species	Action
Actions Subject to Court Order/Settlement Agreement	
Wolverine	12-month petition finding (remand).
Western sage grouse	90-day petition finding (remand).
Queen Charlotte goshawk	Final listing determination.
Rio Grande cutthroat trout	12-month petition finding (remand).
Sierra Nevada distinct population segment mountain yellow-legged frog	12-month petition finding (remand).
Statutory Listing Actions	
Polar bear	Final listing determination.
Ozark chinquapin	90-day petition finding.
Kokanee	90-day petition finding.
Goose Creek milkvetch	90-day petition finding.
Utah prairie dog	90-day petition finding.
Black-footed albatross	90-day petition finding.
Tucson shovel-nosed snake	90-day petition finding.
Gopher tortoise—Florida population	90-day petition finding.
Sacramento Valley tiger beetle	90-day petition finding.
Eagle lake trout	90-day petition finding.
Smooth billed ani	90-day petition finding.
Mojave ground squirrel	90-day petition finding.
Gopher tortoise—Eastern population	90-day petition finding.
Bay Springs salamander	90-day petition finding.
Tehachapi slender salamander	90-day petition finding.
Coaster brook trout	90-day petition finding.
Mojave fringe-toed lizard	90-day petition finding.

LISTING ACTIONS FUNDED BUT NOT YET COMPLETED IN FY2007—Continued

Species	Action
Evening primrose	90-day petition finding.
Palm Springs pocket mouse	90-day petition finding.
Northern leopard frog	90-day petition finding.
Mountain whitefish—Big Lost River population	90-day petition finding.
Giant Palouse earthworm	90-day petition finding.
Shrike, Island loggerhead	90-day petition finding.
Cactus ferruginous pygmy owl	90-day petition finding.
HIGH PRIORITY:	
2 Oahu plants	Proposed listing.
7 Kauai plants	Proposed listing.
4 Hawaiian damselflies	Proposed listing.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant laws and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, the actions described above collectively constitute expeditious progress.

Conclusion

We will add Casey's June beetle to the list of candidate species upon publication of this notice of 12-month finding. We request that interested parties submit any new information on status and threats for this species. Natural history and distribution information in particular will help us monitor and focus habitat conservation of this species. Should an emergency situation develop with this or any candidate species, we will act to provide immediate protection, if warranted.

We intend that any proposed listing action for Casey's June beetle will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited is available on request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** above).

Author(s)

The primary author of this document is Alison Anderson of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 28, 2007.

Kevin Adams,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–13031 Filed 7–3–07; 8:45 am]

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Notices

Federal Register

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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

Submission for OMB Review; Comment Request

June 28, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Patent License Application.

OMB Control Number: 0518–0003.

Summary of Collection: The U.S. Department of Agriculture patent licensing program grants patent licenses to qualified businesses and individuals who wish to commercialize inventions arising from federally supported research. The Agricultural Research Service (ARS) oversees licensing of federally owned inventions which must be done in accordance with terms, conditions, and procedures prescribed under 37 CFR part 404. Application information must be collected to identify the business or individual desiring the patent license along with a plan for the development and marketing of the invention and a description of the applicant's ability to fulfill the plan.

Need and Use of the Information: ARS will collect identify information on the applicant, identifying information for the business, and a detailed description for development and/or marketing of the invention using form AD–761. The information collected is used to determine whether the applicant has both a complete and sufficient plan for developing and marketing the invention and the necessary manufacturing, marketing, technical, and financial resources to carry out the submitted plan.

Description of Respondents: Business or other for profit; Not-for-profit institutions; Individuals or households; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 75.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–12917 Filed 7–3–07; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 28, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Imported Seed and Screening.

OMB Control Number: 0579–0124.

Summary of Collection: The United States Department of Agriculture (USDA) is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pest when eradication is feasible. The Plant Quarantine Act and the Federal Plant Pest Act authorizes the Department to

carry out this mission. Under the authority of the Federal Seed Act of 1939, as amended, the USDA regulates the importation and interstate movement of certain agricultural and vegetable seeds. The Plant Protection & Quarantine Division of USDA's Animal & Plant Health Inspection Service (APHIS) has established a seed analysis program with Canada that allows U.S. companies that import seed for cleaning or processing to enter into compliance agreements with APHIS. This program eliminates the need for sampling shipments of Canadian-origin seed at the border, and allows certain seed importers to clean seed without the direct supervision of an APHIS inspector. APHIS will collect information using forms PPQ 925, Seed Analysis Certificate and PPQ 519, Compliance Agreement.

Need and Use of the Information: APHIS will collect information from PPQ 925 and PPQ 519 to ensure that imported seeds do not pose a health threat to U.S. agriculture. If the information were not collected there would be no way of preventing noxious weeds from entering the United States.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,168.

Frequency of Responses: Recordkeeping: Reporting: On occasion.

Total Burden Hours: 9,576.

Animal and Plant Health Inspection Service

Title: Importation of Artificially Dwarfed Plants.

OMB Control Number: 0579–0176.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry or movement of plants and plant pests, to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Plant Protection and Quarantine, a unit within USDA's Animal and Plant Health Inspection Service (APHIS), enforce these regulations. Artificially dwarfed plants imported into the United States must be accompanied by a phytosanitary certificate of inspection issued by a plant health official employed by the government of the country from which the plants are exported.

Need and Use of the Information: APHIS will collect information from the phytosanitary certificate to state that the plants were: (1) Grown for at least 2 years in a nursery that is registered with the government of the country of export; (2) grown in pots containing only sterile growing media; (3) grown on benches at least 50 cm above the ground; and (4) inspected at least once each year by the plant protection service of the country of export. The collected information will enable PPQ to verify that the imported plants were grown under conditions that help keep the plants free from infestation by certain longhorned beetles and other pests. Without the information APHIS could not verify that imported nursery stock does not present significant risk of introducing plant pests and plant diseases into the United States.

Description of Respondents: Business or other for-profit; Farms; State, Local or Tribal Government; Individuals or households.

Number of Respondents: 30.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 38.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–12962 Filed 7–3–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–PY–07–0041]

Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of, and revision to a currently approved information collection for the National Research, Promotion, and Consumer Information Programs.

DATES: Comments on this notice must be received by September 4, 2007.

Additional Information: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to Angela C. Snyder, Research and Promotion; Standards, Promotion, & Technology Branch; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0256; Washington, DC 20250–0259, (202) 720–0976. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk, Poultry Programs, AMS, USDA, Room 3953–S, 1400 Independence Avenue, SW., Washington, DC 20250–0259, during regular business hours, or can be viewed at: *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date, as approved by OMB: 11/30/2007.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: National research and promotion programs are designed to strengthen the position of a commodity in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for specified agricultural commodities. USDA has the responsibility for implementing and overseeing programs for a variety of commodities including beef, blueberries, cotton, dairy, eggs, fluid milk, Hass avocados, honey, lamb, mangos, mushrooms, peanuts, popcorn, pork, potatoes, soybeans, and watermelons. The enabling legislation includes the Beef Promotion and Research Act of 1985 [7 U.S.C. 2901–2911]; Cotton Research and Promotion Act of 1966 [7 U.S.C. 2101–2118]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4514]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718]; the Hass Avocado Promotion, Research, and Information Act [7 U.S.C. 7801–7813]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4613]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]; the Pork Promotion, Research, and Consumer Information Act of 1985 [7 U.S.C. 4801–4819]; the Potato Research and Promotion Act [7 U.S.C. 2611–2627]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; the Watermelon Research and Promotion Act [7 U.S.C. 4901–4916]; and the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425] (which governs the blueberry, lamb, mango, and peanut programs).

These programs carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development, and product research to assist, improve, or promote the marketing, distribution, and utilization of their respective commodities. Approval of the programs is required through referendum of affected parties. The programs are administered by industry boards composed of producer, handler, processor, and in some cases, importer and public members appointed by the Secretary of Agriculture. Program funding is generated through assessments on designated industry segments.

The Secretary also approves the boards' budgets, plans, and projects. These responsibilities have been delegated to AMS. The applicable commodity program areas within AMS have direct oversight of the respective programs.

The information collection requirements in this request are essential to carry out the intents of the various Acts authorizing such programs, thereby providing a means of administering the programs. The objective in carrying out this responsibility includes assuring the following: (1) Funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by the enabling legislation; and (3) the board's administration of the programs conforms to USDA policy. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the respective orders, and their use is necessary to fulfill the intents of the Acts as expressed in the orders. The information collected is used only by authorized employees of the various boards and authorized employees of USDA.

The various boards utilize a variety of forms including; reports concerning status information such as handler and importer reports; transaction reports; exemption from assessment forms and reimbursement forms; forms and information concerning referenda including ballots; forms and information concerning board nominations and selection and acceptance statements; certification of industry organizations; and recordkeeping requirements. The forms and information covered under this information collection require the minimum information necessary to effectively carry out the requirements of the programs and their use is necessary to fulfill the intent of the applicable authorities.

AMS is committed to complying with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.41 hours per response.

Respondents: Producers, processors, handlers, importers, and others in the marketing chain of a variety of agricultural commodities, and recordkeepers.

Estimated Number of Respondents: 452,182.

Estimated Total Annual Responses: 415,677.

Estimated Number of Responses per Respondent: 0.92.

Estimated Total Annual Burden on Respondents: 170,033.37 hours.

Copies of this information collection can be obtained from Angela C. Snyder, Research and Promotion; Standards, Promotion, & Technology Branch at (202) 720–0976.

Comments regarding, but not limited to: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received will be available for public inspection during regular business hours at the above address and may be viewed at *http://www.regulations.gov.* 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 29, 2007.

Ellen Y. King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 07–3272 Filed 6–29–07; 4:32 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0079]

Notice of Request for Revision and Extension of Approval of an Information Collection; Importation of Live Swine, Pork, and Pork Products From Eight Mexican States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision and extension of approval of an information collection associated with regulations for the importation of live swine, pork, and pork products from eight Mexican States into the United States.

DATES: We will consider all comments that we receive on or before September 4, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0079 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0079, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0079.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be

sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of live swine, pork, and pork products from Mexico, contact Dr. Masoud Malik, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, 4700 River Road, Unit 40, Riverdale, MD 20737; (301) 734–3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Live Swine, Pork, and Pork Products From Eight Mexican States.

OMB Number: 0579–0230.

Type of Request: Revision and extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) is authorized, among other things, to prohibit the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests. To fulfill this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, chapter 1, subchapter D, parts 91 through 99, of the Code of Federal Regulations.

Part 94, § 94.25, allows the importation, subject to certain conditions, of live swine, pork, and pork products from certain regions, including the eight Mexican States of Baja California, Baja California Sur, Campeche, Chihuahua, Quintana Roo, Sinaloa, Sonora, and Yucatan, that are free of classical swine fever. Among the conditions is a requirement for a certificate that must be completed by Mexican veterinary authorities prior to export. The certificate must identify both the region of export and the region of origin as regions designated in §§ 94.9 and 94.10 as free of classical swine fever at the time the live swine, pork, or pork products were in the regions.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(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 our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Full-time salaried veterinarians employed by the national government of Mexico.

Estimated annual number of respondents: 8.

Estimated annual number of responses per respondent: 10.

Estimated annual number of responses: 80.

Estimated total annual burden on respondents: 80 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 28th day of June 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–13008 Filed 7–3–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hod/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Thursday, September 27, 2007. The meeting is scheduled to begin at 9:30 a.m. and will conclude at approximately 12:30 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management Office; 1717 Fabry Road, SE.; Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Recommendations on 2008 Projects; and (2) Public Forum.

The Public Forum is tentatively scheduled to begin at 10 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the September 27th meeting by sending them to Designated Federal Official Donna Short at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 4431 Highway 20; Sweet Home, Oregon 97386; (541) 367–3540.

Dated: June 26, 2007.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 07–3251 Filed 7–3–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Thursday, August 30, 2007. The meeting is scheduled to begin at 9:30 a.m. and will conclude at approximately 12:30 p.m. The meeting will be held at Salem Office of the Bureau of Land Management Office; 1717 Fabry Road SE., Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Report on status of past projects; (2) Election of chairperson; (3) Decision on overhead rate for 2008 projects; (4) Presentation of 2008 Projects; and (5) Public Forum.

The Public Forum is tentatively scheduled to begin at 9:45 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be

submitted prior to the August 30th meeting by sending them to Joanne West at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Joanne West; Sweet Home Ranger District; 4431 Highway 20; Sweet Home, Oregon 97386; (541) 367–3546.

Dated: June 26, 2007.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 07–3252 Filed 7–3–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA Rural Development.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Technical and Supervisory Assistance (TSA) grants.

DATES: Comments on this notice must be received by September 4, 2007 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Nica Mathes, Senior Loan Specialist, Single Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Mail STOP 0783, 1400 Independence Ave., SW., Washington, DC 20250–0783, Telephone 202–205–3656.

SUPPLEMENTARY INFORMATION:

Title: Technical & Supervisory Assistance Grants.

OMB Number: 0575–0188.

Expiration Date of Approval: November 30, 2007.

Type of Request: Extension of currently approved information collection.

Abstract: RHS is authorized under Section 525 of Title V of the Housing Act of 1949, as amended, to make grants to or to enter into contracts to pay part or all of the cost of developing, conducting, administering or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from Federal, State and local housing programs in rural areas.

Recipient public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes and other associations approved by the Secretary assist low-income individuals by providing homebuyer training, preparing applications for loan and other housing assistance, and counseling those with delinquent Rural Development housing loans. RHS refers to this program as Technical and Supervisory Assistance. RHS annually publishes a Notice of Funds Availability (NOFA) in the **Federal Register** to invite grant proposals. The NOFA sets forth the eligibility and application requirements.

Information is collected from applicants and grant recipients by Rural Development staff in its local, State and National offices. This information will be used to determine applicant eligibility for a grant, project feasibility, to select grants for funding, and to monitor performance of selected grantees. If an applicant's proposal is selected for funding, it will be notified of the selection and given the opportunity to submit a formal application.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .56 hours per response.

Respondents: Public and private nonprofit corporations, agencies, institutions, organizations, and Indian tribes.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 7.

Estimated Number of Responses: 349.

Estimated Total Annual Burden on Respondents: 621 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. 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.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E7–12969 Filed 7–3–07; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Program, hereinafter referred as Rural Development, announces its Community Connect Grant Program application window for funding during fiscal year (FY) 2007. In addition, RUS announces the minimum and maximum amounts for Community Connect grants applicable for the fiscal year. The Community Connect Grant Program regulations can be found at 7 CFR part 1739, subpart A.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping *no later* than August 20, 2007 to be eligible for FY 2007 grant funding. Late applications are not eligible for FY 2007 grant funding.

Electronic copies must be received by August 20, 2007 to be eligible for FY 2007 grant funding. Late applications are not eligible for FY 2007 grant funding.

ADDRESSES: You may obtain application guides and materials for the Community Connect Grant Program via the Internet at the following Web site: *http://www.usda.gov/rus/telecom/commconnect.htm.* You may also request application guides and materials from Rural Development by contacting

the appropriate individual listed in section VII of the Supplementary Information section of this notice.

Submit completed paper applications for grants to the Rural Development Utilities Program, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2870, STOP 1599, Washington, DC 20250–1599. Applications should be marked ''Attention: Director, Broadband Division, Rural Development Utilities Program.''

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Kenneth Kuchno, Director, Broadband Division, Rural Development Utilities Program, U.S. Department of Agriculture, telephone: (202) 690–4673, fax: (202) 690–4389.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Community Connect Grant Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.863.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping no later than August 20,2007, to be eligible for FY 2007 grant funding. Late applications are not eligible for FY 2007 grant funding.
- Electronic copies must be received by August 20, 2007, to be eligible for FY 2007 grant funding. Late applications are not eligible for FY 2007 grant funding.

Items in Supplementary Information:

I. Funding Opportunity: Brief introduction to the Community Connect Grant Program

II. Award Information: Available funds and minimum and maximum amounts

III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility

IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible

V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information

VI. Award Administration Information: Award notice information, award recipient reporting requirements

VII. Agency Contacts: Web, phone, fax, email, contact name

I. Funding Opportunity

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

Grant authority will be used for the deployment of broadband transmission service to extremely rural, lower-income communities on a ''community-oriented connectivity'' basis. The ''community-oriented connectivity'' concept will stimulate practical, everyday uses and applications of broadband facilities by cultivating the deployment of new broadband transmission services that improve economic development and provide enhanced educational and health care opportunities in rural areas. Such an approach will also give rural communities the opportunity to benefit from the advanced technologies that are necessary to achieve these goals. Please see 7 CFR part 1739, subpart A for specifics.

This notice has been formatted to conform to a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB), published in the **Federal Register** on June 23, 2003. This Notice does not change the Community Connect Grant Program regulation (7 CFR part 1739, subpart A).

II. Award Information

A. Available Funds

1. *General.* The Administrator has determined that the following amounts are available for grants in FY 2007 under 7 CFR 1739.2(a).

2. *Grants*

a. $8.91 million is available for grants. Under 7 CFR 1739.2, the Administrator has established a minimum grant amount of $50,000 and a maximum grant amount of $1,000,000 for FY 2007.

b. Assistance instrument: Rural Development will execute grant documents appropriate to the project prior to any advance of funds with successful applicants.

B. Community Connect grants cannot be renewed. Award documents specify the term of each award. Applications to extend existing projects are welcomed (grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. Who is eligible for grants? (See 7 CFR 1739.10.)

1. Only entities legally organized as one of the following are eligible for Community Connect Grant Program financial assistance:

a. An incorporated organization,

b. An Indian tribe or tribal organization, as defined in *25 U.S.C. 450b(b) and (c)*,

c. A state or local unit of government,

d. A cooperative, private corporation or limited liability company organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for Community Connect Grant Program financial assistance directly.

3. Applicants must have the legal capacity and authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable federal statutes and regulations.

B. What are the basic eligibility requirements for a project?

1. Required matching contributions. Please see 7 CFR 1739.14 for the requirement. Grant applicants must demonstrate a matching contribution, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of financial assistance requested. Matching contributions must be used for eligible purposes of Community Connect grant assistance (see 7 CFR 1739.12).

2. To be eligible for a grant, the Project must (see 7 CFR 1739.11):

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

b. Serve one and only one Community recognized in the latest U.S. Census; Contiguous areas outside the Community's boundaries that are not recognized in the U.S. Census as a separate Community, can be included in the applicant's proposed Service Area.

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

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

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

C. See paragraph IV.B of this notice for a discussion of the items that make up a completed application. You may also refer to 7 CFR 1739.15 for completed grant application items.

IV. Application and Submission Information

A. Clarifications to requirements for FY 2007.

1. Rural Development clarifies that the definition of ''Critical Community Facilities'' includes the mandatory Community Center.

2. For all funding commitments, including all matching fund commitments and commitments made by the applicant, that are required to complete the Project in addition to the Rural Development grant, evidence must be submitted demonstrating that funding arrangements have been obtained. This evidence must:

a. Clearly state the name of the entity that is making the commitment;

b. The amount of the commitment; and

c. The purpose of the commitment.

3. Rural Development clarifies that in order to qualify as eligible costs for grant coverage or matching fund contributions, operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction must be for the following purposes subject to the specified maximum amounts:

a. Salary for operations manager, not to exceed $30,000 per year.

b. Salary for technical support staff, not to exceed $30,000 per year.

c. Salary for community center staff, not to exceed $25,000 per year.

d. Bandwidth expenses, not to exceed $25,000 per year.

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

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

B. Where to get application information.

The application guide, copies of necessary forms and samples, and the Community Connect Grant Program regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/telecom/commconnect.htm,* or *http://www.grants.gov.*

2. The Rural Development Broadband Division, for paper copies of these materials: (202) 690–4673.

B. What constitutes a completed application?

1. Detailed information on each item required can be found in the Community Connect Grant Program regulation and the Community Connect Grant Program application guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application for any form of Community Connect Grant Program financial assistance specified in the Community Connect Grant Program regulation. The Community Connect Grant Program regulation and the application guide provide specific guidance on each of the items listed and the Community Connect Grant Program application guide provides all necessary forms and sample worksheets.

2. Applications should be prepared in conformance with the provisions in 7 CFR part 1739, subpart A, and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the Rural Development Application Guide for this program containing instructions and all necessary forms, as well as other important information, in preparing their application. Completed applications must include the following:

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

b. *An executive summary of the Project.* The applicant must provide Rural Development with a general project overview.

c. *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed 7 CFR 1739.17.

d. *System design.* The applicant must submit a system design, including, narrative specifics of the proposal, associated costs, maps, engineering design studies, technical specifications and system capabilities, etc.

e. *Scope of work.* The scope of work must include specific activities and services to be performed under the proposal, who will carry out the activities and services, specific time-frames for completion, and a budget for all capital and administrative expenditures reflecting the line item costs for all grant purposes, the matching contribution, and other sources of funds necessary to complete the project.

f. *Community-Oriented Connectivity Plan.* The applicant must provide a detailed Community-Oriented Connectivity Plan.

g. *Financial information and sustainability.* The applicant must provide financial statements and information and a narrative description demonstrating the sustainability of the Project.

h. *A statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

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

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

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

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

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

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

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

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

(vi) Certification regarding Architectural Barriers.

(vii) Certification regarding Flood Hazard Precautions.

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

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

(x) Federal Obligation Certification on Delinquent Debt.

3. DUNS Number. As required by the OMB, all applicants for grants must now supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The SF–424 contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see the Community Connect Web site or Grants.gov for more information on how to obtain a DUNS number or how to verify your organization's number.

C. How many copies of an application are required?

1. Applications submitted on paper: Submit the original application and two (2) copies to Rural Development.

2. Electronically submitted applications: The additional paper copies are not necessary if you submit the application electronically through Grants.gov.

D. *How and where to submit an application.* Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications for grants to the Rural Development Utilities Program, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2870, STOP 1599, Washington, DC 20250–1599. Applications should be marked ''Attention: Director, Broadband Division, Rural Development Utilities Program.''

b. Paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. Rural Development encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically submitted applications.

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. How to use Grants.gov:

(i) Navigate your Web browser to *http://www.grants.gov.*

(ii) Follow the instructions on that Web site to find grant information.

(iii) Download a copy of the application package.

(iv) Complete the package off-line.

(v) Upload and submit the application via the Grants.gov Web site.

d. Grants.gov contains full instructions on all required passwords, credentialing and software.

e. Rural Development encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadline.

f. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

E. Deadlines.

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than August 20, 2007 to be eligible for FY 2007 grant funding. Late applications are not eligible for FY 2007 grant funding.

2. Electronic grant applications must be received by August 20, 2007 to be eligible for FY 2007 funding. Late applications are not eligible for FY 2007 grant funding.

F. Funding Restrictions.

1. *Eligible grant purposes.* Grant funds may be used to finance:

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

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

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

d. Operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction; and

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

2. *Ineligible grant purposes.*

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

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

3. Please see 7 CFR 1739.3 for definitions, 7 CFR 1739.12 for eligible grant purposes, and 7 CFR 1739.13 for ineligible grant purposes

V. Application Review Information

A. Criteria

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria (total possible points: 100) See 7 CFR 1739.17 for the items that will be reviewed during scoring and for scoring criteria.

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

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

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

B. Review Standards

1. All applications for grants must be delivered to Rural Development at the address and by the date specified in this notice (see also 7 CFR 1739.2) to be eligible for funding. Rural Development will review each application for conformance with the provisions of this part. Rural Development may contact the applicant for additional information or clarification.

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

3. Applications conforming with this part will then be evaluated competitively by a panel of Rural Development employees selected by the Administrator of Rural Development Utilities Program, and will be awarded points as described in the scoring criteria in 7 CFR 1739.17. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

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

C. Selection Process

Grant applications are ranked by final score. Rural Development selects applications based on those rankings, subject to the availability of funds.

VI. Award Administration Information

A. Award Notices

Rural Development recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. Rural Development generally notifies applicants whose projects are selected for awards by faxing an award letter. Rural Development follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

B. Administrative and National Policy Requirements

The items listed in paragraph IV.B.2.k of this notice, and the Community Connect Grant Program regulation, application guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. Reporting

1. *Performance reporting.* All recipients of Community Connect Grant Program financial assistance must provide annual performance activity reports to Rural Development until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project. See 7 CFR 1739.19.

2. *Financial reporting.* All recipients of Community Connect Grant Program financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please see 7 CFR 1739.20.

VII. Agency Contacts

A. Web site: *http://www.usda.gov/rus/commconnect.htm.* This Web site maintains up-to-date resources and contact information for the Community Connect Grant Program.

B. Phone: 202–690–4673.

C. Fax: 202–690–4389.

D. Main point of contact: Kenneth Kuchno, Director, Broadband Division, Rural Development Utilities Program, U.S. Department of Agriculture.

Dated: June 29, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. 07–3285 Filed 7–3–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Withdrawal of Announcement of Grant Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Withdrawal of Notice of Funds Availability.

SUMMARY: The Rural Utilities Service, an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Program, hereinafter referred to as Rural Development, announces the withdrawal of a previously published Notice of Funds Availability (NOFA) for the Community Connect Grant Program due to an inadvertent error. A corrected NOFA appears elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth Kuchno, Director, Broadband Division, Rural Development Utilities Program, U.S. Department of Agriculture, telephone: (202) 690–4673, fax (202) 690–4389.

SUPPLEMENTARY INFORMATION: On June 29, 2007, at 72 FR 35685, Rural Development published a NOFA for the Community Connect Grant Program, which contained inadvertent errors. As a result of these errors, Rural Development is withdrawing the previously published NOFA and publishing a corrected version elsewhere in the Notices section of this issue of the **Federal Register**.

Applicants who may have already applied under the previous NOFA announcement must re-apply under today's NOFA in order to be eligible for consideration.

Dated: June 29, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. 07–3286 Filed 7–3–07; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, July 13, 2007; 9:30 a.m.

Place: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Meeting Agenda

I. Approval of Agenda
II. Approval of Minutes of June 1, Meeting
III. Announcements
IV. Staff Director's Report
V. Management and Operations
- 2009 Budget

VI. Program Planning
- Briefing Report on Racial Categorization in the Census
- Briefing Report on Educational Effectiveness of HBCUs
- FY 2007 Statutory Report
- Update: Briefing on Minorities in Foster Care and Adoption

VII. State Advisory Committee Issues
- Hawaii SAC
- Indiana SAC
- Pennsylvania SAC
- New Jersey SAC

VIII. Future Agenda Items
IX. Adjourn

FOR FURTHER INFORMATION CONTACT: Manuel Alba, Press and Communications (202) 376–8582.

Dated: July 2, 2007.

David Blackwood,

General Counsel.

[FR Doc. 07–3304 Filed 7–2–07; 3:37 pm]

BILLING CODE 6335–02–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No: 070206026–7213–01]

Revision to the Unverified List—Guidance as to ''Red Flags''

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security (''BIS'') published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks or post-shipment verifications could not be conducted for reasons outside the control of the U.S. Government (''Unverified List''). Additionally, on July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries who are parties to transactions where BIS is not able to verify the existence or

authenticity of the end-user, intermediate consignee, ultimate consignee, or other party to the transaction and persons affiliated with a person on the Unverified List by virtue of ownership, control, position of responsibility, or other affiliation or connection in the conduct of trade or business. These notices advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a ''red flag'' as described in the guidance set forth in Supplement No. 3 to 15 CFR part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. This notice adds three entities to the Unverified List. The entities are: Al Minzal Medical Equipment & Instruments, P.O. Box 31107, Sharjah, United Arab Emirates; JSC Chop Vityaz-S, 146 Unikh Pionerov Ave, Samara, Russia; Sistem Dizayners Co., APA: 2 NO.: 60, Merdanov Gardashlari St., Baku, Azerbaijan.

DATES: This notice is effective July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Deniz Muslu, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482–4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR parts 730 to 774) (''EAR''), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities, software or technology. In carrying out these activities, BIS officials, or officials of other federal agencies acting on BIS's behalf, selectively conduct pre-license checks (''PLCs'') to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out post-shipment verifications (''PSVs'') to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and otherwise consistent with the EAR.

In certain instances BIS officials, or other federal officials acting on BIS's behalf, have been unable to perform a PLC or PSV with respect to certain export control transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). BIS listed a number of foreign end-users and consignees involved in such transactions in the Unverified List that was included in BIS's **Federal Register** notice of June 14, 2002. 67 FR 40910. On July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries where BIS is not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee, or other party to an export transaction and persons affiliated with a person on the Unverified List by virtue of ownership, control, position of responsibility, or other affiliation or connection in the conduct of trade or business. 69 FR 42652.

The June 14, 2002 and July 16, 2004 notices advised exporters that the involvement of a listed person in a transaction constituted a ''red flag'' under the ''Know Your Customer'' guidance set forth in Supplement No. 3 to 15 CFR part 732 of the EAR. Under that guidance, whenever there is a ''red flag,'' exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate other provisions of the EAR. The **Federal Register** notices further stated that BIS may periodically add persons to the Unverified List based on the criteria set forth above, and remove persons when warranted.

This notice advises exporters that BIS is adding Al Minzal Medical Equipment & Instruments in the United Arab Emirates, JSC Chop Vityaz-S in Russia, and Sistem Dizayners Co. in Azerbaijan to the Unverified List. BIS has determined that it is appropriate to add these entities to the Unverified List because BIS was unable to conduct a PLC, a PSV, and/or was unable to verify the existence or authenticity of an end user, intermediate consignee, ultimate consignee, or other party to an export transaction. A ''red flag'' now exists for transactions involving these entities due to their inclusion on the Unverified List. As a result, exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate other provisions of the EAR.

The Unverified List, as modified by this notice, is set forth below.

Dated: June 28, 2007.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

Unverified List (As of July 5, 2007)

The Unverified List includes names, countries, and last known addresses of foreign persons involved in export transactions with respect to which: The Bureau of Industry and Security (''BIS'') could not conduct a pre license check (''PLC'') or a post shipment verification (''PSV'') for reasons outside of the U.S. Government's control; BIS was not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee or other party to an export transaction; and/or the person is affiliated with a person on the Unverified List by virtue of ownership, control, position of responsibility, or other affiliation or connection in the conduct of trade or business. Any transaction to which a listed person is a party will be deemed to raise a ''red flag'' with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR part 732. The red flag applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known address
Lucktrade International	Hong Kong Special Administrative Region	P.O. Box 91150 Tsim Sha Tsui, Hong Kong.
Brilliant Intervest	Malaysia	14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Dee Communications M SDN. BHD	Malaysia	G5/G6, Ground Floor, Jin Gereja Johor Bahru.
Peluang Teguh	Singapore	203 Henderson Road #09–05H Henderson Industrial Park.
Lucktrade International PTE Ltd.	Singapore	35 Tannery Road #01–07 Tannery Block Ruby Industrial Complex Singapore 347740.
Arrow Electronics Industries	United Arab Emirates	204 Arbift Tower, Benyas Road Dubai.

Name	Country	Last known address
Jetpower Industrial Ltd	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Onion Enterprises Ltd.	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Lucktrade International	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Litchfield Co. Ltd.	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Sunford Trading Ltd.	Hong Kong Special Administrative Region	Unit 2208, 22/F 118 Connaught Road West.
Parrlab Technical Solutions, LTD	Hong Kong Special Administrative Region	1204, 12F Shanghai Industrial Building, 48–62 Hennesey Road, Wan Chai.
T.Z.H. International Co. Ltd.	Hong Kong Special Administrative Region	Room 23, 2/F, Kowloon Bay Ind. Center, No. 15 Wany Hoi Rd., Kowloon Bay.
Design Engineering Center	Pakistan	House 184, Street 36, Sector F–10/1, Islamabad.
Kantry	Russia	13/2 Begovaya Street, Moscow.
Etalon Company	Russia	20B Berezhkovskaya Naberezhnaya, Moscow.
Pskovenergo Service	Russia	47–A Sovetskaya Street, Pskov, Russia Federation, 180000.
Sheeba Import Export	Yemen	Hadda Street, Sanaa.
Aerospace Consumerist Consortium FZCO	United Arab Emirates	Sheikh Zayed Road, P.O. Box 17951, Jebel Ali Free Zone, Dubai and Dubai International Airport, Dubai, 3365.
Medline International LLC	United Arab Emirates	P.O. Box 86343 Dubai.
Al Aarif Factory Equipment Trading LLC	United Arab Emirates	Sheikh Fahad Saad Alsbah Bldg., Al Maktoum Street, P.O. Box 28162, Dubai, UAE (also located in Al Quoz district of Dubai).
Al-Thamin General Trading LLC	United Arab Emirates	P.O. Box 41364, Dubai, UAE.
Amiran Trading Company	United Arab Emirates	Arbift Tower, 1st Floor, Flat No. 1803, Deira, UAE, also P.O. Box 61463, Jebel Ali, Dubai, UAE.
Bazar Trading Co.	United Arab Emirates	Baniyas Tower, Suite 212, Dubai, UAE.
Davood Khosrojerdi, dba Al Musafer Tourism and Cargo.	United Arab Emirates	Concord Tower, Al Maktoum Street, P.O. Box 77900, Dubai, UAE.
Fuchs Oil Middle East	United Arab Emirates	Sharjah Airport International Free Zone, Sharjah, UAE.
Part Tech Co.	United Arab Emirates	Baniyas Tower, Suite 212, Dubai, UAE.
Parto Abgardan	United Arab Emirates	Showroom #5, Sheikh Rashid bin Khalifa al Maktoum Building, Dubai, UAE.
Reza Nezam Trading	United Arab Emirates	Al Dana Center, Al Maktoum Street, P.O. Box 41382, Dubai, UAE.
Sarelica (Sar Elica) FZC	United Arab Emirates	Bldg. #3, Office No. 3 G–08, P.O. Box 41710, Hamariya Free Zone, Sharjah, UAE.
Semicom Technology International LLC	United Arab Emirates	Office No. 18, 6th Floor, Horizons Business Centre, Al-Doha Centre, Al-Maktoum St., P.O. Box 41096, Dubai, UAE.
Vitaswiss Limited	United Arab Emirates	P.O. Box 61069, Office #R/A 8 CB03, UAE.
Centre Bright Company	Hong Kong Special Administrative Region	Unit 7A, Nathan Commercial Building, 430–436 Nathan Road, Kowloon City, Hong Kong.
IC Trading Ltd	Russia	Yauzskaya Str. 8, Bldg. 2, Moscow, Russia.
Al Minzal Medical Equipment & Instruments	United Arab Emirates	P.O. Box 31107, Sharjah, UAE.
JSC Chop Vityaz-S	Russia	146 Unikh Pionerov Ave., Samara, Russia.
Sistem Dizayners Co.	Baku, Azerbaijan	APA: 2 NO.: 60, Merdanov Gardashlari St., Baku, Azerbaijan.

[FR Doc. E7–12894 Filed 7–3–07; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Certain Cut–to-Length Carbon Steel Plate from Romania: Preliminary Results of the Antidumping Duty Administrative Review and Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from a domestic producer, Nucor Corporation, and a Romanian producer/exporter, Mittal Steel Galati, S.A. (''MS Galati''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain cut–to-length carbon steel plate (''CTL plate'') from Romania. The period of review is August 1, 2005, through December 15, 2005. With regard to the two Romanian companies that are subject to this administrative review, producer MS Galati and exporter Metalexportimport S.A. (''MEI''), we preliminarily determine that sales of subject merchandise produced by MS Galati have been made at less than normal value (''NV''). Since MEI was not involved with any of the U.S. sales during the period of review, we are assigning a preliminary dumping margin to MS Galati only and intend to rescind the review with respect to MEI. For a full discussion of the intent to rescind with respect to MEI, *see* the ''Notice of Intent to Rescind in Part'' section of this notice below. We invite interested parties to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue(s), (2) a brief summary of the argument(s), and (3) a table of authorities.

EFFECTIVE DATE: July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or John Drury, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CTL plate from Romania for the period August 1, 2005, through July 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 43441 (August 1, 2006). On August 30, 2006, the Department received a timely request from Nucor Corporation, a domestic producer, requesting that the Department conduct an administrative review of shipments of CTL plate from Romania produced by MS Galati and exported to the United States by MS Galati or MEI. In addition, on August 31, 2006, the Department received a timely request from MS Galati, requesting that the Department conduct an administrative review of subject merchandise produced/exported by MS Galati.

On September 29, 2006, the Department initiated an administrative review of the antidumping duty order on CTL plate from Romania, for the period covering August 1, 2005, through July 31, 2006, to determine whether merchandise imported into the United States from MS Galati and MEI is being sold at less than NV. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006). On October 12, 2006, the Department issued an antidumping duty questionnaire to MS Galati.

On November 17, 2006, the Department received the section A questionnaire response from MS Galati. On December 11, 2006, MS Galati filed its section B and C questionnaire responses. On February 14, 2007, the Department issued a supplemental questionnaire regarding MS Galati's sections A through C questionnaire responses. On March 8, 2007, MS Galati submitted its response to the supplemental questionnaire. On April 2, 2007, the Department issued a second supplemental questionnaire with regard to section C, and received MS Galati's response on April 16, 2007. On June 12, 2007, the Department received MS Galati's quantity and value reconciliation, as required under section A of the Department's antidumping questionnaire. Because there was no sales–below-cost allegation and the Department did not initiate a review of MS Galati's costs, MS Galati was not required to file a section D questionnaire response.

On December 14, 2006, the International Trade Commission determined that revocation of the antidumping duty orders on CTL plate from certain countries, including Romania, would not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom*, 72 FR 4529 (January 31, 2007) and USITC Publication 3899 entitled *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom: Investigation Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325- 327, 348, and 350 (Second Review); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review)* (January 2007). Thus, the Department revoked the antidumping duty order on CTL plate from Romania, pursuant to sections 751(c) and 751(d) of the Act. *See Revocation Pursuant to Second Five–Year (Sunset) Reviews: Countervailing Duty Orders on Certain Steel Products from Belgium, Brazil, Mexico, Spain and Sweden; Antidumping Duty Orders on Certain Cut–to-Length Carbon Steel Plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom; Antidumping Finding on Carbon Steel Plate from Taiwan*, 72 FR 6519 (February 12, 2007) (''*Revocation of Plate from Romania*''). The Department stated in the *Revocation of Plate from Romania* that it will complete any pending administrative reviews of the order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is December 15, 2005. As a result, the Department is completing the instant review of CTL plate from Romania for the period of review covering August 1, 2005, to December 15, 2005.

Period of Review

The period of review (''POR'') is August 1, 2005, through December 15, 2005.

Notice of Intent To Rescind Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the

review, there were no entries, exports, or sales of the subject merchandise. *See, e.g., Stainless Steel Plate in Coils from Taiwan: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (February 7, 2002), and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610 (April 10, 2001). In its supplemental questionnaire response, MS Galati stated that during the POR, MEI was not involved with any of the U.S. sales. *See* MS Galati's supplemental questionnaire response, dated March 8, 2007, at 20. In the previous antidumping duty administrative review of CTL plate from Romania, covering the period August 1, 2004, through July 31, 2005, the Department found that a) MEI is not the producer of subject merchandise, b) MEI does not take title to the merchandise which MS Galati exports through MEI, and c) MS Galati has knowledge of the destination of its subject merchandise exports. *See Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut–to-Length Carbon Steel Plate from Romania*, 72 FR 6522, February 12, 2007. Additionally, the Department conducted a U.S. Customs and Border Protection (''CBP'') data inquiry and determined that there were no identifiable entries of CTL plate during the POR manufactured or exported by MEI. *See* ''Memorandum to the File, through Angelica Mendoza, Program Manager, from Dena Crossland: Metalimportexport S.A. No Shipments of Certain Cut–to-Length Carbon Steel Plate from Romania Pursuant to U.S. Customs and Border Protection Inquiry,'' dated June 24, 2007. Therefore, the Department concludes that during the POR, MEI did not produce or export subject merchandise, including merchandise produced by MS Galati, and accordingly we are preliminarily rescinding the review with respect to MEI.

Scope of the Antidumping Duty Review

The products covered by this antidumping duty review include hot–rolled carbon steel universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coil and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot–rolled carbon steel flat–rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included under this review are flat–rolled products of nonrectangular cross–section where such cross–section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')--for example, products which have been bevelled or rounded at the edges. Excluded from this review is grade X–70 plate. These HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Currency Conversion

We made currency conversions pursuant to 19 CFR 351.415 based on the exchange rates in effect on the dates of the U.S. sales, as certified by Dow Jones Reuters Business Interactive LLC (trading as Factiva).

Date of Sale

The Department's regulations state that it will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If the Department can establish ''a different date that better reflects the date on which the exporter or producer establishes the material terms of sale,'' the Department may choose a different date. *Id.* As further discussed below, the Department preliminarily determines that for U.S. sales, the invoice date is the appropriate date of sale. For home market sales, the Department preliminarily determines that the invoice date is the date of sale provided the invoice is issued on or before the shipment date; and that the shipment date is the date of sale where the invoice is issued after the shipment date. In its section C questionnaire response, MS Galati reported the date of order acknowledgment as the date of sale for its U.S. sales. MS Galati stated that all sales of subject merchandise were made pursuant to affiliated importer Mittal Steel North America's (''MSNA's'') order acknowledgments to the U.S. customer, and that the exact quantities shipped from Romania were consistent with the quantities sold by MSNA. *See* MS Galati's section C questionnaire response, dated December 11, 2006, at C–ME–20. However, in its supplemental questionnaire responses, MS Galati acknowledged that quantities varied between the order acknowledgments and the invoices. *See* MS Galati's supplemental sections A–C questionnaire response, dated March 7, 2007, at 20 and exhibit 18; *see also* MS Galati's second supplemental sections A–C questionnaire response, dated April 16, 2007, at 2–3 and exhibits 1 and 3.

In reviewing all information on the record, we preliminarily find that the terms of sale for some of MS Galati's U.S. sales changed from the order acknowledgment to the invoice. Specifically, there were various sales with changes outside of the allowable tolerance for quantity that took place after the order acknowledgment date. Additionally, there were numerous price changes that took place after the order acknowledgment date. *See* MS Galati's supplemental sections A–C questionnaire response, dated March 7, 2007, at exhibit 18; *see also* MS Galati's second supplemental sections A–C questionnaire response, dated April 16, 2007, at exhibit 1.

Regarding its home market sales, MS Galati stated that the invoice date is the date of sale. *See* MS Galati's section B questionnaire response, dated December 11, 2006, at 22. According to the home market database and MS Galati's section A questionnaire response, MS Galati issues an invoice to the customer on or a few days after the date the merchandise is shipped. *See* MS Galati's section A questionnaire response, dated November 17, 2006, at 21. MS Galati stated in its response that the terms of sale can change up to the date of invoice. *See id.* For home market sales, the Department preliminarily determines that the invoice date is the date of sale if the invoice is issued on the shipment date, and shipment date is the date of sale if the invoice is issued after the shipment date.

Therefore, for these preliminary results, the Department will use the invoice date as the date of sale for MS Galati's U.S. sales, and either the invoice date or shipment date, depending on which one takes place earlier, as the date of sale for MS Galati's home market sales. *See* the

Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Cut–to-Length Carbon Steel Plate from Romania, dated June 27, 2007 (''Analysis Memo''), for further discussion of date of sale and other details on the calculation of the antidumping duty weighted–average margin. A public version of this memorandum is on file in the Department's Central Records Unit (''CRU'') located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Level of Trade

In accordance with section 773(a)(1)(B)(I) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the constructed export price (''CEP'') transaction.[1] *See also* 19 CFR 351.412. The NV LOT is the level of the starting–price sales in the comparison market or, when NV is based on CV, the level of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profits. For CEP sales, the U.S. LOT is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(1)(ii). As noted in the ''Constructed Export Price'' section below, we preliminarily find that all of MS Galati's sales through its U.S. affiliates are appropriately classified as CEP sales.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT than CEP sales, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which NV is based and comparison market sales at the LOT of the export transaction, where possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales for which we are unable to quantify a LOT adjustment, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (''the CEP offset provision''). *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada*, 67 FR 8781 (February 26, 2002); *see also Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In analyzing the differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. See Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

To determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the channels of distribution in each market,[2] including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale. In this review, we obtained information from MS Galati regarding the marketing stages involved in sales to the reported home and U.S. markets. MS Galati reported one LOT with two channels of distribution in the home market (''HM''): (1) sales to unaffiliated distributors and (2) sales to end users (affiliated and unaffiliated). *See* MS Galati's section A questionnaire response (''AQR''), dated November 17, 2006, at pages 14 and 15.

We examined the selling activities reported for each channel of distribution in the HM and we organized the reported selling activities into the following four selling functions: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. We found that MS Galati's level of selling functions to its HM customers for each of the four selling functions did not vary significantly by channel of distribution. *See* MS Galati's AQR at exhibit 5. For example, MS Galati provides similar levels of marketing and technical services to distributors and end users. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class or channel are sufficiently similar, we determined that one LOT exists for MS Galati's HM sales.

In the U.S. market, MS Galati made sales of subject merchandise to MSNA, *i.e.*, through one channel of distribution and it claimed only one LOT for its sales in the United States. *See* MS Galati's AQR at 14 and exhibit 5. All U.S. sales were CEP transactions between MS Galati and its U.S. affiliate, MSNA, and MS Galati performed the same selling functions in its sales to the unaffiliated customers in each instance. *Id.* Therefore, we preliminary determine that MS Galati's U.S. sales constitute a single LOT.

We then compared the selling functions performed by MS Galati on its CEP sales (after deductions made pursuant to section 772(d) of the Act) to the selling functions provided in the HM. We found that MS Galati provides significant selling functions in the HM related to the sales process and marketing support, as well as warranty and technical service, which it does not for MSNA in the U.S. market. In addition, the differences in selling functions performed for HM and CEP transactions indicate that MS Galati's HM sales involved a more advanced stage of distribution than CEP sales. In the HM, MS Galati provides marketing further down the chain of distribution by promoting certain downstream selling functions that are normally performed by the affiliated reseller in the U.S. market. On this basis, we determined that the HM LOT is at a more advanced stage of distribution when compared to CEP sales because MS Galati provides more selling functions in the HM at higher levels of service as compared to selling functions performed for its CEP sales. Thus, we find that MS Galati's HM sales are at a more advanced LOT than its CEP sales.

Based upon our analysis, we preliminarily determine that the CEP and the starting price of HM sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to the comparison market sales, we examined whether an LOT adjustment may be appropriate. In this case, because MS Galati sold at one

[1] The Department finds that CEP analysis is warranted because MS Galati sold subject merchandise to the United States through its U.S. affliliate, MSNA. Therefore, the Department finds that export price analysis is not otherwise warranted based on the facts on the record, and has based the price of the sales on CEP, in accordance with section 773(b) of the Act.

[2] The marketing process in the United States and third country market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

LOT in the HM, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine the price patterns of MS Galati's sales of other similar products, and there is no other record evidence upon which a LOT adjustment could be based. Therefore, no LOT adjustment was made.

Because the data available do not provide an appropriate basis for making a LOT adjustment and the LOT of MS Galati's HM sales is at a more advanced stage than the LOT of MS Galati's CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by MS Galati. We based the amount of the CEP offset on HM indirect selling expenses, and limited the deduction for HM indirect selling expense to the amount of the indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to the NV–CEP comparisons.

Fair Value Comparisons

To determine whether MS Galati's sales of the subject merchandise from Romania to the United States were made at prices below NV, we compared the CEP to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. Therefore, pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the monthly weighted–average normal value of the foreign like product where there were sales made in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the ''Scope of the Antidumping Duty Review'' section above, which were produced and sold by MS Galati in the HM during the POR, to be the foreign like product for the purpose of determining appropriate product comparisons to U.S. sales of subject merchandise. We relied on eight characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of importance): 1) painting; 2) quality; 3) specification and/or grade; 4) heat treatment; 5) standard thickness; 6) standard width; 7) whether or not checkered (floor plate); and 8) descaling. Where there were no sales of identical merchandise in the HM to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. *See* Appendix V of the Department's antidumping duty questionnaire to MS Galati, dated October 12, 2006.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. For purposes of this administrative review, MS Galati has classified its sales as CEP. MS Galati identified one channel of distribution for U.S. sales: MS Galati through MEI to MSNA and then to unaffiliated U.S. customers, who are distributors. *See* ''Level of Trade'' section above for further analysis.

After reviewing the evidence on the record of this review, we have preliminarily determined that MS Galati's transactions are classified properly as CEP sales because these sales occurred in the United States and were made through its U.S. affiliate to an unaffiliated buyer. Such a determination is consistent with section 772(b) of the Act and the U.S. Court of Appeals for the Federal Circuit's decision in *AK Steel Corp. et al. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000) (''*AK Steel*''). In *AK Steel*, the Court of Appeals examined the definitions of EP and CEP, noting ''the plain meaning of the language enacted by Congress in 1994, focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications.'' *AK Steel*, 226 F.3d at 1369. The court stated, '' the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate,'' and noted the phrase ''outside the United States'' had been added to the 1994 statutory definition of EP. *Id.*, 226 F.3d at 1368–70. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer.

For this distribution channel, MS Galati has reported these sales as CEP sales because the first sale to an unaffiliated party occurred in the United States. Therefore, we based CEP on the packed duty paid prices to unaffiliated purchasers in the United States, in accordance with subsections 772(b), (c), and (d) of the Act. Where applicable, we made a deduction to gross unit price for billing adjustments. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and surveying), and U.S. customs duty. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses and commissions) and indirect selling expenses. For these CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) of the Act in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

Normal Value

A. Home Market Viability

We compared the aggregate volume of HM sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Romania was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because the volume of HM sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we determine that sales in the HM provide a viable basis for calculating NV. Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Romania, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same LOT as the CEP sales, as appropriate. After testing

HM viability, we calculated NV as noted in the ''Price–to-Price Comparisons'' section of this notice.

B. Arm's–Length Test

MS Galati reported that it made sales in the HM to affiliated and unaffiliated customers. The Department did not require MS Galati to report its affiliated party's downstream sales because these sales represented less than five percent of total HM sales. *See* MS Galati's section B questionnaire response, dated December 11, 2006, at exhibit 2.

Sales to these affiliated customers in the HM not made at arm's length were excluded from our analysis. *See* 19 CFR 351.403(c). To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments and freight revenue, movement charges, direct selling expenses, discounts and rebates, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings - Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

C. Price–to-Price Comparisons

We based NV on the HM sales to unaffiliated purchasers and sales to affiliated customers that passed the arm's–length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to distribution warehouse, inland freight from plant to customer, and warehousing expenses) in accordance with section 773(a)(6)(B) of the Act. We made circumstance–of-sale adjustments for imputed credit, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. In accordance with section 773(a)(6) of the Act, we deducted HM packing costs and added U.S. packing costs. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on CV.

Preliminary Results of Review

We preliminarily determine that the following weighted–average margin exists for the following manufacturer/exporter during the POR:

Manufacturer/Exporter	POR	Margin
Mittal Steel Galati, S.A.	08/01/05 - 12/15/05	1.02 percent

Assessment

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (''*Assessment Policy Notice*''). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash–Deposit Requirements

The Department notified CBP to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after December 15, 2005, the effective date of revocation of the antidumping duty order.

Schedule for Final Results of Review

The Department will disclose calculations performed for these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs are limited to issues raised in such briefs or comments and may be filed no later than five days after the time limit for filing the case briefs or comments. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and 3) a table of authorities. Case and rebuttal briefs and comments must be served on interested parties in accordance with 19 CFR 351.303(f).

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Unless otherwise specified, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first business day thereafter. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: 1) the party's name, address, and telephone number; 2) the number of participants; and 3) to the extent practicable, an identification of the arguments to be raised at the hearing. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. 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.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 27, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–13009 Filed 7–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–910]

Initiation of Antidumping Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5831 or (202) 482–5253, respectively.

INITIATION OF INVESTIGATION

The Petition

On June 7, 2007, the Department of Commerce (Department) received a petition on imports of circular welded carbon quality steel pipe (CWP) from the People's Republic of China (PRC) filed in proper form by Allied Tube & Conduit, Sharon Tube Company, IPSCO Tubulars, Inc., Western Tube & Conduit Corporation, Northwest Pipe Company, Wheatland Tube Co., *i.e.*, the Ad Hoc Coalition For Fair Pipe Imports From China, and the United Steelworkers (collectively Petitioners). The period of investigation (POI) is October 1, 2006 - March 31, 2007.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioners alleged that imports of CWP from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States. The Department issued supplemental questions to Petitioners on June 11, 2007, and June 19, 2007, and Petitioners filed their responses on June 15, 2007, June 22, 2007, and June 25, 2007, respectively. In addition, Petitioners filed an amendment to the petition on June 15, 2007.

Scope of Investigation

The scope of this investigation covers certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (*e.g.*, plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

Specifically, the term ''carbon quality'' includes products in which: (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium
(xiii) 0.15 percent of vanadium; or
(xiv) 0.15 percent of zirconium.

All pipe meeting the physical description set forth above that is used in, or intended for use in, standard and structural pipe applications is covered by the scope of this investigation. Standard pipe applications include the low–pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load–bearing and mechanical applications, such as for fence tubing, and as an intermediate product for protection of electrical wiring, such as conduit shells. Structural pipe is used in construction applications.

Standard pipe is made primarily to American Society for Testing and Materials (ASTM) specifications, but can be made to other specifications. Standard pipe is made primarily to ASTM specifications A–53, A–135, and A–795. Structural pipe is made primarily to ASTM specifications A–252 and A–500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. This is often the case, for example, with fence tubing. Pipe multiple–stenciled to an ASTM specification and to any other specification, such as the American Petroleum Institute (API) API–5L or 5L X–42 specifications, is covered by the scope of this investigation when used in, or intended for use in, one of the standard applications listed above, regardless of the Harmonized Tariff Schedule of the United States (HTSUS) category under which it is entered. Pipe used for the production of scaffolding (but not finished scaffolding) and conduit shells (but not finished electrical conduit) are included within the scope of this investigation.

The scope does not include: (a) pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold–drawn; (c) finished electrical conduit; (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; and (f) line pipe produced to API specifications for oil and gas applications.

The pipe products that are the subject of this investigation are currently classifiable in HTSUS statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. However, the product description, and not the HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope of the investigation.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. During this review, we noted that, while the Department typically prefers to rely upon physical characteristics to determine the scope of product coverage, the scope description proposed by Petitioners relied upon, in part, end–use applications as a method for determining scope coverage. On June 20, 2007, we met with Petitioners to discuss the scope and its reliance upon end–use applications as a method for determining scope coverage. *See* Memorandum to The File, through Abdelali Elouaradia, Office Director,

Office 4, from Maisha Cryor, Import Compliance Specialist, titled ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Scope of the Petition,'' dated June 22, 2007. As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments, including comments regarding the scope's definition of covered merchandise based upon end–use application, and whether additional HTSUS numbers should be included in the scope description, 14 calendar days after publication of this initiation notice. Rebuttal comments are due 7 calendar days thereafter. Comments should be addressed to Import Administration's Central Records Unit in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230 - Attention: Maisha Cryor, Room 3057. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed by an interested party described in subparagraph (C), (D), (E), (F) or (G) of section 771(9) of the Act, or on behalf of the domestic industry. In order to determine whether a petition has been filed by or on behalf of the industry, the Department, pursuant to section 732(c)(4)(A) of the Act, determines whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that CWP constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Antidumping Investigation Initiation Checklist: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, (Initiation Checklist) at Attachment I, (Analysis of Industry Support), on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

In determining whether Petitioners have standing (*i.e.*, those domestic workers and producers supporting the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition), we considered the industry support data contained in the petition with reference to the domestic like product as defined in Attachment IV, (Scope of the Petition), to the Initiation Checklist. To establish industry support, Petitioners provided their shipments for the domestic like product for the year 2006, as well as shipments from supporters of the petition, and compared them to shipments for the domestic like product for the industry. In their second petition supplemental submission, Petitioners demonstrated the correlation between shipments and production. *See* ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China/ Petitioner's Response To The Department's June 19, 2007 Request For Clarification Of Certain Items Contained In The Petition,'' dated June 22, 2007, (Second Petition Supplemental) at 7. Based on the fact that total industry production data for the domestic like product for 2006 is not reasonably available, and that Petitioners have established that shipments are a reasonable proxy for production data, we have relied upon shipment data for purposes of measuring industry support. For further discussion see Initiation Checklist at Attachment I (Analysis of Industry Support).

Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Sec. 732(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under 732(c)(4)(A)(i) because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under 732(c)(4)(A)(ii) because the domestic producers (or workers) who support the petition account for more

than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Initiation Checklist* at Attachment I (Analysis of Industry Support).

The Department finds that Petitioners filed the petition on behalf of the domestic industry because they are an interested party as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. See Initiation Checklist at Attachment I (Analysis of Industry Support).

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation on imports of CWP from the PRC. The source of data for the deductions and adjustments relating to the U.S. price as well as normal value (NV) for the PRC are also discussed in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will reexamine the information and revise the margin calculations, if appropriate.

Export Price

Petitioners relied on five U.S. prices for CWP manufactured in the PRC and offered by U.S. distributors for sale in the United States. The prices quoted were for specific grades and quality of CWP falling within the scope of this petition, for delivery to the U.S. customer within the POI. Petitioners deducted from the prices the costs associated with exporting and delivering the product, including ocean freight and insurance charges, and foreign brokerage and handling. Petitioners did not deduct foreign inland freight charges from the export price (EP) because they were unable to establish the distances between the Chinese mills and the ports nearest to those mills. *See* Volume I of the petition at 35. Petitioners did deduct an amount for a U.S. distributor/importer mark–up. *See* Volume I of the petition at 34; *see also* Initiation Checklist.

Normal Value

Petitioners stated that the PRC is a non–market economy (NME) and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that the PRC is a NME. *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007); *Final Determination of Sales at Less Than Fair Value: Magnesium Metal From the People's Republic of China*, 70 FR 9037 (February 24, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (February 14, 2005). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for the purpose of initiating this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners selected India as the surrogate country. *See* Volume I of the petition at 28. Petitioners argued that India is an appropriate surrogate country because it is a market–economy country that is at a comparable level of economic development to the PRC and is a significant producer and exporter of CWP. *Id*. Based on the information provided by Petitioners, we believe that its use of India as a surrogate country is appropriate for purposes of initiating this investigation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i), interested parties will be provided an opportunity to submit publicly available information to value factors of production within 40 calendar days after the date of publication of the preliminary determination.

Petitioners provided dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated NV based on consumption rates for inputs used to produce CWP experienced by U.S. producers. In accordance with section 773(c)(4) of the Act, Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain factors of production, Petitioners used official Indian government import statistics, excluding shipments from countries previously determined by the Department to be NME countries and excluding shipments into India from Indonesia, the Republic of Korea, and Thailand because the Department has previously excluded prices from these countries because they maintain broadly–available, non–industry specific export subsidies. *See, e.g.*, *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*, 72 FR 27287 and Issues and Decision Memorandum at Comment 23 (May 15, 2007).

For inputs valued in Indian rupees and not contemporaneous with the POI, Petitioners used information from the wholesale price indices (WPI) in India as published in the *International Financial Statistics* of the International Monetary Fund (IMF) for input prices during the period preceding the POI. *See* Second Petition Supplemental at 1 and Exhibit 1. In addition, Petitioners made currency conversions, where necessary, based on the POI–average rupee/U.S. dollar exchange rate for the POI, as reported on the Department's website. *Id*.

The Department calculates and publishes the surrogate values for labor to be used in NME cases on its website. Therefore, to value labor, Petitioners used a labor rate of $0.83 per hour, published on the Department website, in accordance with the Department's regulations. *See* 19 CFR 351.408(c)(3) and Initiation Checklist.

Petitioners valued electricity in the production of CWP based on the Indian electricity rate as reported in the *Key World Energy Statistics 2003*, published by the International Energy Agency for the year 2000. *See* ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China/ Petitioner's Response To The Department's June 11, 2007 Request For Clarification Of Certain Items Contained In The Petition,'' dated June 15, 2007 (Petition Supplemental) at 23 and Exhibit M. Petitioners originally inflated electricity to a POI value using the WPI published by the Reserve Bank of India. *See* Volume I of the petition at 31. However, Petitioners revised the inflator to the WPI published by the IMF at the direction of the Department. *See* Petition Supplemental at 23 and Exhibit

M; *see also* Initiation Checklist for further details. Petitioners valued natural gas in the production of CWP based on Indian natural gas prices charged to industrial users during a period overlapping the POI, as reported by CRISIL Research India. *See* Volume I of the petition at 32 and Volume II of the petition at Exhibit. However, the Department determined that the Gas Authority of India, Ltd. (GAIL) was more appropriate as the source for the valuation of natural gas. *See* Initiation Checklist for further details. Therefore, the Department requested that Petitioners recalculate the surrogate value for natural gas based upon values published by GAIL. *See* ''Letter to Gilbert Kaplan, Counsel for Petitioners, from Mark Manning, Program Manager, Office 4, Regarding 'Petition for the Imposition of Antidumping Duties: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,' '' dated June 19, 2007. As a result, Petitioners valued natural gas in the production of CWP based on Indian natural gas rates, published by GAIL for February 2005. *See* Second Petition Supplemental at Exhibit 4. Petitioners inflated natural gas to a POI value using the WPI published by the IMF. *Id.*

For the NV calculations, Petitioners derived the figures for factory overhead, selling, general and administrative expenses, and profit from the financial ratios of two Indian producers of CWP: Zenith Birla (India) Limited and Surya Roshni Limited.

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of CWP from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based upon comparisons of EP to the NV, calculated in accordance with section 773(c) of the Act, the estimated calculated dumping margins for CWP from the PRC range from 51.34 percent to 85.55 percent.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. Petitioners contend that the industry's injured condition is illustrated by reduced market share, lost sales, reduced production, capacity and capacity utilization rate, reduced shipments and increased inventories, underselling and price depression or suppression, lost revenue, reduced employment, decline in financial performance and increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment II (Injury).

Separate–Rates Application

The Department modified the process by which exporters and foreign producers may obtain separate–rate status in NME investigations. *See* Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries (April 5, 2005) (Separate–Rates and Combination Rates Bulletin), available on the Department's website at *http://ia.ita.doc.gov/policy/bull05-1.pdf*. The process requires the submission of a separate–rate status application. Based on our experience in processing the separate–rates applications, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See Initiation of Antidumping Duty Investigations: Certain Lined Paper Products From India, Indonesia, and the People's Republic of China*, 70 FR 58374, 58379 (October 6, 2005); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005); and *Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea*, 70 FR 35625, 35629 (June 21, 2005). The specific requirements for submitting the separate–rates application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. Submission of the separate–rates application is due no later August 26, 2007.

NME Respondent Selection and Quantity and Value Questionnaire

For NME investigations, it is the Department's practice to request quantity and value information from all known exporters identified in the petition. Although many NME exporters respond to the quantity and value information request, at times some exporters may not have received the quantity and value questionnaire or may not have received it in time to respond by the specified deadline. Therefore, the Department typically requests the assistance of the NME government in transmitting the Department's quantity and value questionnaire to all companies who manufacture and export subject merchandise to the United States, as well as to manufacturers who produce the subject merchandise for companies who were engaged in exporting subject merchandise to the United States during the POI. The quantity and value data received from NME exporters is used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate–rates application by the respective deadlines in order to receive consideration for separate–rate status. Appendix I of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters no later than July 18, 2007. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Department's website at *http://ia.ita.doc.gov/ia-highlights-and-news.html*. The Department will send the quantity and value questionnaire to those exporters identified in Volume II of the petition at Exhibit 5, and to the NME government.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate–Rates and Combination Rates Bulletin states the following:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific

combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Separate–Rates and Combination Rates Bulletin, at 6.

Initiation of Antidumping Investigation

Based upon our examination of the petition on CWP from the PRC, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of CWP from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 calendar days after the date of publication of this initiation notice.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of CWP from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 733(a)(2)(A)(i) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 27, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

Appendix I

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (*see* scope section of this notice), produced in the PRC, and exported/shipped to the United States during the period October 1, 2006, through March 31, 2007.

Market	Total Quantity	Terms of Sale	Total Value
United States			
1. Export Price Sales			
2.			
a. Exporter name			
b. Address			
c. Contact			
d. Phone No.			
e. Fax No.			
3. Constructed Export Price Sales			
4. Further Manufactured Sales			
TOTAL SALES			

Total Quantity:

- Please report quantity on a metric ton basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales:

- Please report all sales on the same terms, such as ''free on board'' at port of export.

Total Value:

- All sales values should be reported in U.S. dollars. Please provide any exchange rates used and their respective dates and sources.

Export Price Sales:

- Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated customer occurs before importation into the United States.
- Please include any sales exported by your company directly to the United States.
- Please include any sales exported by your company to a third–country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please *do not* include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales:

- Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated customer occurs after importation. However, if the first sale to the unaffiliated customer is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.
- Please include any sales exported by your company directly to the United States.
- Please include any sales exported by your company to a third–country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please *do not* include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured Sales:

- Further manufacture or assembly (including re–packing) sales (''further manufactured sales'') refers to merchandise that

undergoes further manufacture or assembly in the United States before being sold to the first unaffiliated customer.

- Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E7–13017 Filed 7–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Scott Holland or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1279 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 2007, the Department of Commerce (''the Department'') published an extension of the time limit to complete the final results of the administrative review of the antidumping duty order on stainless steel bar from India covering the period February 1, 2005, through January 31, 2006. *See Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 35033 (June 26, 2007). Due to a clerical error, the due date for the completion of the final results was listed as September 6, 2007. The Department hereby amends the date on which the final results are due for completion. The final results are now due on September 4, 2007.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

In accordance with 782(i)(3) of the Act, the Department conducted on–site verification of responses submitted by two respondents in this review in May and June 2007. Accordingly, the Department must still issue the verification findings. Therefore, we find that it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by July 5, 2007). Thus, the Department is extending the time limit for completion of the final results to no later than September 6, 2007, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: June 28, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–13011 Filed 7–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–911]

Notice of Initiation of Countervailing Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Damian Felton, Yasmin Nair or Nancy Decker, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0133, (202) 482–3813 and (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Initiation Of Investigations:

The Petition

On June 7, 2007, the Department of Commerce (''the Department'') received a petition filed in proper form by the Ad Hoc Coalition for Fair Pipe Imports from China and its individual members (Allied Tube & Conduit; IPSCO Tubulars, Inc.; Northwest Pipe Company; Sharon Tube Company; Western Tube & Conduit Corporation; Wheatland Tube Company; and the United Steelworkers) (collectively, ''petitioners''). The Department received timely information from petitioners supplementing the petition on June 15, June 20 and June 25, 2007.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (''the Act''), petitioners allege that manufacturers, producers, or exporters of circular welded carbon quality steel pipe (''CWP'') in the People's Republic of China (the ''PRC''), receive countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation (*see* ''Determination of Industry Support for the Petition'' section below).

Scope of Investigation

The scope of this investigation covers certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (*e.g.*, plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

Specifically, the term ''carbon quality'' includes products in which: (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;

(ii) 2.25 percent of silicon;

(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium
(xiii) 0.15 percent of vanadium; or
(xiv) 0.15 percent of zirconium.

All pipe meeting the physical description set forth above that is used in, or intended for use in, standard and structural pipe applications is covered by the scope of this investigation. Standard pipe applications include the low–pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load–bearing and mechanical applications, such as for fence tubing, and as an intermediate product for protection of electrical wiring, such as conduit shells. Structural pipe is used in construction applications.

Standard pipe is made primarily to American Society for Testing and Materials (ASTM) specifications, but can be made to other specifications. Standard pipe is made primarily to ASTM specifications A–53, A–135, and A–795. Structural pipe is made primarily to ASTM specifications A–252 and A–500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. This is often the case, for example, with fence tubing. Pipe multiple–stenciled to an ASTM specification and to any other specification, such as the American Petroleum Institute (API) API–5L or 5L X–42 specifications, is covered by the scope of this investigation when used in, or intended for use in, one of the standard applications listed above, regardless of the Harmonized Tariff Schedule of the United States (HTSUS) category under which it is entered. Pipe used for the production of scaffolding (but not finished scaffolding) and conduit shells (but not finished electrical conduit) are included within the scope of this investigation.

The scope does not include: (a) pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold–drawn; (c) finished electrical conduit; (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; and (f) line pipe produced to API specifications for oil and gas applications.

The pipe products that are the subject of these investigations are currently classifiable in HTSUS statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. However, the product description, and not the HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope of the investigation.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. During this review, we noted that, while the Department typically prefers to rely upon physical characteristics to determine the scope of product coverage, the scope description proposed by Petitioners relied upon, in part, end–use applications as a method for determining scope coverage. On June 20, 2007, we met with Petitioners to discuss the scope and its reliance upon end–use applications as a method for determining scope coverage. *See* Memorandum to The File, through Abdelali Elouaradia, Office Director, Office 4, from Maisha Cryor, Import Compliance Specialist, titled ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Scope of the Petition,'' dated June 22, 2007. As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments, including comments regarding the scope's definition of covered merchandise based upon end–use application, and whether additional HTSUS numbers should be included in the scope description, 14 calendar days after publication of this initiation notice. Rebuttal comments are due 7 calendar days thereafter. Comments should be addressed to Import Administration's Central Records Unit in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230 - Attention: Maisha Cryor, Room 3057. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the PRC for consultations with respect to the countervailing duty petition. The Department held these consultations in Beijing, China with representatives of the Government of the PRC on June 24, 2007. *See* the Memoranda to The File, entitled, ''Consultations with Officials from the Government of the People's Republic of China'' (June 24, 2007) (public documents on file in the CRU of the Department of Commerce, Room B–099).

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC'') is responsible for determining whether ''the domestic industry'' has been injured and must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. *See* Section 771(10) of the Act. In addition, the Department's determination is

subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to domestic like product, petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information presented by petitioners, we have determined that there is a single domestic like product, CWP, which is defined in the ''Scope of Investigation'' section above, and we have analyzed industry support in terms of the domestic like product.

Our review of the data provided in the petition, the supplemental submission and other information readily available to the Department indicates that petitioners have established industry support. First, the petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Sec. 702(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under 702(c)(4)(A)(i) because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under 702(c)(4)(A)(ii) because the domestic producers (or workers) who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Initiation Checklist* at Attachment I (Analysis of Industry Support). *See* ''Office of AD/CVD Operations Initiation Checklist for the Countervaling Duty Petition on Circular Welded Carbon Quality Steel Pipe from China,'' at Attachment II (''*CVD Initiation Checklist*'').

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of CWP from the PRC are benefitting from countervailable subsidies and that such imports are causing or threatening to cause, material injury to the domestic industry producing CWP. In addition, petitioners allege that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the prices on imports from the PRC do not reflect recent increases in raw material costs, and that large margins of underselling exist, which are causing domestic producers to suffer. Petitioners assert that the industry's injury is evidenced by a decline in production, U.S. shipments, capacity utilization, market share, employment and profitability. The allegations of injury and causation are supported by relevant evidence including U.S. Customs and Border Protection import data, lost sales, employment and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation and have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See CVD Initiation Checklist*.

Initiation of Countervailing Duty Investigations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to the petitioners supporting the allegations. The Department has examined the countervailing duty petition on CWP from the PRC and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of CWP in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see CVD Initiation Checklist*.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

Preferential Lending

1. Government Policy Lending Program
2. Loans and interest subsidies provided pursuant to the Northeast Revitalization Program

Income Tax Programs

3. ''Two Free, Three Half'' income tax program
4. Income tax exemption for export–oriented foreign investment enterprises (''FIEs'')
5. Corporate income tax refund program for reinvestment of FIE profits in export–oriented enterprises
6. Local income tax exemption and reduction program for ''productive'' FIEs
7. Reduced income tax rates for FIEs based on location
8. Reduced income tax rate for knowledge or technology intensive FIEs
9. Reduced income tax rate for high or new technology FIEs
10. Preferential tax policies for research and development at FIEs
11. Income tax credits on purchases of domestically produced equipment by domestically–owned companies
12. Income tax credits on purchases of domestically produced equipment by FIEs

Provincial Subsidy Programs

13. Program to rebate antidumping legal fees in Shenzen and Zhejiang provinces
14. Funds for ''outward expansion'' of industries in Guangdong province
15. Export interest subsidy funds for enterprises located in Shenzhen and Zhejiang province
16. Loans pursuant to the Liaoning Province's five-year framework

[1] *See USEC, Inc. v. United States*, 25 CIT 49, 55-56, 132 F. Supp. 2d 1, 7-8 (Jan. 24, 2001) (*citing Algoma Steel Corp. v. United States*, 12 CIT 518, 523, 688 F. Supp. 639, 642-44 (June 8, 1988)).

Indirect Tax Programs and Import Tariff Program

17. Export payments characterized as VAT rebates
18. VAT and tariff exemptions on imported equipment
19. VAT rebates on domestically produced equipment
20. Exemption from payment of staff and worker benefits for export–oriented enterprises

Grant Programs

21. State Key Technology Renovation Program Fund
22. Grants to loss–making state owned enterprises

Provision Of Goods Or Services For Less Than Adequate Remuneration

23. Hot–rolled steel
24. Electricity and natural gas
25. Water
26. Land

Government Restraints on Exports

27. Zinc
28. Hot–rolled steel

For further information explaining why the Department is investigating these programs, *see CVD Initiation Checklist*.

We are postponing our investigation of the following program until such time as we select our respondents because the allegation is company–specific:

1. Loans to uncreditworthy companies

For further information explaining why the Department is postponing investigation of this program, see CVD Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

1. *Currency manipulation*

Petitioners allege that the GOC's policy of maintaining an undervalued RMB is an export subsidy that provides either a direct transfer of funds or the provision of a good or service at less than adequate remuneration. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Therefore, we do not plan to investigate the currency manipulation program.

2. *Tax reduction for enterprises making little profit*

Petitioners allege that ''enterprises making little profit'' are a *de jure* specific group. Petitioners have not established with reasonably available evidence that ''enterprises making little profit'' are a *de jure* specific group pursuant to section 771(5A)(D)(i) of the Act. Therefore, we do not plan to investigate tax reduction for enterprises making little profit.

3. *Tax incentives for companies engaging in research and development*

Petitioners allege that ''domestic'' companies (*i.e.*, companies that are not FIEs) are a *de jure* specific group. Petitioners have not established with reasonably available evidence that this program is *de jure* specific pursuant to section 771(5A)(D)(i) of the Act. Therefore, we do not plan to investigate tax incentives for ''domestic'' companies engaging in research and development.

4. *Exemption of CWP from export taxes*

Petitioners allege that CWP producers have been exempted from the export taxes that were imposed on 142 steel products effective June 1, 2007. Petitioners have not sufficiently alleged, on the basis of reasonably available information, that CWP producers have been relieved from paying export taxes that would otherwise have been due. Consequently, we do not plan to investigation the exemption of CWP producers from export taxes.

5. *Funds for technology and research*

Petitioners allege that because the GOC did not provide the criteria for awarding funds under this program when they notified it to the Word Trade Organization, funds are awarded on a discretionary basis and, hence, specific. Petitioners have not adequately explained how this program is specific pursuant to section 771(5A)(D)(i) of the Act. Therefore, we do not plan to investigate funds for technology and research.

6. *Provision of goods or services for less than adequate remuneration - other companies*

Petitioners allege that the GOC's policy of combining steel companies results in the provision of productive assets to the combined companies at less than adequate remuneration. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Consequently, we do not plan to investigate this program.

7. *Loan guarantees from government–owned banks*

As part of their Government Policy Lending allegation, petitioners include loan guarantees. To support this allegation, they point to a provincial guarantee program. However, the supporting evidence indicates that this program is for small and medium size enterprises, a non–specific group under our regulations. *See* 19 C.F.R. 351.502(e). Accordingly, we do not plan to investigate loan guarantees from government–owned banks.

8. *Loan to Huludao Economic Development Zone*

Petitioners identify a loan to the Huludao Economic Development Zone and suggest that some portion of the loan would likely have gone to a CWP producer in the zone. However, the supporting information indicates that the money was used to support infrastructure development within the zone. Therefore, we do not plan to investigate the loan to Huludao Economic Development Zone program.

For further information explaining why the Department is not initiating an investigation of these programs, *see CVD Initiation Checklist*.

Application of the Countervailing Duty Law to the PRC

Petitioners contend that there is no statutory bar to applying countervailing duties to imports from the PRC or any other non–market economy country. Citing *Georgetown Steel*, petitioners assert that the court deferred to the Department's conclusion that it did not have the authority to conduct a CVD investigation, but did not affirm the notion that the statute prohibits the Department from applying countervailing duties to NME countries. *See* Petition, Volume I, at 38 (*citing Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) (''*Georgetown Steel*'')). Petitioners further argue that *Georgetown Steel* is not applicable as the countervailing duty law (section 303 of the Tariff Act of 1930) involved in the court's decision has since been repealed and the statute has been amended to provide an explicit definition of a subsidy. *See* Petition, Volume I, at 39 (citing 777(5) of the Act). In addition, petitioners argue that the Chinese economy is entirely different from the economies investigated in *Georgetown Steel* and noted that the Department recently recognized in the *CFS Investigation* that the economic conditions of *Georgetown Steel* are not applicable to present-day China. *See* Petition, Volume I, at 41 (*citing Coated Free Sheet Paper from the People's Republic of China; Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484, 17486 (April 9, 2007) (''*CFS Investigation*''); and Memorandum for David M. Spooner, Assistant Secretary for Import Administration, entitled ''Countervailing Duty Investigation of Coated Free Sheet Paper from The People's Republic of China Whether the Analytic Elements of the *Georgetown Steel* Opinion are Applicable to China's

Present-day Economy,'' (March 29, 2007) (''*Georgetown Steel* Memorandum'')). Petitioners argue that the conditions of the CWP sector of the PRC economy are substantially the same as the Department found them to be in the *CFS Investigation*. Consequently, the countervailing duty law should be applied to the PRC in this investigation.

The Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (''TRBs'') From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–1 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001–2002 Administrative Review*, 68 FR 70488, 70488–89 (December 18, 2003). In the *CFS Investigation*, the Department preliminarily determined that the current nature of China's economy does not create obstacles to applying the necessary criteria in the CVD law. As such, the Department determined that the policy that gave rise to the *Georgetown Steel* litigation does not prevent us from concluding that the PRC government has bestowed a countervailable subsidy upon a Chinese producer. *See Georgetown Steel* Memorandum. Therefore, because petitioners have provided sufficient allegations and support of their allegations to meet the statutory criteria for initiating a countervailing duty investigation of CWP paper from the PRC, we continue to find that *Georgetown Steel* does not preclude us from initiating this investigation. For further information, *see CVD Initiation Checklist*.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the Government of the PRC. As soon as and to the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is a reasonable indication that imports of subsidized CWP from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 27, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–13014 Filed 7–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB19

Issuance of Permit for Incidental Take of Threatened or Endangered Species

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

ACTION: Notice.

SUMMARY: Notice is hereby given that on June 12, 2007, NMFS issued Permit 1613 for incidental take of threatened and endangered species, to the Green Diamond Resource Company, of northern California, pursuant to the Endangered Species Act of 1973, as amended. Copies of Incidental Take Permit 1613 and associated decision documents are available upon request.

ADDRESSES: If you would like copies of any of the above documents, please contact the Protected Resources Division of NOAA's National Marine Fisheries Service, Southwest Region, 1655 Heindon Road, Arcata, CA 95521 (ph: 707–825–5163, fax: 707–825B–840).

FOR FURTHER INFORMATION CONTACT: John P. Clancy at the above Arcata, California, address, telephone number (707–825–5175), or e-mail, *john.p.clancy@noaa.gov*.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act (Act) and Federal regulations prohibit take of fish and wildlife species listed as endangered or threatened. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS has further defined ''harm'' as an act which actually kills or injures fish or wildlife, and emphasizes that such acts may include ''significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering.'' NMFS may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for the incidental taking of threatened and endangered species are found in 50 CFR 222.307.

On June 12, 2007, NMFS issued Permit 1613 to the Green Diamond Resource Company for the incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Act. Permit 1613 was issued after the following determinations were made: the permit application was submitted in good faith; all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of the species; and the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives, pursuant to the National Environmental Policy Act of 1969. Permit 1613 authorizes incidental take of fish in two Evolutionarily Significant Units (ESUs) and one Distinct Population Segment (DPS) listed under the Act: California Coastal Chinook salmon (*Oncorhynchus tshawytscha*) ESU, Southern Oregon/Northern California Coast coho salmon (*O. kisutch*) ESU, and Northern California steelhead (*O. mykiss*) DPS. Permit 1613 also authorizes incidental take of fish in three unlisted ESUs (Klamath Mountains Province steelhead ESU, Upper Klamath/Trinity Rivers Chinook salmon ESU, and Southern Oregon and Northern California Coastal Chinook salmon ESU) should these species be listed during the 50–year term of the permit.

Copies of Permit 1613 and associated documents are available upon request. Decision documents for Permit 1613 include Findings and Recommendations; a Biological Opinion; and a Record of Decision.

Dated: June 28, 2007.

Marta Nammack,

Acting Chief, Endangered Species Division, Office of Protected Resources, NOAA's National Marine Fisheries Service.

[FR Doc. E7–13061 Filed 7–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA97

Marine Mammals; File No. 881–1890

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 881–1890 for conduct of research on Steller sea lions (Eumetopias jubatus) in Alaska, held by The Alaska SeaLife Center (ASLC), Seward, AK, has been amended.

ADDRESSES: The permit amendment 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; *http://www.nmfs.noaa.gov/pr/permits/review.htm*; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 15, 2007, notice was published in the **Federal Register** (72 FR 7420) that a request for a scientific research permit to take Steller sea lions had been submitted by the ASLC. The requested permit was issued on June 18, 2007 (72 FR 35427). An amendment to the subject permit has 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).

The permit issued to ASLC authorized activities to conduct population monitoring and studies on health, nutrition, and foraging behavior of free ranging Steller sea lions in the Gulf of Alaska and the Aleutian Islands (west of 144o West), and on temporarily captive female Steller sea lions at the ASLC. The permit has been amended to allow population monitoring and studies on health, nutrition, and foraging behavior of free ranging Steller sea lions east of 144o West, and on temporarily captive male Steller sea lions at the ASLC.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a Programmatic Environmental Impact Statement (PEIS) for Steller Sea Lion and Northern Fur Seal Research was prepared to evaluate the potential environmental impacts of awarding grants and issuing permits to facilitate research on these species. Information about the PEIS is available at *http://www.nmfs.noaa.gov/pr/permits/eis/steller.htm*.

Issuance of the 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 species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 29, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–13062 Filed 7–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XB21]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of Statistical Committee (SSC) meeting via conference call.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its SSC via conference call to discuss planning of an amendment.

DATES: The conference call will be held on July 26, 2007.

ADDRESSES: The meeting will be held via conference call and listening stations will be available. For specific locations, see **SUPPLEMENTARY INFORMATION**.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Council is preparing an amendment which will require reductions in the harvest of some grouper based on a recent assessment of gag grouper (SEDAR 10 Assessment and supplemental reviews). The SSC and the Special SSC will review certain aspects of that assessment and provide recommendations to the Council on the appropriate benchmark assessment to use to develop the regulations.

The Council is preparing an amendment which will require persons to obtain a permit from NMFS to participate in aquaculture by constructing an aquaculture facility in the exclusive economic zone (EEZ) of the Gulf of Mexico. Each application for a permit must comply with many permit conditions related to record keeping and operation of the facility. These permit conditions will assure the facility has a minimal affect on the environment and on other fishery resources. Compliance with the conditions will be evaluated annually for the duration of the permit as the basis for renewal of the permit for the next year.

The conference call will begin at 10 a.m. EDT and conclude no later than 12:30 p.m. EDT.

Listening stations are available at the following locations:

The Gulf Council office (see **ADDRESSES**), and the National Marine Fisheries Service (NMFS) offices as follows:

Galveston, TX

4700 Avenue U, Galveston, TX 77551, Contact: Rhonda O'Toole, (409) 766–3500;

St. Petersburg, FL

263 13th Avenue South, St. Petersburg, FL 33701, Contact: Joyce Mochrie, (727) 824–5301; and

Miami, FL

75 Virginia Beach Dr., Miami, FL 33149, Contact: Alex Chester, (305) 361–4259.

Copies of any related meeting materials can be obtained by calling the Council office at (813) 348–1630.

Special Accommodations

These meetings are 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 29, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–12963 Filed 7–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have two main purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled for: Monday, July 16, 2007.

ADDRESSES: Conference Call. Public access is available at SSMC Bldg 3, Room # 5836, 1315 East-West Highway, Silver Spring, MD.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brown, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11717, Silver Spring, Maryland 20910, (301) 734–1088.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Monday, July 16, 2007—12 to 2 p.m.

Agenda

I. Discussion of the Reauthorization Committee's Report.

II. Discussion of the Special Review Team Report.

Dated: June 26, 2007.

Mark E. Brown,

Chief Financial Officer/Chief Administrator Officer, Office of Oceanic and Atmospheric Research.

[FR Doc. E7–12972 Filed 7–3–07; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XB23]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Limited Access Privilege (LAP) Program Exploratory Workgroup in Charleston, SC.

DATES: The meeting will take place August 1–2, 2007. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, Charleston Airport, 5265 International Boulevard, North Charleston, SC 29418; telephone: (877) 782–9444 or (843) 308–9330; fax: (843) 308–9331.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer,; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the LAP Program Exploratory Workgroup will meet from 1 p.m. to 5 p.m. on August 1, 2007, and from 8:30 a.m. to 3 p.m. on August 2, 2007. The meeting is being convened to address issues relevant to the Council's consideration of implementing a Limited Access Privilege Program for the commercial snapper grouper fishery in the South Atlantic region.

Items for discussion by the Workgroup include: (1) Presentations and discussion with fishermen from the Gulf of Mexico regarding the implementation of Limited Access Privilege Programs in the Gulf region, and (2) discussion of design characteristics of LAP Programs for the South Atlantic. These characteristics include options for caps on ownership, species to include in a LAP Program, and underage and overage allowances.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: July 2, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–13065 Filed 7–3–07; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974; Announcement of Systems of Records

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Systems of Records.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is publishing notice of two new systems of records, CPSC–25, FOIA Express System of Records (FOIAXpress) and CPSC–26, Learning Management System. Comments must be received on or before September 4, 2007.

ADDRESSES: Written comments should be e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov*, or sent by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Comments may also be sent by facsimile to (301) 504–0127.

FOR FURTHER INFORMATION CONTACT: Linda L. Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission,

4330 East West Highway, Bethesda, Maryland 20814; (301) 504–7671,or by e-mail to *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC–25, FOIAXpress will be used to maintain records of correspondence and email requests submitted to the Commission under the Freedom of Information Act, 5 U.S.C. 552, or Privacy Act, 5 U.S.C. 552a, so that requests can be tracked and responded to accurately and in a timely manner. CPSC–26, Learning Management System, will be used to submit employee training reports as required by the Office of Personnel Management under 5 CFR 410.701.

These systems of records will become effective September 4, 2007 unless comments are received which justify a contrary determination. The Congress and the Office of Management and Budget have been notified of these systems.

Dated: June 28, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

CPSC–25

SYSTEM NAME:

CPSC–25, FOIAXpress.

SYSTEM LOCATION:

Division of Information Management, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information from the Consumer Product Safety Commission pursuant to the Freedom of Information Act or Privacy Act.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

Correspondence and e-mail requests for information submitted to the Commission which may contain personal information about individuals, e.g., name, address, city, state, telephone number, fax and e-mail address and other pertinent information related to processing and responding to their FOIA and/or Privacy Act request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 5 U.S.C. 552a.

PURPOSE:

These records are used by Commission staff responding to the request for information so that requests can be tracked and responded to accurately and in a timely manner.

ROUTINE USES:

1. These records are used to record the requesting individual's address so a response can be forwarded.

2. These records are used to record the specific information that the individual is seeking so that the information we provide is responsive to the request.

3. Staff will search the records to determine which requests have been filled and which are still pending.

4. CPSC will use these records to prepare an annual report of FOIA activities at the end of each fiscal year and submit the report to the Attorney General, through the Department of Justice, Office of Information and Privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be entered into a database tracking system and given a request number. All information will be stored electronically and paper requests will eventually be destroyed.

RETRIEVABILITY:

Records will mainly be retrieved using the FOIA request number, however, records may also be retrieved by searching on a requester's last name, a company name or entry date and closed date.

SAFEGUARDS:

Computer records are protected by passwords available only to staff with a need to know.

RETENTION AND DISPOSAL:

Records will be stored electronically for 2 to 6 years, contingent upon the National Archives Records Administration (NARA's General Records Schedule 14).

SYSTEM MANGER AND ADDRESS:

Todd A. Stevenson, Director, Division of Information Management, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

NOTIFICATION PROCEDURES:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORDS SOURCE CATEGORIES:

Personal information in these records is obtained from the individual requesting the information under FOIA or Privacy Act.

CPSC–26

SYSTEM NAME:

CPSC–26, Learning Management System.

SYSTEM LOCATION:

Division of Information Management, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CPSC employees.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

Information concerning training courses that an employee takes during the year. The employee enters a training request by entering their social security number, date of birth, course title, vendor name, course location and other OPM specific data fields that pertain to the collection of training records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 41—Training; 5 CFR part 410.

PURPOSE:

These records are used by Commission to respond to Office of Personnel Management's requirements that all federal agencies submit training reports on a monthly basis. The reports must include employee social security number and date of birth.

ROUTINE USES:

1. These records are used by CPSC to record training information for all employees.

2. CPSC will use these records to submit monthly training reports to OPM.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be entered into a database tracking system and stored electronically.

RETRIEVABILITY:

Records will mainly be retrieved using the employee's last name.

SAFEGUARDS:

Computer records are protected by passwords available only to staff with a need to know.

RETENTION AND DISPOSAL:

Training records will be stored electronically for five years.

SYSTEM MANGER AND ADDRESS:

Donna Simpson, Director, Office of Human Resources, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

NOTIFICATION PROCEDURES:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORDS SOURCE CATEGORIES:

Personal information in these records is obtained from the individual requesting training.

[FR Doc. E7–12906 Filed 7–3–07; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda, Priorities and Strategic Plan; Request for Comments

AGENCY: Consumer Product Safety Commission.

ACTION: Request for comments.

SUMMARY: The staff of the Consumer Product Safety Commission (Commission or CPSC) is requesting interested parties to comment about the CPSC's agenda and priorities for Commission attention during fiscal year 2009, which begins October 1, 2008, and about revisions to its current strategic plan, the revised version of which will be submitted to Congress in the fall of 2007 pursuant to the Government Performance and Results Act (GPRA). Written comments concerning the Commission's agenda and priorities for fiscal year 2009 and revisions to the strategic plan become part of the public record.

DATES: Written comments from members of the public must be received by the Office of the Secretary not later than July 20, 2007.

ADDRESSES: Written comments should be captioned ''Agenda, Priorities and Strategic Plan'' and e-mailed to *cpsc-os@cpsc.gov,* or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, to be received not later than July 20, 2007.

FOR FURTHER INFORMATION CONTACT: For a copy of the current strategic plan, e-mail, call or write Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *cpsc-os@cpsc.gov;* telephone (301) 504–7923; facsimile (301) 504–0127. An electronic copy of the 2003 Strategic Plan can be found at *http://www.cpsc.gov/cpscpub/pubs/reports/2003strategic.pdf.*

SUPPLEMENTARY INFORMATION: Section 306(d) of the Government Performance and Results Act (GPRA) (5 U.S.C. 306(d)) requires the Commission to seek comments from interested parties as part of the process of revising the current CPSC strategic plan. The strategic plan is a GPRA requirement. The revised plan will provide an overall guide to the formulation of future agency actions and budget requests.

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The draft CPSC budget request for fiscal year 2009, which begins on October 1, 2008, is being formulated now by staff. The final budget request must reflect the contents of the agency's strategic plan developed under GPRA.

The Commission staff desires to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments on both the fiscal year 2009 budget and potential revisions to the strategic plan.

Written comments on the Commission's current strategic plan, and agenda and priorities for fiscal year 2009, should be received in the Office of the Secretary not later than July 20, 2007. Persons who desire a hard copy of the current strategic plan may contact the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, e-mail *cpsc-os@cpsc.gov,* telephone (301) 504–7923, facsimile (301) 504–0127. The strategic plan is also available on the CPSC Web site at *http://www.cpsc.gov/cpscpub/pubs/reports/2003strategic.pdf.*

The CPSC's FY 2008 budget request that is currently pending before Congress is available at *http://www.cpsc.gov/cpscpub/pubs/reports/2008plan.pdf.*

Dated: June 28, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–12965 Filed 7–3–07; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Special Demonstration Programs—Model Demonstration Projects to Improve the Postsecondary and Employment Outcomes of Youth with Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority and definitions.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services (OSERS) announces a final priority and definitions under the Special Demonstration Programs administered by the Rehabilitation Services Administration (RSA). The Assistant Secretary may use the priority and definitions for competitions in fiscal year (FY) 2007 and later years. We intend for the priority to support projects that demonstrate the use of promising practices in collaborative transition planning and service delivery to improve the postsecondary education and employment outcomes of youth with disabilities.

DATES: *Effective Date:* The priority and definitions are effective August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Edwin Powell, U.S. Department of Education, 400 Maryland Avenue, SW., room 5038, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7505 or via Internet: *Edwin.Powell@ed.gov.*

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: The purpose of the Special Demonstration Programs is to provide financial assistance to projects that expand and improve the provision of vocational rehabilitation (VR) and other services for individuals with disabilities authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

We published a notice of proposed priority and definitions (NPP) for this program in the **Federal Register** on February 15, 2007 (72 FR 7427). The NPP included a background statement that described our rationale for the priority and definitions.

More specifically, the background section of the NPP described the challenges that youth with disabilities face as they transition to adult life and how too many of these youth experience difficulties in achieving successful post-school outcomes. We explained the importance of the State VR programs in assisting youth with disabilities to prepare for education, training, and employment opportunities beyond high school. The NPP also included a discussion of the need for programs that build on collaborative State and local efforts and use promising practices to improve the postsecondary education and employment outcomes of youth with disabilities.

This notice of final priority and definitions (NFP) contains several changes from the NPP. These changes are explained in the following section, *Analysis of Comments and Changes.*

Analysis of Comments and Changes

In response to our invitation in the NPP, 75 parties submitted comments on the proposed priority and definitions. An analysis of the comments and changes in the priority and definitions since publication of the NPP follows.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Comments: Two commenters stated that the language in the priority should address cultural concerns.

Discussion: Without more detailed information from the commenters, we cannot respond specifically to their concerns. However, we note that under the Rehabilitation Act, VR services must be provided to eligible individuals with disabilities irrespective of an individual's ethnicity or race. An applicant under this priority may submit a proposal that speaks to the need for specific interventions or activities that address cultural concerns.

Changes: None.

Comments: Seven commenters suggested expanding the age range for individuals receiving transition services under this priority. Some commenters suggested we include children younger than 16 in the age range; others suggested we include young adults over the age of 22. Still other commenters suggested that the definition be consistent with their State's regulations or other Federal regulations. One commenter specifically recommended that the definition of *youth with disabilities* include language from the definition of *child with a disability* found in 34 CFR 300.8.

Discussion: The regulations for Special Demonstration Programs in 34 CFR 373.4 define *youth or young adults with disabilities* as individuals with disabilities who are between the ages of 16 and 26. However, we determined that this age range was overly inclusive for this priority. We therefore proposed that these projects should serve youth from the age of 16 through the age of 22 in order to focus on the majority of students receiving transition services under the Individuals with Disabilities Education Act (IDEA). We also determined that this age range would be the most relevant for providing transition services to youth receiving educational services under section 504 plans and youth who have dropped out of school.

The IDEA regulations require transition services to be included in the first individualized education program (IEP) to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team (34 CFR 300.320(b)). We recognize that some States may have regulations that require transition services to be provided to youth under the age of 16. We also recognize that States have the option of providing transition services to youth with disabilities over the age of 22, if permitted by State regulations. Despite these considerations, we believe that it is important to designate a specific age range to ensure that all of these projects serve a comparable population, thus providing for consistency among the projects that will allow for valid comparisons among project results for evaluation purposes. Furthermore, we have not incorporated language from the definition of *child with a disability* in 34 CFR 300.8, as one commenter recommended, because this definition includes disability categories that apply to students with disabilities receiving special education services under the IDEA but which do not necessarily apply to other transition age youth (e.g., students under section 504 plans or youth who have dropped out of school).

Changes: None.

Comments: One commenter suggested that the priority should not require the creation of a State interagency transition taskforce, because a new taskforce could duplicate the functions of other State entities, such as the State Rehabilitation Councils (SRCs).

Discussion: Given the very specific functions of the State interagency transition taskforce and the requirement that the taskforce focus only on the transition of youth with disabilities, we think it is unlikely that many States have an existing entity that could serve these functions. However, the priority does not necessarily require the creation of a new taskforce. Accordingly, as long as the entity meets the definition of *State interagency transition taskforce* and can perform the specific functions outlined in the definition, the priority does not preclude an applicant from using an existing entity to facilitate interagency collaboration and coordination for the project.

Changes: None.

Comments: Four commenters suggested that youth with disabilities be included on the State interagency transition taskforce.

Discussion: We do not find it necessary to require that transitioning youth with disabilities serve on the State interagency transition taskforce. Our proposed definition of *State interagency transition taskforce* stated, in part, that the taskforce must include ''individuals to represent the perspectives of * * * transitioning youth with disabilities.'' A transitioning youth with a disability could certainly serve on the taskforce in this capacity. However, we believe that individuals other than transitioning youth with disabilities also could represent adequately the perspectives of these transitioning youth. Thus, it is appropriate to allow the applicant to determine who will represent this population.

Changes: In order to clarify that youth with disabilities may, but are not required to, serve on the State interagency transition taskforce, we revised the definition of *State interagency transition taskforce* to explicitly include youth with disabilities among those who may serve on the taskforce.

Comments: One commenter stated that the priority does not adequately refer to the important services provided by the private sector to transitioning youth with disabilities.

Discussion: We are well aware of the contributions made by the private sector to improve the post-secondary and employment outcomes of youth with disabilities. For this reason, the State interagency transition taskforce must include among its members ''individuals to represent the perspectives of business and industry.'' We believe that requiring the taskforce to include this group of individuals addresses adequately the private sector's involvement in providing services to youth with disabilities.

Changes: None.

Comments: Seven commenters suggested that the priority require more collaboration among the State VR agency or agencies, the State educational agency (SEA), local educational agencies (LEAs), and community stakeholders on the topic of transition.

Discussion: We believe the priority, as proposed, already requires significant coordination and collaboration among the State VR agency, the SEA, LEAs, and community stakeholders. For instance, under the priority, the State interagency transition taskforce must implement a model transition program to be carried out at two sites in coordination with the applicable LEA or LEAs. The taskforce also must provide training and technical assistance to LEAs on planning and providing transition services to youth with disabilities. Additionally, the priority provides for local interagency teams to implement the VR service delivery models developed by the taskforce. We believe that these activities, as well as others outlined in the priority, are more than sufficient to ensure significant collaboration among local, State, and community stakeholders.

Changes: None.

Comments: One commenter stated that the priority does not address the role of partners specified in the Workforce Investment Act (WIA).

Discussion: We recognize the valuable contributions that WIA partners and other entities providing services under WIA, such as State employment and training agencies, local one-stop workforce centers, and State and local workforce investment boards, can make in improving post-secondary education and employment outcomes for youth with disabilities. Accordingly, in the definition of *State interagency transition taskforce*, we proposed that the taskforce include representatives of the State VR agency; the State VR agency for the Blind, in a State where there is such an agency; and the State Labor and Employment/Workforce agency, three of the required partners under WIA. An applicant may include other WIA partners in addition to these required participants on its taskforce.

Changes: None.

Comments: One commenter suggested that SEAs and LEAs be excluded from the priority.

Discussion: The purpose of the priority is to promote and strengthen collaboration among various partners at the State and local levels to improve post-school outcomes for youth with disabilities. We believe SEAs and LEAs are vital partners in facilitating successful transitions from school to post-school activities for youth with disabilities, and therefore, decline to make the changes requested.

Changes: None.

Comments: One commenter suggested that the priority include support for the cost of transportation.

Discussion: The priority permits the provision of individualized VR services for youth with disabilities who are eligible for these services under 34 CFR 361.42. These individualized services may include providing transportation if it is needed by the youth to access necessary and appropriate transition services. In addition, the priority does not preclude an applicant from including in its proposed model transition program transportation or any other service that is allowable under the Office of Management and Budget (OMB) cost principles. Therefore, we believe the priority is broad enough to permit the use of funds for transportation services if needed by the individuals served by the project.

Changes: None.

Comments: Two commenters suggested that we require applicants to provide the following additional services under the priority: mentoring, assistive technology services, driver's education, services provided by parent training and information centers, summer programs, services to youth who are involved in the juvenile justice system, and intensive reading remediation programs.

Discussion: We agree that the services identified by the commenters are important services in a transition program. The services that we identified in the priority, however, were not intended to be an exhaustive list of all services that could be provided under the priority. Rather, we expect that, through the State interagency transition taskforce, the grantee will identify the services to be delivered as part of the coordinated set of promising practices to be provided under paragraph 4(c) of the priority. Thus, while the priority does not preclude a grantee from providing any of the services identified by the commenters, we believe it is better left to an applicant and the State interagency transition taskforce to identify the particular services that would best address the needs in the State or local area that the project will serve. Therefore, we do not think it is necessary to require all grantees to provide the particular additional services suggested by the commenters.

Changes: None.

Comments: One commenter suggested that the priority require every middle school, high school, and college involved in the model demonstration project to have a transition counselor to work with youth with disabilities.

Discussion: The priority does not preclude applicants from including transition counselors in their model demonstration projects. However, that approach may not be feasible in some instances because of staffing constraints and funding limitations. Therefore, we do not believe that we should require all applicants to adopt such an approach.

Changes: None.

Comments: One commenter suggested that the priority include a requirement to train personnel in institutions of higher education and personnel responsible for planning and providing services to youth with disabilities.

Discussion: Applicants under the priority must provide training and technical assistance to LEAs and VR personnel. The priority does not preclude an applicant from proposing, as part of its model demonstration project, to train personnel in institutions of higher education or other personnel responsible for planning and providing services to youth with disabilities. However, we do not believe we should require each model demonstration project to train personnel in institutions of higher education or other personnel responsible for planning and providing services to youth with disabilities because training of those personnel may not be necessary to meet the specific needs in the State or local area(s) that the project will cover.

Changes: None.

Comments: One commenter requested that the priority require projects funded under the priority to cultivate community employment possibilities.

Discussion: With regard to employment, the purpose of the priority is to improve employment outcomes for youth with disabilities. Employment outcomes may be improved through a variety of methods, including the use of activities that focus on cultivating community employment possibilities. In order to provide flexibility and promote creativity, we do not believe the priority should include a requirement to cultivate community employment possibilities.

Changes: None.

Comments: Two commenters suggested that the priority require projects to educate parents and students at an early age about transition services.

Discussion: The priority requires projects to provide a coordinated set of promising practices, which must include, among other things, youth development activities and practices to enhance family involvement. Through these youth development activities and

practices to enhance family involvement, we expect that grantees will provide information and other services to youth with disabilities and their parents so that they are well informed about the transition services available to them and thus able to make better decisions.

Changes: None.

Comment: One commenter suggested that we require applicants to propose in their applications a specific life skills curriculum that includes vocational preparation and training and community field trips.

Discussion: Under the priority, applicants must provide, among other things, a description of promising practices they propose to provide, including youth development activities. The definition of youth development activities, in turn, specifically identifies training in life skills (e.g., independent living skills, self-advocacy, and conflict resolution) that an applicant may include in its model demonstration project. We do not believe it is appropriate to prescribe more specifically the types of youth development activities an applicant may propose; such decisions are best left to the applicant and the State interagency transition taskforce who can better assess the needs of the youth who will be served.

Changes: None.

Comments: One commenter suggested that the progress of a youth with disabilities be evaluated with a variety of assessments (e.g., work samples, behavioral observation, community-based or situational assessment, family questionnaires, etc.) conducted at various points in the program of services for that youth.

Discussion: Assessment of a youth's progress, through means such as those described by the commenter, may be utilized at the discretion of the applicant. However, the outcome data that each grantee must collect, at a minimum, are specified in paragraph 4(d) of the priority. Therefore, the assessments the grantee chooses to use must ultimately focus on improving postsecondary education and employment outcomes for youth with disabilities.

Changes: None.

Comments: One commenter suggested that the priority require a Web-based clearinghouse to compile and disseminate information about the results of projects funded under the priority.

Discussion: OSERS currently funds several transition-related technical assistance and dissemination centers that serve as clearinghouses, including the National Dropout Prevention Center for Students with Disabilities, the National Secondary Transition Technical Assistance Center, and the National Dissemination Center for Children with Disabilities (NICHCY). Information on promising practices resulting from the model demonstration projects funded under the priority will be shared with these technical assistance centers; thus, these existing centers will be used to disseminate information stemming from projects funded under the priority. We believe this is a more efficient use of resources and, therefore, decline to make the change recommended by the commenter.

Changes: None.

Comments: Three commenters recommended that the priority require an evaluation plan that includes both formative and summative analyses.

Discussion: Paragraph 4(d) of the priority requires applicants to provide an evaluation plan in their applications that includes, among other things, the data to be collected and how it will be analyzed. All grantees will necessarily conduct summative analyses of the data they collect to include in the final report they are required to submit to the Department. Grantees also may utilize formative analyses so that they can better assess the progress they are making with youth at various points during the period of the project. However, we do not believe it is necessary to require that all applicants conduct formative analyses, but instead, will leave this decision to the discretion of the applicant.

Changes: None.

Comments: One commenter asked that we clarify whether a third-party evaluation is required under the priority.

Discussion: Paragraph 2(f) of the priority requires an applicant to demonstrate that the project for which it seeks funding will conduct an evaluation plan of the project's performance, including an evaluation of the effectiveness of the practices and strategies implemented by the project in achieving project goals, particularly post-school outcomes. This project evaluation does not need to be conducted by a third party. However, during the first year of these projects, we intend to work with grantees to ensure that the required evaluation data under paragraph 4(d) are collected uniformly to allow the Department to analyze project outcomes across models.

Changes: None.

Comments: One commenter suggested that all post-school outcome data be disaggregated and available to examine all categories of disabilities.

Discussion: We recognize the importance of making certain that grantees can disaggregate data by disability. In order to be responsive to this concern, we have revised paragraph 4(d) of the priority to require applicants to use a consistent approach to collecting and reporting data that can be disaggregated by disability.

Changes: Paragraph 4(d) of the priority has been changed to require that the evaluation plan include the collection of data about the disability or disabilities of a youth, consistent with the disability coding system used by State VR agencies.

Comments: One commenter suggested that we require that the project findings be disseminated to the local community, including institutions of higher education, served by the LEA.

Discussion: Paragraph 4(e) of the priority requires a plan for the systematic dissemination of project findings and knowledge gained that will assist State and local agencies in adapting or replicating the transition model carried out by the project. Applicants may propose to disseminate their findings in the manner suggested by the commenter. However, we do not believe there is a sufficient basis to require all grantees to disseminate project findings to specific groups.

Changes: None.

Comments: Three commenters recommended that the priority require applicants to base their projects on objective evidence of the specific needs in the State.

Discussion: We recognize the importance of basing the project design on objective evidence regarding specific needs in the State. Objective evidence of State needs will be used as a selection criterion in reviewing applications submitted under the priority. Accordingly, we do not believe it is necessary to include this requirement in the priority.

Changes: None.

Comments: One commenter suggested that applicants be required to demonstrate that they are currently participating in research-based designs for best practices and have significant linkages to other transition-outcome improvement projects.

Discussion: Restricting applicants to those currently participating in research-based designs and those that have significant linkages to other transition-outcome improvement projects may too severely restrict the applicant pool. In fact, through this priority, we hope to encourage the adoption of research-based designs and

promising transition practices in additional States and localities. However, we agree with the commenter that projects funded under the priority should link with other transition projects, if they do not already do so. Through ongoing technical assistance and information dissemination activities during the project period, we will advise grantees of new and existing transition-outcome improvement projects with which they may establish linkages.

Changes: None.

Comments: Two commenters suggested that the term ''internship'' be included in the definition of *career preparatory and pre-employment experiences.*

Discussion: We did not intend the definition of *career preparatory and pre-employment experiences* to preclude internships as one of the training activities. To clarify our intent, we have revised the definition.

Changes: The definition of *career preparatory and pre-employment experiences* has been revised to clarify that the list of experiences and activities included in the definition is not exhaustive.

Comments: One commenter suggested that the list of definitions in the priority include: career planning, vocational preparation, and successful transition.

Discussion: The terms ''career planning'' and ''vocational preparation'' are not used in this priority and therefore are not included in the list of definitions. Career planning and vocational preparation are strategies that the applicant may propose in providing career preparatory and pre-employment experiences and student-focused planning activities consistent with paragraph 4(d) of the priority. Regarding the suggestion to add the definition of successful transition to the list of definitions, the term may be defined differently for each student or project. Thus, adding a definition for successful transition to the list of definitions is not necessary or appropriate.

Changes: None.

Comments: One commenter recommended requiring each project to define employment for the sake of clarity because some projects consider sheltered work to be employment.

Discussion: We believe that the definition of *employment outcome* in 34 CFR part 373 addresses the issue raised by the commenter. Under the regulations, the term *employment outcome* has the same meaning as *employment outcome* in the State VR services program regulations in 34 CFR 361.5(b)(16). That definition of *employment outcome* does not include sheltered work. Therefore, it is not necessary for an applicant to define employment. In order to clarify that applicants must use the definition of *employment outcome* found in 34 CFR 361.5(b)(16), a reference to this definition has been added in paragraph 2(b)(i) of the priority in which the individualized VR services that an applicant must provide are described.

Changes: Paragraph 2(b)(i) of the priority has been revised to clarify that the individualized VR services that are provided are designed to achieve an employment outcome consistent with the definition in 34 CFR 361.5(b)(16).

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) Awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Priority—Model Demonstration Projects to Improve the Postsecondary and Employment Outcomes of Youth with Disabilities

This priority supports projects that demonstrate the use of promising practices of collaborative transition planning and service delivery in improving the postsecondary education and employment outcomes of youth with disabilities.

In order to meet this priority, an applicant must—

(1) Provide an assurance that the State has an interagency transition taskforce that provides input in the development of the application and that the interagency transition taskforce will—

(a) Play an advisory role in the operation of the project;

(b) Assist in the development of project goals;

(c) Review project findings; and

(d) Assist in the dissemination of project findings;

(2) Demonstrate that the project for which it seeks funding will—

(a) Implement a model transition program that is designed to improve post-school outcomes of students with disabilities through the use of local interagency transition teams and the implementation of a coordinated set of promising practices and strategies. The activities must be implemented at a minimum of two sites to be carried out in coordination with the applicable LEA or LEAs;

(b) Provide transition services to youth with disabilities, including—

(i) Individualized VR services to youth with disabilities who are eligible for such services consistent with 34 CFR 361.42 and designed to achieve an employment outcome as defined in 34 CFR 361.5(b)(16); and

(ii) Services to groups of youth with disabilities, through methods such as workshops and seminars, to support the transition of such youth to post-school and employment outcomes;

(c) Provide training and technical assistance to LEAs and State VR personnel responsible for planning and providing transition services to youth with disabilities;

(d) Conduct outreach activities that assist in the identification of youth with disabilities who are in need of VR services;

(e) Analyze and use the secondary education and post-school outcome data of youth with disabilities collected by the SEA and other relevant data to assist the project to improve transition services and post-school outcomes;

(f) Conduct an evaluation of the project's performance, including an evaluation of the effectiveness of the practices and strategies implemented by the project in achieving project goals, particularly post-school outcomes;

(3) Provide evidence that the LEAs responsible for providing transition services to children with disabilities under the IDEA in the local sites proposed by the applicant will participate in carrying out project activities (e.g., letter of support); and

(4) Provide a description of—

(a) The State interagency transition taskforce members, including their roles and responsibilities with respect to transition planning and the provision of services;

(b) The local interagency team members, including their roles and

responsibilities with respect to transition planning and the provision of services;

(c) The coordinated set of promising practices that it proposes to provide, which, at a minimum, must include student-focused planning, career preparatory and pre-employment experiences, youth development activities, and practices to enhance family involvement;

(d) The evaluation plan, including project goals, measurable objectives, and operational definitions and the data to be collected and how it will be analyzed. At a minimum these data must include: the disability or disabilities of the youth, reported consistent with the disability coding system used by State VR agencies; high school exit data (academic achievement and functional performance data, high school graduation outcomes, including type of diploma received); student's post-school goals; services provided; postsecondary education outcomes; employment outcomes (type of employment, wages and earnings, hours worked, weeks of employment); and public benefits received such as Supplemental Security Income and Social Security Disability Insurance; and

(e) A plan for the systematic dissemination of project findings and knowledge gained that will assist State and local agencies in adapting or replicating the transition model carried out by the project.

Definitions

(1) *Career preparatory and pre-employment experiences* means experiences and activities to help students become prepared for a successful future in postsecondary education or employment including, but not limited to: instruction in learning and study strategies; career education activities that assist the student to form and develop career aspirations and to make informed choices about careers; structured work experiences such as job shadowing, volunteer and community service, and on-the-job training experiences; and employment skills instruction such as work-related behaviors and skills training, job seeking skills, and occupation-specific vocational skill training.

(2) *State interagency transition taskforce* means a group of individuals who meet on a regular basis to facilitate interagency collaboration and the coordination of practices and services to improve the transition of students with disabilities from secondary education to postsecondary education and employment, such as identifying and addressing systemic transition barriers; facilitating the coordination of transition policies, practices, and services within the State; providing technical assistance; and disseminating information on promising practices.

(a) The group must, at a minimum, include one or more representatives of the State VR agency (including, where applicable, the State VR agency for the Blind), SEA, State Labor and Employment/Workforce agency, Social Security Administration, State developmental disabilities agency, and the State mental health agency. The group also must include individuals to represent the perspectives of business and industry and transitioning youth with disabilities.

(b) The group also may include representatives from other relevant entities such as the State Rehabilitation Council (if applicable in the State), State Independent Living Council, State Developmental Disabilities and Mental Health Planning Councils, postsecondary educational institutions, and transition service providers, youth with disabilities, parents of transitioning youth with a disability, and other stakeholders.

(3) *Student-focused planning* means activities designed to facilitate student participation, self-evaluation and self-determination, including goal setting and decision making within the planning process. Examples of such activities include the identification of student interests and preferences; use of educational, career and psychological assessments in the development of postsecondary education, training, and vocational goals; career, vocational counseling, and guidance; VR participation at IEP meetings; joint IEP and individualized plan for employment (IPE) planning meetings; and timely referrals to adult service providers.

(4) *Transition services,* as defined in section (7)(37) of the Rehabilitation Act, means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, and integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(5) *Youth development activities* means activities that help students control and direct their own lives based on informed decisions and become self-sufficient and productive members of society, such as learning to communicate their disability-related work support and accommodation needs and learning to find, request, and secure appropriate supports and reasonable accommodations in education, training, and employment settings. Examples of youth development activities include: mentoring opportunities, training in life skills such as independent living skills, self-advocacy, and conflict resolution; exposure to personal leadership and youth development activities; and exposure to post-program supports.

(6) *Youth with disabilities* means an individual with a disability as defined in paragraph (b) of the definition of *individual with a disability* in 34 CFR 373.4 who is no younger than age 16 and no older than age 22.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the Executive order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP we have determined that the benefits of the priority and related definitions justify the costs.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 373.

Electronic Access to This Document

You may view this document, as well as all other Department of Education

documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.235U Special Demonstration Programs)

Program Authority: 29 U.S.C. 773(b).

Dated: June 28, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 07–3249 Filed 7–3–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Special Demonstration Programs—Model Demonstration Projects to Improve the Postsecondary and Employment Outcomes of Youth with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007 and Later Years

Catalog of Federal Domestic Assistance (CFDA) Number: 84.235U.

Dates: Applications Available: July 5, 2007.

Deadline for Transmittal of Applications: August 6, 2007.

Deadline for Intergovernmental Review: October 3, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Special Demonstration Programs is to provide financial assistance to eligible entities to expand and improve the provision of rehabilitation and other services for individuals with disabilities.

Priority: This priority is from the notice of final priority and definitions for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2007, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Model Demonstration Projects to Improve the Postsecondary and Employment Outcomes of Youth with Disabilities.

Program Authority: 29 U.S.C. 773(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, and 99. (b) The regulations for this program in 34 CFR part 373. (c) The notice of final priority and definitions, published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,250,000.

Maximum Award: We will reject any application that proposes a budget exceeding $575,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 4–7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Only State vocational rehabilitation agencies are eligible for assistance under this program.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.235U.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: July 5, 2007.

Deadline for Transmittal of Applications: August 6, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (*http://www.Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: October 3, 2007.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Special Demonstration Programs—Model Demonstration Projects to Improve the Postsecondary and Employment Outcomes of Youth with Disabilities, CFDA Number 84.235U, must be submitted electronically using the Government-wide Grants.gov Apply site at *http://www.Grants.gov.* Through

this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for Special Demonstration Programs—Model Demonstration Projects to Improve the Postsecondary and Employment Outcomes of Youth with Disabilities at *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.326, not 84.326A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability

of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Edwin Powell, U.S. Department of Education, 400 Maryland Avenue, SW., room 5038, PCP, Washington, DC 20202–2800. Fax: (202) 245–7505.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.235U), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.235U), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.235U), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Under this priority, we require a grantee to develop an evaluation plan and conduct an evaluation of the effectiveness of the project in achieving its goals, particularly goals relating to post-school outcomes. In measuring performance, we require a grantee to collect: High school exit data (e.g., academic achievement and functional performance data, and high school graduation outcomes, including type of diploma received); student's post-school goals; services provided; postsecondary education outcomes; employment outcomes (e.g., type of employment,

wages and earnings, hours worked, weeks of employment); and public benefits received such as Supplemental Security Income and Social Security Disability Insurance. During the first year of the project RSA intends to assist grantees in implementing these data collection requirements. RSA will use these data, especially data on postsecondary education and employment outcomes, to assess the performance of the projects funded under this priority.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Edwin Powell, U.S. Department of Education, 400 Maryland Avenue, SW., room 5038, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7505 or by e-mail: *edwin.powell@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 28, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–12895 Filed 7–2–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Overview Information; Native Hawaiian Career and Technical Education Program (NHCTEP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.259A.

Dates:

Applications Available: July 5, 2007.

Deadline for Transmittal of Applications: August 6, 2007.

Eligible Applicants: (a) Community-based organizations primarily serving and representing Native Hawaiians. For purposes of NHCTEP, a community-based organization means a public or private nonprofit organization that provides career and technical education, or related services, to individuals in the Native Hawaiian community.

(b) Any community-based organization may apply individually or as a part of a consortium with one or more eligible community-based organizations. (34 CFR 75.127)

Note: An applicant must include documentation, including proof of its non-profit status in accordance with 34 CFR 75.51, in its application showing that it and, if applicable, consortium members are eligible according to the requirements in paragraphs (a) and (b) of the *Eligible Applicants* section of this notice.

Estimated Available Funds: $2,956,000 for the first 12 months of the 24-month project period. Funding for the second year is subject to the availability of funds and to a grantee meeting the requirements of 34 CFR 75.253. FY 2006 funds will be used for new awards under this competition.

Estimated Range of Awards: $250,000–$500,000.

Estimated Average Size of Awards: $295,600.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

I. Funding Opportunity Description

Purpose of Program: The Native Hawaiian Career and Technical Education Program (NHCTEP) provides grants to eligible applicants to plan, conduct, and administer programs, or portions of programs, that are authorized by and consistent with the purposes of section 116 of the Carl D. Perkins Career and Technical Education Act of 2006 (Act) for the benefit of Native Hawaiians.

Background Information

For the convenience of applicants, we describe in this notice the major statutory changes made to the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), which was amended by the Act, that affect NHCTEP.

Statutory Changes Affecting NHCTEP

(a) *Community-based organizations.* Under the previous authority for this program, section 116(h) of Perkins III, the Secretary awarded grants or entered into contracts with organizations primarily serving and representing Native Hawaiians that were recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, authorized by and consistent with the provisions of Perkins III. Under the new program authority, in section 116(h) of the Act, the Secretary awards grants or enters into contracts with community-based organizations primarily serving and representing Native Hawaiians to plan, conduct, and administer programs, or portions thereof, that are authorized by and consistent with the provisions of section 116 of the Act for the benefit of Native Hawaiians. As a result of this change, the Secretary will be making multiple grant awards in FY 2007, rather than making a single award; FY 2007 awards will be made only to community based organizations; and the Governor of the State of Hawaii will not have a role in determining which community based organizations receive NHCTEP awards.

(b) *Purpose.* In the Act, Congress has expanded and added elements to the statement of purpose, most significantly by stating that, among other statutory purposes, programs should build on the efforts of States and localities to develop challenging academic and technical standards and to assist students in meeting such standards, including in preparation for high-skill, high-wage, or high-demand occupations in emerging or established professions. (20 U.S.C. 2301(1)) Congress also has added to the statement of purpose the requirement that programs provide technical assistance that promotes leadership, initial preparation, and professional development at the State and local levels, and improves the quality of, career and technical education teachers, faculty, administrators, and counselors. (20 U.S.C. 2301(5)) Additionally, the Act's purpose section has been amended to include supporting partnerships among secondary schools, postsecondary institutions, baccalaureate degree-granting

institutions, area career and technical education schools, local workforce investment boards, business and industry, and intermediaries, as well as providing individuals with opportunities throughout their lives to develop, in conjunction with other education and training programs, the knowledge and skills needed to keep the United States competitive. (20 U.S.C. 2301(6) and (7))

(c) *Definitions.* In the Act, Congress has amended the definitions of certain terms that affect NHCTEP. Most significantly, the term ''career and technical education'' has replaced the term ''vocational and technical education'' throughout the Act. Thus, in this notice we use the term ''career and technical education.'' Moreover, under the new definition of career and technical education, the sequence of courses provided as part of a career and technical education program must provide students with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions. (20 U.S.C. 2302(5)(A)(i)) Under section 8(e) of the Act, for secondary programs, ''coherent and rigorous content'' is determined in a manner consistent with section 1111(b)(1)(D) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). (20 U.S.C. 2306a)

(d) *Special Populations.* Paragraph (F) of the definition of ''Special Populations'' in section 3(29) of the Act uses the term ''individuals with limited English proficiency'' instead of the phrase ''individuals with other barriers to educational achievement, including individuals with limited English proficiency'' that was used in Perkins III. (20 U.S.C. 2302(29)(F)) Although the Act no longer includes, within the definition of ''special populations,'' the phrase ''individuals with other barriers to educational achievement,'' under section 324 of the Act, NHCTEP students with other barriers to educational achievement may receive assistance for tuition and fees, dependent care, transportation, books, and supplies that are necessary for a student to participate in a project funded under this program. (20 U.S.C. 2414(b))

Note: Refer to the *Direct assistance to students* and *Student stipends* sections of this notice for guidance on providing financial assistance for tuition, dependent care, transportation, books, supplies, and stipends.

Authorized Programs, Services, and Activities

(a) *Authorized Programs.* Under section 116(e) of the Act, educational programs, services, and activities funded under NHCTEP must support and help to improve career and technical education programs. (20 U.S.C. 2326(e)) This requirement, along with the statutory definition of career and technical education, aligns NHCTEP with other programs authorized under the Act that require grantees to offer a sequence of courses that provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions. (20 U.S.C. 2302(5)) Under section 116(h) of the Act, eligible community-based organizations receive NHCTEP grants to plan, conduct, and administer programs, or portions thereof, that are consistent with the purposes of section 116 of the Act, for the benefit of Native Hawaiians.

Under this competition the Secretary awards grants to carry out projects that—

(1) Provide organized educational activities offering a sequence of courses that—

(i) Provide individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(ii) Provide technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(iii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual.

Projects may include prerequisite courses (other than remedial courses) that meet the definitional requirements of section 3(5)(A) of the Act. (20 U.S.C. 2302(5)(A)) In addition, at the secondary level, coherent and rigorous academic curriculum must be aligned with challenging academic content standards and student achievement standards in reading/language arts and mathematics that the State in which the applicant is located has established under the ESEA. Contacts for State NCLB programs may be found on the Internet at: *http://www.ed.gov/about/contacts/State/index.html;*

(2) Develop new programs, services, or activities or improve or expand existing programs, services, or activities that are consistent with the purposes of the Act. In other words, the Department will support ''expansions'' or ''improvements'' that include, but are not necessarily limited to, the expansion of effective programs or practices; upgrading of activities, equipment, or materials; increasing staff capacity; adoption of new technology; modification of curriculum; or implementation of new policies to improve program effectiveness and outcomes; and

(3) Funds a career and technical education program, service, or activity that—

(i) Is a new program, service, or activity that was not provided by the applicant during the instructional term (a defined period, such as a semester, trimester, or quarter, within the academic year) that preceded the request for funding under NHCTEP;

(ii) Will improve or expand an existing career and technical education program; or

(iii) Inherently improves career and technical education.

Note: A program, service, or activity ''inherently improves career and technical education'' if it—

(a) Develops new career and technical education programs of study that will be approved by the appropriate accreditation agency;

(b) Strengthens the rigor of the academic and career and technical components of funded programs;

(c) Uses curriculum that is aligned with industry-recognized standards and will result in students attaining industry-recognized credentials, certificates, or degrees;

(d) Integrates academics (other than remedial courses) with career and technical education programs through a coherent sequence of courses to ensure learning in the core academic and career and technical subjects;

(e) Links career and technical education at the secondary level with career and technical education at the postsecondary level and facilitates students' pursuit of a baccalaureate degree;

(f) Expands the scope, depth, and relevance of curriculum, especially content that provides students with a comprehensive understanding of all aspects of an industry and a variety of hands-on, job-specific experiences; and

(g) Offers—

(1) Work-related experience, internships, cooperative education, school-based enterprises, entrepreneurship, community service learning, and job shadowing that are related to career and technical education programs;

(2) Coaching/mentoring, support services, extra help for students after school, on the

weekends, and/or during the summers so they can meet higher standards;

(3) Career guidance and academic counseling for students participating in career and technical education programs under NHCTEP;

(4) Placement services for students who have successfully completed career and technical education programs and attained a technical skill proficiency that is aligned with industry-recognized standards;

(5) Professional development programs for teachers, counselors, and administrators;

(6) Strong partnerships among grantees and local educational agencies, postsecondary institutions, community leaders, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, parents, and local partnerships, to enable students to achieve State academic standards and career and technical skills;

(7) The use of student assessment and evaluation data to improve continually instruction and staff development; or

(8) Research, development, demonstration, dissemination, evaluation and assessment, capacity-building, and technical assistance related to career and technical education programs.

(b) *Student stipends.*

(1) A portion of an award under this program may be used to provide stipends to help students meet the costs of participation in a NHCTEP project.

(2) To be eligible for a stipend a student must—

(i) Be enrolled in a career and technical education project funded under this program;

(ii) Be in regular attendance in a NHCTEP project and meet the training institution's attendance requirement;

(iii) Maintain satisfactory progress in his or her program of study according to the training institution's published standards for satisfactory progress; and

(iv) Have an acute economic need that—

(A) Prevents participation in a project funded under this program without a stipend; and

(B) Cannot be met through a work-study program.

(3) The amount of a stipend is the greater of either the minimum hourly wage prescribed by State or local law, or the minimum hourly wage established under the Fair Labor Standards Act.

(4) A grantee may award a stipend only if the stipend combined with other resources the student receives does not exceed the student's financial need. A student's financial need is the difference between the student's cost of attendance and the financial aid or other resources available to defray the student's cost of attending a NHCTEP project.

(5) To calculate the amount of a student's stipend, a grantee would multiply the number of hours a student actually attends career and technical education instruction by the amount of the minimum hourly wage that is prescribed by State or local law or by the minimum hourly wage that is established under the Fair Labor Standards Act.

Example: If a grantee uses the Fair Labor Standards Act minimum hourly wage of $5.15 and a student attends classes for 20 hours a week, the student's stipend would be $103 for the week during which the student attends classes ($5.15 × 20 = $103).

Note: Grantees must maintain records that fully support their decisions to award stipends to students, as well as the amounts that are paid, such as proof of a student's enrollment in the NHCTEP project, stipend applications, timesheets showing the number of hours of attendance that are confirmed in writing by an instructor, student financial status information, and evidence that a student could not participate in the NHCTEP project without a stipend. (20 U.S.C. 1232f; 34 CFR 75.700–75.702; 75.730; and 75.731)

(6) An eligible student may earn a stipend when taking a course for the first time, although a stipend may not be provided to a student who has already taken, completed, and had the opportunity to benefit from a course and is merely repeating the course.

(7) An applicant must include, in its application, the procedure it intends to use to determine student eligibility for stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

(c) *Direct assistance to students.* A grantee may provide direct assistance to a student only if the following conditions are met:

(1) The recipient of the direct assistance is an individual who is a member of a special population and who is participating in a NHCTEP project.

(2) The direct assistance is needed to address barriers to the individual's successful participation in a NHCTEP project.

(3) The direct assistance is part of a broader, more generally focused program or activity to address the needs of an individual who is a member of a special population.

Note: Direct assistance to individuals who are members of special populations is not, by itself, a ''program or activity for special populations.''

(4) The grant funds used for direct assistance must be expended to supplement, and not supplant, assistance that is otherwise available from non-Federal sources. For example, generally, a community-based organization could not use NHCTEP funds to provide child care for single parents if non-Federal funds previously were made available for this purpose, or if non-Federal funds are used to provide child care services for single parents participating in non-career and technical education programs and these services otherwise would have been available to career and technical education students in the absence of NHCTEP funds.

(5) In determining how much of the NHCTEP grant funds it will use for direct assistance to an eligible student, a grantee considers whether the specific services to be provided are a reasonable and necessary cost of providing career and technical education programs for special populations. However, the Secretary does not envision a circumstance in which it would be a reasonable and necessary expenditure of NHCTEP project funds for a grantee to utilize a majority of a project's budget to pay direct assistance to students, in lieu of providing the students served by the project with career and technical education.

Additional Program Requirements

(a) *Career and technical education agreement.* Any applicant that is not proposing to provide career and technical education directly to Native Hawaiian students and proposes instead to pay one or more qualified educational entities to provide such career and technical education to Native Hawaiian students must include with its application a written career and technical education agreement between the applicant and the educational entity. The written agreement must describe the commitment between the applicant and the educational entity and must include, at a minimum, a statement of the responsibilities of the applicant and the entity. The agreement must be signed by the appropriate individuals on behalf of each party, such as the authorizing official or administrative head of the applicant Native Hawaiian community-based organization.

(b) *Limitation on services.* Section 315 of the Act prohibits the use of funds received under the Act to provide career and technical education programs to students prior to the seventh grade.

(c) *Supplement-Not-Supplant.* In accordance with section 311(a) of the Act, funds under this program may not be used to supplant non-Federal funds used to carry out career and technical education activities and tech prep program activities. Furthermore, the prohibition against supplanting also means that grantees are required to use their negotiated restricted indirect cost rates under this program. (34 CFR 75.563).

The Secretary cautions applicants not to plan to use funds under NHCTEP to replace otherwise available non-Federal funding for ''direct assistance to students,'' (as defined elsewhere in this notice) and family assistance programs. For example, NHCTEP funds must not be used to supplant non-Federal funds to pay the costs of students' tuition, dependent care, transportation, books, supplies, and other costs associated with participation in a career and technical education program.

Further, funds under NHCTEP may not be used to replace Federal student financial aid. The Secretary wishes to highlight that the Act does not authorize the Secretary to fund projects that serve primarily as entities through which students may apply for and receive tuition and other financial assistance.

Evaluation Requirements

To ensure the high quality of NHCTEP projects and the achievement of the goals and purposes of section 116(h) of the Act, each grantee must budget for and conduct an ongoing evaluation of the effectiveness of its program. An independent evaluator must conduct the evaluation. The evaluation must—

(a) Be appropriate for the project and be both formative and summative in nature; and

(b) Include—

(1) Collection and reporting of the performance measures for NHCTEP that are identified in the Performance Measures section of this notice; and

(2) Qualitative and quantifiable data with respect to—

(i) Academic and career and technical competencies demonstrated by the participants and the number and kinds of academic and work credentials acquired by individuals, including participation in programs providing skill proficiency assessments, industry certifications, or training at the associate degree level that is articulated with an advanced degree option;

(ii) Enrollment, completion, and placement of participants by gender, for each occupation for which training was provided;

(iii) Job or work skill attainment or enhancement, including participation in apprenticeship and work-based learning programs, and student progress in achieving technical skill proficiencies necessary to obtain employment in the field for which the student has been prepared, including attainment or enhancement of technical skills in the industry the student is preparing to enter;

(iv) Activities during the formative stages of the project, to help guide and improve the project, as well as a summative evaluation that includes recommendations for disseminating information on project activities and results;

(v) The number and percentage of students who obtained industry-recognized credentials, certificates, or degrees;

(vi) The outcomes of students' technical assessments, by type and scores, if available;

(vii) The rates of attainment of a proficiency credential or certificate, in conjunction with a secondary school diploma;

(viii) The effectiveness of the project, including a comparison between the intended and observed results and a demonstration of a clear link between the observed results and the specific treatment given to project participants;

(ix) The extent to which information about or resulting from the project was disseminated at other sites, such as through the grantee's development and use of guides or manuals that provide step-by-step directions for practitioners to follow when initiating similar efforts; and

(x) The impact of the project, e.g., follow-up data on students' employment, sustained employment, promotions, further and continuing education or training, or the impact the project had on Native Hawaiian economic development or career and technical education activities.

Definitions

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the U.S. Department of Commerce or the U.S. Department of Health and Human Services Poverty Guidelines.

Career and technical education means organized educational activities that—

(a) Offer a sequence of courses that—

(1) Provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(2) Provides technical skills proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(3) May include prerequisite courses (other than remedial courses) that meet the requirements of this definition; and

(b) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual. (20 U.S.C. 2302(5))

Coherent sequence of courses means a series of courses in which career and academic education is integrated, and that directly relates to, and leads to, both academic and occupational competencies. The term includes competency-based education and academic education, and adult training or retraining, including sequential units encompassed within a single adult retraining course, that otherwise meets the requirements of this definition.

Direct assistance to students means tuition, dependent care, transportation, books, and supplies that are necessary for a student to participate in a project funded under this program.

Individual with a disability means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)). (20 U.S.C. 2302(17))

Individual with limited English proficiency means a secondary school student, an adult, or an out-of-school youth, who has limited ability in speaking, reading, writing, or understanding the English language, and—

(a) Whose native language is a language other than English; or

(b) Who lives in a family or community environment in which a language other than English is the dominant language. (20 U.S.C. 2302(16))

Native Hawaiian means any individual any of whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii. (20 U.S.C. 2326(a)(4))

Non-traditional fields means occupations or fields of work, including careers in computer science, technology, and other current and emerging high-skill occupations, for which individuals from one gender comprise less than 25 percent of the individuals employed in each such occupation or field of work. (20 U.S.C. 2302(20))

Special populations means—

(a) Individuals with disabilities;

(b) Individuals from economically disadvantaged families, including foster children;

(c) Individuals preparing for non-traditional fields;

(d) Single parents, including single pregnant women;

(e) Displaced homemakers; and

(f) Individuals with limited English proficiency. (20 U.S.C. 2302(29))

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

Support services means services related to curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices. (20 U.S.C. 2302(31))

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed non-statutory requirements, definitions, and selection criteria. However, section 437(d)(1) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232(d)(1)), allows the Secretary to exempt from rulemaking requirements, non-statutory requirements, definitions, and selection criteria governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 116 of the Act and, therefore, qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the non-statutory requirements, definitions, and selection criteria under the authority of section 437(d)(1) of GEPA. These non-statutory requirements, definitions, and selection criteria will apply to the FY 2006 competition only.

Program Authority: The Carl D. Perkins Career and Technical Education Act of 2006 (Act), Public Law 109–270, 20 U.S.C. 2301, *et seq.*, in particular, section 116(a)–(h). (20 U.S.C. 2326(a)–(h))

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,956,000 for the first 12 months of the 24-month project period. Funding for the second year is subject to the availability of funds and to a grantee meeting the requirements of 34 CFR 75.253.

Estimated Range of Awards: $250,000–$500,000.

Estimated Average Size of Awards: $295,600.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) Community-based organizations primarily serving and representing Native Hawaiians. For purposes of NHCTEP, a community-based organization means a public or private nonprofit organization that provides career and technical education, or related services, to individuals in the Native Hawaiian community.

(b) Any community-based organization may apply individually or as a part of a consortium with one or more eligible community-based organizations. (34 CFR 75.127)

Note: An applicant must include documentation, including proof of its non-profit status in accordance with 34 CFR 75.51, in its application showing that it and, if applicable, consortium members are eligible according to the requirements in paragraphs (a) and (b) of the *Eligible Applicants* section of this notice.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching requirements, but does involve supplement-not-supplant funding provisions. (See the *Supplement-Not-Supplant* section of this notice.)

IV. Application and Submission Information

1. *Address to Request Application Package:* Nancy Essey, U.S. Department of Education, 400 Maryland Avenue, SW., room 11070, Potomac Center Plaza, Washington, DC 20202–7241. Telephone: (202) 245–7789. Fax: (202) 245–7170 or by e-mail: *nancy.essey@ed.gov.*

You may also obtain an application package via the Internet from the following address: *http://www.ed.gov/GrantApps/.*

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 a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, the letters of support, or documentation of the applicant's eligibility. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: July 5, 2007.

Deadline for Transmittal of Applications: August 6, 2007.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372.

5. *Funding Restrictions:* We reference regulations outlining funding restriction in the Applicable Regulations section of this notice.

6. *Other Submission Requirements*

Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. NHCTEP, CFDA Number 84.259A, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for NHCTEP at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.259, not 84.259A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp.*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two

copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.259A), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.259A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention*: (CFDA Number 84.259A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

(1) *Selection Criteria:* The selection criteria for this program are as follows. The maximum score for each criterion and for each factor is indicated in parentheses. The maximum total score for these selection criteria is 110 points.

(a) *Quality of the project design.* (35 points) In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which the design of the proposed project is appropriate to and will successfully address the needs of the target population or other identified needs (as evidenced by data such as local labor market demand, occupational trends, and surveys). (5 points)

(2) The extent to which goals, objectives, and outcomes are clearly specified and measurable (for example, we look for clear descriptions of proposed student career and technical education activities; recruitment and retention strategies; expected enrollments, completions, and student placements in jobs, military specialties, and continuing education/training opportunities; the number of teachers, counselors, and administrators to be trained; and identification of requirements for each program of study to be provided under the project, including related training areas and a description of performance outcomes). (10 points)

(3) The extent to which the proposed project will establish linkages with other appropriate agencies (e.g. community, State, and other Federal resources) and organizations providing services to the target population in order to improve services to students and strengthen the proposed project. (5 points)

(4) The extent to which the services to be provided by the proposed project will create and offer activities that focus on improving the skills necessary to gain employment in high-skill, high-wage, and high-demand occupations, in emerging fields, or in a specific career field. (5 points)

(5) The extent to which the services proposed in the project will create opportunities for students to acquire skills identified by the State at the secondary level or by industry-recognized career and technical education programs for licensure, degree, certification, or as required by a career or profession. (5 points)

(6) The extent to which the project will provide opportunities for high-quality training or professional development services that— (5 points)

(i) Are of sufficient quality, intensity, and duration to lead to improvements in practice among instructional personnel;

(ii) Will improve and increase instructional personnel's knowledge and skills to help students meet challenging and rigorous academic and career and technical skill proficiencies;

(iii) Will advance instructional personnel's understanding of effective instructional strategies that are supported by scientifically-based research; and

(iv) Include professional development plans that clearly address ways in which learning gaps will be addressed and how continuous review of performance will be conducted to identify training needs. (5 points)

(b) *Quality of the management plan.* (15 points) In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and the milestones and performance standards for accomplishing project tasks. (5 points)

(2) The extent to which the time commitments of the project director and other key project personnel, including instructors, are appropriate and adequate to meet the objectives of the proposed project. (5 points)

(3) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

(c) *Quality of project personnel.* (25 points) In determining the quality of project personnel, we consider the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

(2) The qualifications, including relevant training, expertise, and experience, of the project director. (5 points)

(3) The qualifications, including relevant training, expertise, and

experience, of key project personnel, especially the extent to which the project will use instructors who are certified to teach in the field in which they will provide instruction. (10 points)

(4) The qualifications, including training, expertise, and experience, of project consultants. (5 points)

(d) *Adequacy of resources.* (15 points) In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization(s) and the entities to be served, including the relevance and demonstrated commitment (e.g., articulation agreements, memoranda of understanding, letters of support, or commitments to employ project participants) of the applicant, local employers, or entities to be served by the project. (5 points)

(2) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project. (5 points)

(3) The potential for continued support of the project after Federal funding ends. (5 points)

(e) *Quality of the project evaluation.* (20 points) In determining the quality of the evaluation, we consider the following factors:

(1) The extent to which the methods of evaluation proposed by the grantee are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and the performance measures discussed elsewhere in this notice and will produce quantitative and qualitative data, to the extent possible. (5 points)

(3) The extent to which the methods of evaluation will provide performance feedback and continuous improvement toward achieving intended outcomes. (5 points)

(4) The quality of the proposed evaluation to be conducted by an external evaluator with the necessary background and technical expertise to carry out the evaluation. (5 points)

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements*: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

We strongly encourage grantees to submit their reports through e-Reports, the Department's electronic performance reporting initiative.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), Federal departments and agencies must clearly describe the goals and objectives of their programs, identify resources and actions needed to accomplish these goals and objectives, develop a means of measuring progress made, and regularly report on their achievement. One important source of program information on successes and lessons learned is the project evaluation conducted under individual grants. The Department has developed the following core factors and measures for evaluating the overall effectiveness of the Native Hawaiian Career and Technical Education Program and projects supported under this competition. Consequently, we advise an applicant for a grant under this program to give careful consideration to these core factors and measures.

(a) *Number of Projects.* The number of secondary, postsecondary, and adult programs that—

(1) Apply industry-recognized skill standards so students can earn skill certificates in those projects; and

(2) Offer skill competencies, related assessments, and industry-recognized skill certificates in secondary and postsecondary institutions.

(b) *Secondary Projects.* The percentage of participating secondary career and technical education students who—

(1) Meet or exceed proficiency standards in reading/language arts and mathematics;

(2) Attain a secondary school diploma or its State-recognized equivalent, or a proficiency credential in conjunction with a secondary school diploma; and

(3) Attain career and technical education skill proficiencies aligned with industry-recognized standards; and

(4) Are placed in postsecondary education, advanced training, military service, or employment in high-skill, high-wage, and high-demand occupations or in current or emerging occupations.

(c) *Postsecondary Projects.* The percentage of participating postsecondary students in career and technical education programs who—

(1) Receive postsecondary degrees, certificates, or credentials;

(2) Attain career and technical education skill proficiencies aligned with industry-recognized standards;

(3) Receive industry-recognized credentials, certificates, or degrees;

(4) Are retained in postsecondary education or transfer to a baccalaureate degree program; and

(5) Are placed in military service or apprenticeship programs, or are placed in employment, receive an employment promotion, or retain employment.

(d) *Adult Projects.* The percentage of participating adult career and technical education students who—

(1) Enroll in a postsecondary education or training program;

(2) Attain career and technical education skill proficiencies aligned with industry-recognized standards;

(3) Receive industry-recognized credentials or certificates, or degrees; and

(4) Are placed in employment, receive an employment promotion, or retain employment.

Note: All grantees will be expected to submit an annual performance report addressing these performance measures, to the extent feasible and to the extent that they apply to each grantee's NHCTEP project.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Nancy Essey, U.S. Department of Education, 400 Maryland Avenue, SW., room 11070, Potomac Center Plaza, Washington, DC 20202–7241. Telephone: (202) 245 –7789, or by e-mail: *nancy.essey@ed.gov.*

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 notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

Electronic Access to This Document: You may view this notice, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free 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 29, 2007.

Troy R. Justesen,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. E7–13022 Filed 7–3–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, July 23, 2007, 1 p.m.–5 p.m.; Tuesday, July 24, 2007, 8:30 a.m.–4 p.m.

ADDRESSES: Newberry Hall, 117 Newberry Street SW., Aiken, SC 29801.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, July 23, 2007

1 p.m.—Combined Committee Session.

5 p.m.—Adjourn.

Tuesday, July 24, 2007

8:30 a.m.—Approval of Minutes, Agency Updates.

9:45 a.m.—Public Comment Session.

10 a.m.—Chair and Facilitator Update.

10:45 a.m.—Administrative Committee Report.

11:45 a.m.—Public Comment Session.

12 p.m.—Lunch Break.

1 p.m.—Nuclear Materials Committee Report.

1:45 p.m.—Strategic and Legacy Management Committee Report.

2:15 p.m.—Waste Management Committee Report.

3:15 p.m.—Public Comment Session.

3:30 p.m.—Facility Disposition and Site Remediation Committee Report.

4 p.m.—Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, July 23, 2007.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC on June 29, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–12981 Filed 7–3–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF85–305–008; EL07–76–000]

Carson Cogeneration Company; Notice of Filing

June 27, 2007.

Take notice that on June 22, 2007, pursuant to § 292.205(c) of the regulations of the Federal Energy Regulatory Commission implementing the Public Utility Regulatory Policies Act of 1978, 18 CFR 292.205(c) (2006), Carson Cogeneration Company filed a request for limited waiver of the operating and efficiency standards for a natural gas-fired, combined cycle, cogeneration facility located in Carson, California.

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 online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to

receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 23, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12938 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–433–002]

Crossroads Pipeline Company; Notice of Compliance Filing

June 28, 2007.

Take notice that on June 22, 2007, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 6, with an effective date of June 1, 2007.

Crossroads states that it is making this filing in compliance with the Commission's Order in this docket issued May 31, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an ''eSubscription'' link on the web site that enables subscribers to receive 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12929 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–433–000]

Crossroads Pipeline Company; Notice of Technical Conference

June 27, 2007.

Take notice that the Commission will convene a technical conference in the above referenced proceeding on Tuesday, July 31, 2007, at 10 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

The Commission's May 31, 2007, order[1] in this proceeding directed that a technical conference be held to address the issues raised by a May 1, 2007, filing of Crossroads Pipeline Company (Crossroads) to establish a retainage tracking mechanism and adjust its current retainage percentage.

The parties and the Commission Staff will have the opportunity to discuss all of the issues raised by the filing including, but not limited to, providing additional technical, engineering and operations support for its proposed transportation retainage percentage.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Lisa T. Long by phone at (202) 502–8691 or via e-mail at *lisa.long@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12937 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

[1] *Crossroads Pipeline Company,* 119 FERC ¶ 61,221 (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–494–000]

Dauphin Island Gathering Partners; Notice of Revenue Report

June 28, 2007.

Take notice that on June 26, 2007, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing its report of net revenue received from cash outs. Dauphin Island states that it has made the refund to its customers based upon its calculation method as set out in its report.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time July 5, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12931 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA07–12–001]

Midamerican Energy Company; Notice of Compliance Filing

June 28, 2007.

Take notice that on June 25, 2007, MidAmerican Energy Company tendered for filing, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d (2007), in compliance with Order No. 890, an amendment to its Order No. 890 Implementation Section 205 filing made on April 16, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, D.C. 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. E7–12927 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–493–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 28, 2007.

Take notice that on June 26, 2007, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective August 1, 2007:

Ninth Revised Sheet No. 88
Fifth Revised Sheet No. 97
Seventh Revised Sheet No. 97A
Original Sheet No. 97B

Viking states that the purpose of this filing is to: (i) Correct an incorrect reference in the pro forma Firm Transportation Agreement to one of its Exhibits; (ii) add a new Exhibit to the pro forma Firm Transportation Agreement to standardize documentation of discounted rate agreements; and (iii) modify the pro forma Firm Transportation Agreement Exhibits.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12930 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ05–1–002]

Western Area Power Administration; Notice of Filing

June 27, 2007.

Take notice that on June 21, 2007, the Western Area Power Administration filed an amendment to its non-jurisdictional open access transmission tariff, pursuant to the Federal Energy Regulatory Commission's May 21, 2007 Order, *Western Area Power Administration*, 119 FERC ¶ 61,175 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *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 23, 2007

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12935 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–67–000]

DC Energy, LLC Complainant, v. H.Q. Energy Services (U.S.) Inc. Respondent; Notice of Amended Complaint

June 27, 2007.

Take notice that on June 22, 2007, DC Energy, LLC (DC Energy) pursuant to Rule 215 of the Rules of Practice and Procedure of the Commission's Regulations, 18 CFR 385.215, filed an amendment to its June 12, 2007, Complaint. DC Energy states that it has discovered new facts which are directly relevant to the issues raised in its original Complaint.

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 12, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12934 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 29, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–1065–010.

Applicants: Entergy Services, Inc.

Description: Entergy Operating Companies submits its compliance filing in accordance with Commission's May 25, 2007 Order.

Filed Date: 06/25/2007.

Accession Number: 20070627–0102.

Comment Date: 5 p.m. Eastern Time on Monday, July 16, 2007.

Docket Numbers: ER07–157–001, ER06–398–002, ER06–399–002, ER04–268–005, ER98–4159–008.

Applicants: Macquarie Cook Power, Inc.; Duquesne Keystone LLC; Duquesne Conemaugh LLC; Duquesne Power, LLC; Duquesne Light Company.

Description: Macquarie 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: ER07–613–004, ER07–1077–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits amendments to the ISO Tariff 2007 Congestion Revenue Rights Credit Policy Amendment.

Filed Date: 06/22/2007.

Accession Number: 20070627–0104.

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, 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.

Docket Numbers: ER07–1078–000.

Applicants: American Electric Power Service Corporation.

Description: AEP Operating Companies submit an Interconnection and Local Delivery Service Agreement with the Village of Glouster, Ohio.

Filed Date: 06/26/2007.

Accession Number: 20070628–0084.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 17, 2007.

Docket Numbers: ER07–1079–000.

Applicants: American Electric Power Service Corporation.

Description: Ohio Power Co and Columbus Southern Power Company submit their eighth revision to the Interconnection and Local Delivery Service Agreement with Buckeye Power, Inc.

Filed Date: 06/26/2007.

Accession Number: 20070628–0085.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 17, 2007.

Docket Numbers: ER07–1080–000.

Applicants: American Electric Power Service Corporation.

Description: AEP Operating Companies submits an Interconnection and Local Delivery Service Agreement with the Village of Woodsfield, Woodsfield, Ohio.

Filed Date: 06/26/2007.

Accession Number: 20070628–0086.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 17, 2007.

Docket Numbers: ER07–1081–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits a Large Generator Interconnection Agreement etc for Wholesale Distribution Service between the Transmission and Distribution

Business Unit of SCE et al for the Mira Loma Peaker Project.

Filed Date: 06/26/2007.

Accession Number: 20070628–0221.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 17, 2007.

Docket Numbers: ER07–1082–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits a Large Generator Interconnection Agreement etc for Wholesale Distribution Service between the Transmission and Distribution Business Unit of SCE et al for the Grapeland Peaker Project.

Filed Date: 06/26/2007.

Accession Number: 20070628–0220.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 17, 2007.

Docket Numbers: ER07–1083–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits a Large Generator Interconnection Agreement etc for Wholesale Distribution Service between the Transmission and Distribution Business Unit of SCE et al for the Center Peaker Project.

Filed Date: 06/26/2007.

Accession Number: 20070628–0219.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 17, 2007.

Docket Numbers: ER07–1084–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits a Large Generator Interconnection Agreement etc for Wholesale Distribution Service between the Transmission and Distribution Business Unit of SCE et al for the Barre Peaker Project.

Filed Date: 06/26/2007.

Accession Number: 20070628–0218.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 17, 2007.

Docket Numbers: ER07–1085–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corp dba National Grid submits an Amended and Restated Power Sales Agreement with Fulton Cogeneration Associates, LP, designated as Service Agreement 1150.

Filed Date: 06/26/2007.

Accession Number: 20070628–0082.

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.

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 email 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. E7–13064 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11588–027—AK]

Alaska Power and Telephone Company; Notice of Availability of Environmental Assessment

June 28, 2007.

An environmental assessment (EA) is available for public review. The EA was prepared for an application filed by Alaska Power and Telephone Company (licensee) on January 26, 2007, and supplemented on March 6 and April 5, 2007, requesting Commission approval for an Amendment of License to Modify Project Design at the Kasidaya Hydroelectric Project. The project is located on Kasidaya Creek at Taiya Inlet, 3 miles south of the City of Skagway, Alaska. The project occupies lands within the Tongass National Forest, administered by the U.S. Forest Service.

The licensee has requested that in lieu of passing the penstock through a tunnel to cross Kasidaya Creek and gain access to the diversion structure, they would like to have the penstock cross over Kasidaya Creek with a modular steel bridge. The penstock would be buried adjacent to the access road, except for crossing the creek, on a small bridge adjacent to the aluminum block culvert. In addition to being significantly less expensive than the tunnel, the bridge arrangement would also provide more convenient access to the diversion site for construction and operation of the project.

The Environmental Assessment (EA), which is attached to the order approving order amending license and revising annual charges, evaluates the environmental effects of the relocation and redesign of project facilities. While these changes to project facilities will impact areas not specifically evaluated in previous EA's, the environmental effects are expected to be similar.

A copy of the EA is attached to a Commission order titled ''Approving Order Amending License and Revising Annual Charges,'' issued June 27, 2007 and is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at 1–866–208–3676, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12926 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–470–000, Docket Nos. CP06–471–000, Docket Nos. CP06–472–000, Docket Nos. CP06–473–000, Docket Nos. CP06–474–000]

Southern LNG, Inc, Elba Express Company, LLC, Southern Natural Gas Company; Notice Accepting in Part and Rejecting in Part Intervenors' Comments to the Draft Environmental Impact Statement for the Proposed Elba III Project

June 28, 2007.

On May 25, 2007, Landowners for Economic and Environmental Protection (Landowners) submitted Intervenors' Comments to the Draft Environmental Impact Statement for the Proposed Elba III Project in the above referenced dockets.

After receipt of the filing, the staff of the Federal Energy Regulatory Commission (FERC or Commission) has determined that the text of Comments, together with Exhibits A and B, comply with the Commission's filing requirements and are acceptable submittals which will be considered in the Final Environmental Impact Statement. However, Exhibit C (five DVDs containing digital data) is hereby rejected for numerous failures to comply with the Commission's Submission Guidelines for CDs, DVDs, and Other Electronic Media (Guidelines),[1] as outlined below:

- The submission does not include a cover letter containing information specified by the Guidelines;
- The data files on the DVDs include files that exceed the 50 MB limit per file, with many files in the range of 145–456 MB;
- The folder mapping on the DVDs does not follow the Files and Folders Guidelines correlating the electronic data to the logical organization of the document, and there is no documentation outlining how the data was split over the five DVDs and the content on each;

There appears to be duplication of Exhibit A in three places and duplicate copies of other electronic files on the DVDs;

- Many file names are not descriptive, and the cover letter is not in the root directory;
- There are at least 10 unacceptable file types submitted which prohibit both FERC staff and the public from viewing them;
- Specialized software was used to compile the data and distribute the contents over five DVDs, which does not allow FERC staff or the public access to the electronic media without administrative rights;
- The filing does not include a detailed description of the content of the filing and instructions for the public on how to obtain the resources to view it;
- The external labels on the DVDs do not identify the filer, docket number, or security classification of the data;
- The consultant responsible for the compilation of the DVDs did not comply with FERC staff's request to provide a paper copy of the map document (.mxd file) for FERC staff use.

Accordingly, Exhibit C of Landowners' May 25, 2007 submission to the Commission is hereby rejected without prejudice to Landowners' resubmitting this portion of its filing in accordance with the Guidelines.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12932 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12805–000]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 28, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12805–000.

c. *Date filed:* June 11, 2007.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Pit 3 Dam Streamflow Incremental Generation Project.

f. *Location:* The project would be located in the Pit River upstream of Shasta Lake, near the towns of Burney, Fall River Mills, and McArthur, in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Alan Soneda, Pacific Gas and Electric Company, 245 Market Street, MS N11E, P.O. Box 770000, San Francisco, CA 94177–0001, phone (415)-973–4054.

i. *FERC Contact:* Sonali Dohale, (212) 273–5902.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of one powerhouse with a turbine and generator to be constructed on the right abutment at the downstream side of the existing Pit 3 Dam. The proposed Project will be run-of-river; the minimum required instream flow below Pit 3 Dam will be passed through the proposed powerhouse without change in volume or timing. The project is estimated to have an annual generation of 18.3 gigawatt-hours per-year.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE, Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice

[1] The Guidelines appear online at: *http://www.ferc.gov/help/submission-guide.asp*. The Guidelines specifically outline the areas in which Exhibit C was non-compliant.

of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12928 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1267–080]

Greenwood County, South Carolina; Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

June 27, 2007.

a. *Type of Application:* Application to amend article 407 of the project license.

b. *Project Number:* Project No. 1267–080.

c. *Date Filed:* May 22, 2007.

d. *Applicant:* Greenwood County, South Carolina.

e. *Name of Project:* Buzzard's Roost Hydroelectric Project (FERC No. 1267).

f. *Location:* The project is located on the Saluda River in Greenwood, Laurens and Newberry Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Charles M. Watson Jr., County Attorney, County of Greenwood, 600 Monument St., Suite 102, Greenwood, SC 29646, phone (864)-942–3140.

i. *FERC Contact:* Any questions on this notice should be addressed to Chris Yeakel at (202) 502–8132.

j. *Deadline for filing comments and or motions:* July 27, 2007.

k. *Description of Application:* The applicant seeks approval to amend article 407 of its project license to revise the schedule for management of lake levels (rule curve). The licensee proposes to commence filling the lake one month earlier in order to obtain a lake elevation of 439 feet by March 15, provide steady lake levels during fish spawning, and to maintain the lake at the summer level until November 1 in order to facilitate late-season recreation. The licensee also proposes to maintain the lake at its annual low from December 15 until January 1 of each year in order to provide a period for adjacent landowners to work on permitted encroachments. Additionally, with the exception of the fish spawning period from March 15 to June 30, the licensee requests that it be allowed to fluctuate the reservoir within 6 inches above and below the levels determined by the rule curve to provide for some peaking operation. The licensee states that it will vary from article 407 to perform necessary maintenances, safely manage flood flows, during operating emergencies, and to meet minimum flow requirements under article 408.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (p-1267) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and

reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–1267–080). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12933 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–425–000]

Northern Natural Gas Company; Notice of Technical Conference

June 27, 2007.

The Commission's May 31, 2007 Order in the above-captioned proceeding,[1] directed that a technical conference be held to discuss Northern Natural Gas Company's proposed gas quality specifications.

Take notice that a technical conference will be held on Tuesday, July 24, 2007 at 9 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested parties and staff are permitted to attend. For further information please contact David Faerberg at (202) 502–8275 or e-mail *david.faerberg@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12936 Filed 7–3–07; 8:45 am]

BILLING CODE 6717–01–P

[1] *Northern Natural Gas Company*, 119 FERC ¶ 61,213 (2007).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0724, FRL–8335–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request, NSPS for New Residential Wood Heaters (Renewal), EPA ICR Number 1176.08, OMB Control Number 2060–0161

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 6, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0770, to (1) EPA online using www.regulations.gov (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John DuPree, Compliance Assessment and Media Programs Division, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–564–5950; fax number: 202–564–0050; e-mail address: *Dupree.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2006, (71 *FR* 58853), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2006–0724, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752.

Use EPA's electronic docket and comment system at http://www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in

the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at http://www.regulations.gov, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to www.regulations.gov.

Title: NSPS for New Residential Wood Heaters (Renewal).

ICR Numbers: EPA ICR Number 1176.08, OMB Control Number 2060–0161.

ICR Status: This ICR is scheduled to expire on July 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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: The Standards of Performance for New Stationary Sources, New Residential Wood Heaters, were proposed on February 18, 1987, and promulgated on February 26, 1988. These standards apply to each wood heater manufactured on or after July 1, 1988, or sold at retail on or after July 1, 1990. Wood heaters manufactured on or after July 1, 1990, or sold at retail on or after July 1, 1992, must meet more stringent emission standards. Approximately 54 manufacturers, 875 retailers, and 5 certification laboratories are currently subject to the regulations. No increase is expected in those estimates over the next three years. Particulate matter is the pollutant regulated under the standards.

Two features of this rulemaking are unique to the New Source Performance Standard (NSPS) program. First, these standards were negotiated by representatives of groups affected by the NSPS, including those groups which are burdened by the information collection activities. None of these activities were judged to be unreasonable by these representatives. Some of these provisions were recommended by the affected groups as a means of promoting an efficient and smooth running certification and enforcement program. Second, these regulations established a certification program instead of the usual NSPS requirement that each affected facility demonstrates compliance through new source review and testing. Under this certification program, a single wood heater is tested to demonstrate compliance for an entire model line, which could consist of thousands of stoves. The certification approach significantly reduces the compliance burden, including information collection, for the manufacturers of wood heaters. Because of the potential risks to the environment from the intentional or accidental misuse of the certification approach, there were, however, several safeguards included, some of which entail reporting and recordkeeping.

Under this regulation, wood heater manufacturers, testing laboratories, and retailers are required to submit reports to EPA and/or to maintain records for demonstrating compliance with the NSPS.

The information supplied by the manufacturer to the Agency is used: (1) To ensure that Best Demonstrated Technology is being applied to reduce emissions from wood heaters; (2) to ensure that the wood heater tested for certification purposes is in compliance with the applicable emission standards; (3) to provide assurance that untested production model heaters have emission performance characteristics similar to tested models; and (4) to provide an indicator of continued compliance.

Information supplied to the Agency by testing laboratories is used to grant or to deny laboratory accreditation, and to assist in enforcement and compliance activities. Information requested by the Agency from manufacturers is used to determine compliance with requirements that are based upon volume of production.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers and sellers of new residential wood stoves.

Estimated Number of Respondents: 934.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 9,728.

Estimated Total Annual Cost: $1,963,367 which is comprised of $1,345,500 in annualized Capital Startup costs, $2,500 annualized Operations and Maintenance (O&M) costs and $615,367 annualized Labor Costs.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR and there is no change in burden to industry.

Dated: June 21, 2007.

Sara Hisel-McCoy,

Acting, Director, Collection Strategies Division.

[FR Doc. E7–12997 Filed 7–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2007–0156; FRL–8334–7]

Approval of Clean Air Act Section 112(l) Delegations for National Emission Standards for Hazardous Air Pollutants Subparts II, CCC, MMMM, PPPP, and DDDDD; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is notifying the public that delegation of the authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP) standards for Shipbuilding and Ship Repair Surface Coating (Subpart II), Steel Pickling—Hydrochloric Acid Process Facilities and Regeneration Plants (Subpart CCC), Surface Coating of Miscellaneous Metal Parts and Products (Subpart MMMM), Surface Coating of Plastic Parts and Products (Subpart PPPP), and Industrial, Commercial, and Institutional Boilers and Process Heaters (DDDDD) was approved in a letter from EPA to the Indiana Department of Environmental Management (IDEM) dated May 30, 2007.

FOR FURTHER INFORMATION CONTACT: Ethan Chatfield, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–5112, *chatfield.ethan@epa.gov.*

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

I. What Action Is EPA Taking?
II. Under What Authority Is EPA Approving These Delegations?
III. What Is the Effect of These Delegations?
IV. How Can I Get Copies of This Document and Other Related Information?

I. What Action Is EPA Taking?

We are notifying the public that pursuant to section 112(1) of the Clean Air Act (CAA) and 40 CFR 63.92, EPA has approved the IDEM request to delegate the authority to implement and enforce 40 CFR part 63, subparts II, CCC, MMMM, PPPP, and DDDDD. IDEM has incorporated these NESHAPs by reference, unchanged from the federal standards, through Indiana rules 326 IAC 20–26, 326 IAC 20–29, 326 IAC 20–80, 326 IAC 20–81, and 326 IAC 20–95, respectively. EPA has also approved the delegation of the Category I authorities for these NESHAP standards as set forth at 40 CFR 63.91(g).

II. Under What Authority Is EPA Approving These Delegations?

Pursuant to section 112(1) of the CAA, a state may develop and submit to EPA for approval a program for the partial or complete delegation of section 112 rules. EPA may approve state rules or programs which either: (1) Implement and enforce section 112 rules as promulgated by EPA (''straight delegation''); (2) implement and enforce state rules which adjust section 112 rules; or, (3) implement and enforce state rules which substitute for section 112 rules. The Federal regulations governing EPA's approval of state rules or programs under section 112(1) are located at 40 CFR part 63, subpart E.

Currently, IDEM has an EPA-approved program for the straight delegation of NESHAP standards. EPA approved IDEM's program for part 70 and non-part 70 sources on November 14, 1995, (60 FR 57118) and July 8, 1997 (62 FR 36460), respectively. Pursuant to the approved delegation program, EPA has approved the straight delegation of numerous NESHAP standards in Indiana (see 62 FR 36460 (7/8/1997), 65 FR 17264 (3/31/2000), 69 FR 22508 (4/26/2004), and 71 FR 2225 (1/13/2006)). EPA has also approved rule adjusted NESHAP delegations for subparts X, VVVV, WWWW (see 71 FR 48923 (8/22/2006) and 71 FR 56971 (9/28/2006)).

By letter dated February 8, 2007, IDEM requested approval of five additional 'straight delegations' of authority for 40 CFR part 63, subparts II, CCC, MMMM, PPPP, and DDDDD.

III. What Is the Effect of These Delegations?

On May 30, 2007, EPA approved IDEM's request to delegate the authority to implement and enforce 40 CFR part 63, subparts II, CCC, MMMM, PPPP, and DDDDD, through 326 IAC 20–26, 326 IAC 20–29, 326 IAC 20–80, 326 IAC 20–81, and 326 IAC 20–95. EPA also approved the delegation of the applicable Category I authorities as set forth at 40 CFR section 63.91(g).

All notifications, reports and other correspondence required under these NESHAPs, should be sent to the State of Indiana, rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to: Indiana Department of Environmental Management, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204–2251.

Pursuant to Section 112(1)(7) of the CAA, nothing in this delegation prohibits EPA from enforcing any applicable emission standard or requirement.

IV. How Can I Get Copies of This Document and Other Related Information?

Docket. EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–0156. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Ethan Chatfield, Environmental Engineer, at (312) 886–5112 before visiting the Region 5 office.

Electronic Access. You may access this Federal Register document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

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

Dated: June 19, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–12851 Filed 7–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0484; FRL–8335–3]

Board of Scientific Counselors, National Center for Environmental Research (NCER) Standing Subcommittee Meeting—2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) National Center for Environmental Research (NCER) Standing Subcommittee.

DATES: The meeting will be held on Tuesday, July 24, 2007 from 9 a.m. to 5 p.m., and will continue on Wednesday, July 25, 2007 from 9 a.m. to 12 noon. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the conference call will be accepted up to 1 business day before the meeting.

ADDRESSES: The meeting will be held at the Park Hyatt Washington, 24th & M Streets, NW., Washington, DC 20037. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0484, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, National Center for Environmental Research (NCER) Standing Subcommittee—2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2007–0484.

Note: This is not a mailing 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–HQ–ORD–2007–0484. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, National Center for Environmental Research (NCER) Standing Subcommittee—2007 Docket, EPA/DC, EPA West, Room B102, 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 ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Susan Peterson, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–1077; via fax at: (202) 565–2911; or via e-mail at: *peterson.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Susan Peterson, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: The role of NCER and its research programs within ORD, NCER's Air Program, NCER's Human Health Program, and discussion of the charge to the NCER Standing Subcommittee. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Susan Peterson at (202) 564–1077or *peterson.susan@epa.gov.* To request accommodation of a disability, please contact Susan Peterson, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 28, 2007.

Eric Weber,

Acting Director, Office of Science Policy.

[FR Doc. E7–12999 Filed 7–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8335–7]

Notice of Availability of Draft NPDES General Permits for Noncontact Cooling Water Discharges in the States of Massachusetts and New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Draft NpPDES General Permits, MAG250000 and NHG250000.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA-New England, is issuing notice of availability of the draft National Pollutant Discharge Elimination System (NPDES) general permits for noncontact cooling water (NCCW) discharges to certain waters of the Commonwealth of Massachusetts and the State of New Hampshire. These General Permits replace the NCCW General Permits which expired on April 25, 2005.

These draft General Permits establish Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions, and management practices for facilities discharging NCCW. Owners and/or operators of facilities discharging NCCW, including those currently authorized to discharge under the expired General Permits, will be required to submit an NOI to be covered by the General Permit to both EPA-New England and the appropriate state agency. After EPA and the State have reviewed the NOI, the facility will receive a written notification from EPA of permit coverage and authorization to discharge under the General Permit. The eligibility requirements for coverage under this General Permit are discussed in detail under Part 3 of the General Permit. The reader is strongly urged to

go to that section to determine eligibility before reading further.

Public Comment Period: Interested persons may submit comments on the draft General Permits to the EPA-Region I. Interested persons may also request, in writing, that EPA hold a public hearing pursuant to 40 CFR 124.12, on the draft . All comments and requests for public hearings must be postmarked or delivered before midnight August 6, 2007, the close of the public comment period. All public comments or requests for a public hearing must be submitted to the address below.

Adresses and Contact Information: Written comments on the draft General Permit may be hand delivered or mailed to Ms. Austine Frawley, EPA-Region 1, Office of Ecosystem Protection, CIP, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023, or sent via e-mail to *frawley.austine@epa.gov.* No facsimiles (faxes) will be accepted.

The draft General Permits are based on an administrative record available for public review at EPA-Region 1, Office of Ecosystem Protection, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023, Monday–Friday from 9 am–5 pm. For further information contact Ms. Frawley at 617–918–1065, between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding holidays.

SUPPLEMENTARY INFORMATION: The draft General Permits and a Fact Sheet may be viewed over the Internet via the EPA-Region 1 Web site. The Fact Sheet and General Permit for dischargers in Massachusetts are at *http://www.epa.gov/ne/npdes/mass.html.* The Fact Sheet and General Permit for dischargers in New Hampshire are at *http://www.epa.gov/ne/npdes/newhampshire.html.* To obtain a paper copy of the documents, please contact Ms. Frawley using the contact information provided above. A reasonable fee may be charged for copying requests. When the General Permit is issued, the notice of final issuance will be published in the **Federal Register**. The General Permit shall be effective on the date specified in the notice of final issuance, and it will expire at midnight, five (5) years from the last of the month preceding the effective date.

Dated: June 22, 2007.

Robert Varney,

Regional Administrator, Region 1.

[FR Doc. E7–12990 Filed 7–3–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 28, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before September 4, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via Internet at *Cathy.Williams@fcc.gov,* and to Jasmeet Seehra, Office of Management and Budget (OMB), Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, FCC 03–42.

Form Number: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; and State, local, or tribal Governments.

Number of Respondents: 35,036.

Estimated Time per Response: 1—10 hours.

Frequency of Response: Recordkeeping; On occasion and biennial reporting requirements; Third party disclosure requirement.

Total Annual Burden: 145,869 hours.

Total Annual Cost: $51,187,500.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals' and households' information is contained in the OSCAR database, which is covered under the Commission's system of records notice (SORN), FCC/CIB–1, ''Informal Complaints and Inquiries.'' The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints under 47 CFR 79.2 (c).

Privacy Impact Assessment: Under development.

Needs and Uses: Section 258 of the Telecommunications Act of 1996 directed the Commission to prescribe rules to prevent the unauthorized change by telecommunications carriers of consumers' selections of telecommunications service providers (slamming). On March 17, 2003, the FCC released the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* CC Docket No. 94–129, FCC 03–42 (*Third Order on Reconsideration*), in which the Commission revised and clarified certain rules to implement section 258 of the 1996 Act. On May 23, 2003, the Commission also released an *Order* (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the *Third Order on Reconsideration.* The rules and requirements implementing section 258 can be found primarily at 47 CFR part 64. These rules will continue to enable the Commission to deter slamming, while protecting consumers from carriers that take advantage of consumer confusion over different types of telecommunications services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–12991 Filed 7–3–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 28, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L.No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 4, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to P*RA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554 or via Internet at *Cathy.Williams@fcc.gov* and Jasmeet Seehra, OMB Desk Officer, Office of Management and Budget (OMB), Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* or via fax at (202) 395–5167.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0250.

Title: Sections 73.1207, 74.784 and 74.1284, Rebroadcasts.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 6,062.

Estimated Time per Response: 30 minutes.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party requirement.

Total Annual Burden: 5,350 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1207 requires that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also specifies procedures that broadcast stations must follow when rebroadcasting time signals, weather bulletins, or other material from non-broadcast services.

47 CFR 74.784 requires licensees of low power television and TV translator stations to notify the FCC when rebroadcasting programs or signals of another station occurs. They are also required to certify that written consent has been obtained from originating station. FCC staff uses the data to ensure compliance with Section 325(a) of the Communications Act, as amended.

47 CFR 74.1284 requires that the licensee of a FM translator station obtain prior consent to rebroadcast programs of any FM broadcast station or other FM translator. The licensee must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station.

The Commission is revising this information collection to consolidate rule Section 47 CFR 73.1207 into OMB control number 3060–0250. The rule section is currently approved under OMB control number 3060–0173.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–12993 Filed 7–3–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

June 28, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before September 4, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams,

Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via Internet at *Cathy.Williams@fcc.gov,* and to Jasmeet Seehra, Office of Management and Budget (OMB), Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via Internet at *Jasmeet _K._Seehra@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0422.

Title: Section 68.5, Waivers (Application for Waivers of Hearing Aid Compatibility Requirements).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time per Response: 3 hours (avg).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 30 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personal identifiable information (PII) from individuals.

Needs and Uses: Telephone manufacturers seeking a waiver of 47 CFR 68.4(a)(1), which requires that certain telephones be hearing aid compatible, must demonstrate that compliance with the rule is technologically infeasible or too costly. Information is used by FCC staff to determine whether to grant or dismiss the request.

OMB Control Number: 3060–0967.

Title: Section 79.2, Accessibility of Programming Providing Emergency Information.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, local, or tribal Governments.

Number of Respondents: 100.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 300 hours.

Total Annual Cost: $22,500.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals' and households' information is contained in the OSCAR database, which is covered under the Commission's system of records notice (SORN), FCC/CIB–1, ''Informal Complaints and Inquiries.'' The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints under 47 CFR 79.2(c).

Privacy Impact Assessment: Under development.

Needs and Uses: 47 CFR 79.2 is designed to ensure that persons with hearing and visual disabilities have access to the critical details of emergency information. The Commission adopted the rules to assist persons with hearing disabilities on April 14, 2000, in the *Second Report and Order* in MM Docket No. 95–176. The Commission modified the rules to assist persons with visual disabilities on July 21, 2000, in the *Report and Order* in MM Docket No. 99–339. As the Commission noted in the previous PRA submission, the Commission adopted its rules for persons with different disabilities at different times. It previously provided for persons with hearing disabilities in OMB Control No. 3060–0945; and for persons with visual disabilities in OMB Control No. 3060–0967. Because both sets of rules make use of the same complaint procedures, which are what triggered the PRA submissions, the Commission consolidated these two information collections and discontinued OMB information collection No. 3060–0945. 47 CFR 79.2(c) requires that each complaint transmitted to the Commission include the following: the name of the video programming distributor at issue; the date and time of the omission of the emergency information; and the type of emergency. The Commission then notifies the video programming distributor, which must reply within 30 days.

OMB Control Number: 3060–0968.

Title: Slamming Complaint Form.

Form Number: FCC Form 501.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 3,600.

Estimated Time per Response: 15 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 900 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals' and households' information is contained in the OSCAR database, which is covered under the Commission's system of records notice (SORN), FCC/CIB–1, ''Informal Complaints and Inquiries.'' The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints under 47 CFR 79.2(c).

Privacy Impact Assessment: Under development.

Needs and Uses: On December 17, 1998, the Commission announced to the public via news release its plan to provide consumers with tools to better protect themselves from telephone related fraud, as well as offer consumers an easy means to file complaints. On December 23, 1998, the Commission released a *Second Report and Order and Further Notice of Proposed Rulemaking* (FCC 98–334) adopting new rules to prevent the unauthorized change by telecommunications carriers of consumers' selections of telecommunications service providers (slamming), and revealing future initiatives to protect consumers from telephone related fraud. One of those initiatives was the development of the electronic slamming complaint form: FCC Form 501. FCC Form 501, Slamming Complaint Form, is devised to ensure complete and efficient submission of necessary information to process slamming complaints. FCC Form 501 remains available to consumers electronically and in hard copy. The Commission will use this information to provide redress to consumers and to act against companies engaged in this illegal practice.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–12994 Filed 7–3–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 07–1239]

Wireline Competition Bureau Seeks Additional Comment on Promoting Deployment and Subscribership in Underserved Areas, Including ''Near Reservation'' Areas

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) seeks additional comment on issues raised in the above docket related to what constitutes a ''near reservation'' area for federal Lifeline and Link-Up support purposes.

DATES: Comments are due on or before August 6, 2007. Reply comments are due on or before August 20, 2007.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC. Comments may be submitted, identified by CC Docket No. 96–45, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.fcc.gov.* Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS) / *http://www.fcc.gov/cgb/ecfs/.*
- *E-mail:* To *Dana.Walton-Bradford@fcc.gov.* Include CC Docket No. 96–45 in the subject line of the message.
- *Fax:* To the attention of Dana Walton-Bradford at 202–418–1932. Include CC Docket No. 96–45 on the cover page.
- *Mail:* All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC. Parties should send a copy of their filings to Dana Walton-Bradford, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A321, 445 12th Street, SW., Washington, DC 20554.
- *Public inspection, purchase, or download:* The full text of the document summarized here is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 225 12th Street, SW., Room CY–A257, Washington, DC 20504. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, and may also be downloaded at: *http://www.fcc.gov.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comment Filing Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gina Spade, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, or Dana Walton-Bradford, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in CC Docket No. 96–45, released March 12, 2007 (DA 07–1239). The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* 1. By this document, the Bureau seeks to refresh the record on issues raised in the *Twelfth Report and Order,* 65 FR 47941, August 4, 2000, and *Twenty-Fifth Report and Order and Further Notice of Proposed Rulemaking,* 68 FR 41936, July 16, 2003, in the above proceeding related to what constitutes a ''near reservation'' area for federal Lifeline and Link-Up support purposes. Because comments on the issue were filed several years ago, the passage of time and intervening developments have rendered the records developed by those commenters stale. Moreover, some issues raised by commenters may have become moot or irrelevant in light of intervening events. For these reasons, the Bureau requests that parties refresh the record with any new information or arguments they believe to be relevant to deciding the issues still pending. The refreshed record will enable the Commission to undertake appropriate consideration of the issue of how best to provide support through Lifeline and Link-Up to ''near reservation'' areas.

2. In the *Twelfth Report and Order,* the Commission adopted a definition of ''tribal lands'' that included ''reservation'' and ''near reservation'' areas, as defined, at that time, in sections 20.1(v) and (r) of the Bureau of Indian Affairs (BIA) regulations. Subsequently, the Commission became aware that the term ''near reservation'' included wide geographic areas, extending substantially beyond the boundaries of reservations, that do not possess the same characteristics that warranted the targeting of support to reservations. As a result, the Commission issued an Order staying implementation of the enhanced Lifeline and Link-Up rules to the extent that they apply to qualifying low-income consumers located on ''near reservation'' areas.

3. In the Further Notice accompanying the *Tribal Stay Order and Further Notice,* 65 FR 58721, October 2, 2000, the Commission sought additional comment on how to extend the enhanced Lifeline and Link-Up measures to qualifying low-income consumers living in areas or communities that are ''near reservations.'' Specifically, the Commission sought comment on how to define geographic areas that are adjacent to the reservations or are otherwise a part of the reservation's community of interest, in a manner that is consistent with its goal of targeting enhanced Lifeline and Link-Up support to the most underserved segments of the Nation. To the extent that using the BIA definition of ''near reservations'' to target support as intended in the *Twelfth Report and Order* was not effective, the Commission sought comment generally on how it might achieve its goal of serving geographically isolated, impoverished areas that are characterized by low subscribership.

4. On May 21, 2003, in the *Twenty-Fifth Order on Reconsideration, Report and Order, and Further Notice of Proposed Rulemaking,* the Commission again sought comment on potential modifications to its rules regarding availability of enhanced Federal Lifeline and Link-Up assistance to qualifying low-income consumers living ''near reservations.'' In this follow-up, the Commission noted that few commenters filed in response to the 2000 *Tribal Stay Order and Further Notice.*

Comment Filing Procedures

5. Pursuant to 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments are due on or before August 6, 2007 and reply comments are due on or before August 20, 2007. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the

Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, CC Docket No. 96–45. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

6. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

7. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

8. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Dana Walton-Bradford, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A321, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *Dana.Walton-Bradford@fcc.gov*. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

9. Documents in CC Docket No. 96–45 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail: *fcc@bcpiweb.com.*

10. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

11. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Kirk S. Burgee,

Chief of Staff, Wireline Competition Bureau.

[FR Doc. E7–12862 Filed 7–3–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011870–005.

Title: Indian Subcontinent Discussion Agreement.

Parties: CMA CGM S.A.; Emirates Shipping Line FZE; Evergreen Marine Corp. (Taiwan) Ltd.; MacAndrews & Company Limited; Nippon Yusen Kaisha; Shipping Corporation of India; United Arab Shipping Company (S.A.G.); and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment reflects the withdrawal of Hapag Lloyd A.G. as a party to the agreement effective June 24, 2007.

Agreement No.: 011931–003.

Title: CMA CGM/Marfret Vessel Sharing Agreement.

Parties: CMA CGM S.A., CMA CGM (UK) Limited, and Compagnie Maritime Marfret S.A.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway, Suite 3000; New York, NY 10006–2802.

Synopsis: The amendment revises the geographic scope of the agreement by adding ports in the Caribbean. The parties request expedited review.

Dated: June 29, 2007.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–13019 Filed 7–3–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
011263N	Bugatti Freight Int'l (USA) Inc., 150–40 183rd Street, Suite 208, Jamaica, NY 11413.	May 24, 2007.
019662NF	Hemisphere Cargo Corp., dba H Cargo Lines, dba H Cargo Logistics, 10850 NW 21st Street, Ste. 100, Miami, FL 33172.	March 17, 2007.
018113N	UFO International Freight Forwarder Corporation, 15224 West State Street, Westminster, CA 92683.	May 19, 2007.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. E7–13033 Filed 7–3–07; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 018482N.
Name: Dolphin Shipping, Inc.
Address: 600 E. Ocean Blvd., #802, Long Beach, CA 90802.
Order Published: FR: 04/11/07 (Volume 72, No. 69, Pg. 18248).

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. E7–13041 Filed 7–3–07; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Freight Right Global Logistics, Inc., 899 W. Cowles Street, #A, Long Beach, CA 90813. *Officers:* Robert Khachatryan, Vice President, (Qualifying Individual) Juleta Harutyunyan, President.

ASAP Carriers LLC, Hudson River Valley New York, 31 Monell Place, Beacon, NY 12508. *Officer:* Ruediger Hilken, General Manager (Qualifying Individual).

KCE Logistics Inc., 1932 NW. 82nd Avenue, Miami, FL 33126. *Officers:* Janery D. Saenz, Vice President (Qualifying Individual), Mauricio Jikal, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Koch Maritime, Inc., 2230 Energy Park Drive, St. Paul, MN 55108. *Officers:* Lawrence Edward Garaghty, COO, (Qualifying Individual), Randy Koch, CEO.

Export Freight & Brokers, Inc., 6258 Presidential Court, Ste. 207, Ft. Myers, FL 33919. *Officers:* Corina Barahona, Vice President (Qualifying Individual), Filander Antonio Barahona, President.

Heneways U.S.A. Inc., 5600 N. River Road, Suite 800, Rosemont, IL 60018. *Officers:* Julie M. Tortorich, Vice Pres. Operations (Qualifying Individual), Neil Pearson, President.

NC Cargo, Corp., 7478 NW. 54th Street, Miami, FL 33166. *Officers:* Lorenzo J. Colina, President (Qualifying Individual), Aura P. Colina, Vice President.

Topstar Shipping, Inc., 8587 NW. 54th Street, Miami, FL 33166. *Officers:* Neila Guevara, Vice President (Qualifying Individual), Jose Miguel Guevara, President.

T.R.T. International, Ltd., 196–E Maracaibo Street, Newark, NJ 07114. *Officers:* Yelena Zaborenko, Vice President (Qualifying Individual), Toleg Mitnik, President.

TB Worldwide Shipping Services, 4740 Gretina Street, Dallas, TX 75207, Anthony Okafor, Sole Proprietor.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Eagle Van Lines, Inc., 5041 Beech Place, Temple Hills, MD 20748. *Officers:* Christos Georgakopoulos, Vice President (Qualifying Individual), George Georgakopoulos, President.

Trade Routes, 3010 NW. 85th Street, Seattle, WA 98117, Gry I. Loklingholm, Sole Proprietor.

Royal Shipping Lines Corp, 475 Hialeah Drive, (Rear Shopping Ctr), Hialeah, FL 33010. *Officers:* Vivian Garcia, Vice President (Qualifying Individual), Jose Molina, President.

Sunship International Acquisitions Inc., 6815 W. 95th Street, Suite 1 NE., Oaklawn, IL 60453. *Officers:* Ylli Karaqica, Vice President (Qualifying Individual), Andrzej Kmiecik, President.

Alcoritransport, Inc., 15985 NW. 52 Ave., Hialeah, FL 33014. *Officer:* Alex Fernando Uribe, President (Qualifying Individual).

Dated: June 29, 2007.

Karen V. Gregory,
Assistant Secretary.
[FR Doc. E7–13040 Filed 7–3–07; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be

available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414

1. First Michigan Bancorp, Inc., Troy, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of First Michigan Bank (in organization), Troy, Michigan.

Board of Governors of the Federal Reserve System, June 29, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–12985 Filed 7–3–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH); Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board) and Subcommittee for Dose Reconstruction Reviews (SDRR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following meeting of the aforementioned committee and Subcommittee:

Subcommittee Meeting Time and Date:

9:30 a.m.–11:30 a.m., July 17, 2007.

Committee Meeting Times and Dates:

1 p.m.–4:30 p.m., July 17, 2007.
9:45 a.m.–5 p.m., July 18, 2007.
8:30 a.m.–4:30 p.m., July 19, 2007.

Public Comment Times and Dates:

5 p.m.–6 p.m., July 17, 2007.
7:30 p.m.–8:30 p.m., July 18, 2007.

Place: Red Lion Richland Hanford House, 802 George Washington Way, Richland, Washington, 99352. Telephone 509–946–7611, Fax 509–943–8564.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 75 to 100 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program (EEOICP) Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2007.

Purpose: This Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The topics for the Subcommittee Meeting will focus on issues related to the conduct on Blind Review as well as the conduct of Basic vs. Advanced Reviews. Also to be considered are plans for future Reviews as well as the Sanford Cohen & Associates Contract for the next fiscal year. The agenda for the Advisory Board meeting includes SEC Petitions for Hanford, Ames Iowa, Blockson Chemical, Chapman Valve, and Bethlehem Steel; SEC Petition Update on Dow Chemical; Status of Upcoming SEC Petitions; NIOSH Report on the Progress of the Redo of Rocky Flats Cases; SC&A Contract Actions for the next Fiscal Year; Agency Reports: NIOSH, Department of Labor and Department of Energy; Timeliness of NIOSH/Board Actions; Work Group Reports; Board Future Meetings and Schedules; and Board Working Time.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–6825, Fax 513–533–6826.

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. E7–12982 Filed 7–3–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5042–N2]

RIN 0938–ZB00

Medicare Program; Solicitation for Proposals From Rural Hospitals to Participate in the Medicare Hospital Gainsharing Demonstration Program Under Section 5007 of the Deficit Reduction Act

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

ACTION: Notice.

SUMMARY: This notice is to inform rural inpatient hospitals of an opportunity to

apply to participate in the Medicare Hospital Gainsharing Demonstration being implemented by CMS. The Medicare Hospital Gainsharing Demonstration authorized under section 5007 of the Deficit Reduction Act (DRA) of 2005 was established to test and evaluate methodologies and arrangements between hospitals and physicians designed to govern the utilization of inpatient hospital resources and physician work. The purpose of this demonstration is to improve the quality and efficiency of care provided to Medicare beneficiaries and to develop improved operational and financial hospital performance with the sharing of remuneration payments between hospitals and physicians in six projects, each project consisting of one hospital. Two projects must be rural. Because we received a limited response from rural hospitals to our original solicitation in September 2006, we are re-issuing our solicitation for proposals from rural hospitals only. Rural hospitals that submitted proposals previously are eligible to reapply. The goals and objectives of the demonstration remain unaltered. This demonstration will be limited in scope: we intend to focus on the short-term impacts of gainsharing programs.

DATES: Applications will be considered timely if we receive them on or before 5 p.m., eastern standard time, on September 4, 2007.

ADDRESSES: Mail or deliver applications to the following address:

Centers for Medicare & Medicaid Services, Attention: Lisa Waters (CMS–5042–N2), Mail Stop: C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244.

Because of staff and resource limitations, we cannot accept applications by facsimile (FAX) transmission or by e-mail.

FOR FURTHER INFORMATION CONTACT: Lisa Waters at (410) 786–6615 or *GAINSHARING@cms.hhs.gov.* Interested parties can obtain a complete solicitation, application, and supporting information on the following CMS Web site at *http://www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/2006_DRA_5007_Medicare_Hospital_Gainsharing_Demonstration.pdf.*

Paper copies can be obtained by writing to Lisa Waters at the address listed in the **ADDRESSES** section of this notice.

Eligible Organizations: CMS is seeking applications from rural inpatient hospitals that receive payment under section 1886(d) of the Social Security Act (the Act), which is the authority for the hospital inpatient prospective payment system. For purposes of this demonstration, a hospital will be considered rural if it is rural under the inpatient prospective payment system (see 42 CFR 412.64(b)(1)).

For the purpose of this demonstration, section 5007(g)(4) of the DRA provides that hospitals may provide gainsharing payments to physicians (as defined in section 1861(r)(1) or (r)(3) of the Act) and practitioners (as ''described in section 1842(e)(18)(C) of the Act''). The latter reference to ''section 1842(e)(18)(C)'' of the Act, however, clearly is a typographical error, as there is no such section, and it is clear from the context and legislative history that the reference was intended to be to section 1842(b)(18)(C) of the Act. Section 5007(g) of DRA explicitly provides that the reference to physicians who are permitted to participate in the demonstration is deemed to include certain ''practitioners.'' Conference Report language also specifically refers to the inclusion of practitioners as part of the gainsharing arrangement. Since section 1842(e)(18)(C) of the Act does not exist, and since section 1842(b)(18)(C) of the Act is, with the exception of substituting (b) for (e), identical to that section, and specifically defines practitioners, we believe that section 1842(b)(18)(C) of the Act is the intended reference. We do not believe this typographical error impedes any authority to otherwise implement this demonstration. Furthermore, a comprehensive list of all eligibility requirements can be found in the ''Eligible Organizations'' section of the solicitation.

SUPPLEMENTARY INFORMATION:

I. Background

Section 5007 of the Deficit Reduction Act of 2005 (DRA) requires the establishment of a qualified gainsharing demonstration program that will test and evaluate methodologies and arrangements between hospitals and physicians designed to govern the utilization of inpatient hospital resources and physician work to improve the quality and efficiency of care provided to beneficiaries and to develop improved operational and financial hospital performance with the sharing of remuneration as specified in the project. It will have a short-term focus given the limited size of the demonstration.

II. Provisions of the Notice

This notice solicits applications to participate in the DRA section 5007 Medicare Hospital Gainsharing Demonstration that will assist in determining if gainsharing can align incentives between hospitals and physicians to improve the quality and efficiency of care provided to beneficiaries, which will promote improved operational and financial performance of hospitals. The focus of each demonstration will be to link physician incentive payments to improvements in quality and efficiency. Each demonstration will provide measures to ensure that the quality and efficiency of care provided to beneficiaries is monitored and improved.

Overall, we seek demonstration models that result in savings to Medicare. We will assure the demonstration is budget neutral.

III. Collection of Information Requirements

This information collection requirement is subject to the Paperwork Reduction Act of 1995; however, the collection is currently approved under OMB control number 0938–0880 entitled ''Medicare Demonstration Waiver Application.''

Authority: Section 5007 of the Deficit Reduction Act of 2005, Pub. L. 109–171.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 4, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Editorial Note: This document was received at the Office of the Federal Register on June 29, 2007.

[FR Doc. 07–3265 Filed 6–29–07; 4:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel Tools and Technology to Measure Patient Adherence in CAM Research: Phase II.

Date: July 23, 2007.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

June 26, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3245 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; National Eye Institute Review Panel.

Date: July 12, 2007.

Time: 9:30 a.m. to 3 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, 5635 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Houmam H. Araj, Ph.D., Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602, 301–451–2020, *haraj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Eye Institute Special Emphasis Panel; National Eye Institute Training Grantst Ts and Ks.

Date: July 31, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Samuel Rawlings, Ph.D., Chief Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, 301–451–2020, *rawlings@nei.nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Cooperative Agreement Applications.

Date: August 17, 2007.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anne E. Schaffner, Ph.D., Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS).

Dated: June 26, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3238 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Review of Ancillary Study Grant Applications.

Date: July 18, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 916, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Urinary Incontinence Treatment Network Ancillary Study.

Date: July 19, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; FAVORIT Trial Biomarkers Ancillary Studies.

Date: July 25, 2007.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38oz@nih.gov*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; CBT for IBS.

Date: July 26, 2007

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: June 27, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3236 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Short Term Education Experiences for Research.

Date: July 11, 2007.

Time: 4 p.m. to 5. p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Leroy Worth, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: June 26, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3237 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Alcohol & Pancreatitis.

Date: August 21, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philippe Marmillot, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse, and Alcoholism, 5635 Fishers Lane, Rm 3045, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 26, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3240 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Animal Models of Endophenotypes of Alcohol Related Behaviors.

Date: August 9, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAAA, 5635 Fishers Lane, Room 3041, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Beata Buzas, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3041, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 26, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3241 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Clinic Trial Panning (R34) Grants and Implementation (U01) Cooperative Agreements.

Date: July 27, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Madison, Rockville, MD 20852.

Contact Person: Barney Duane Price, PhD, Scientific Review Administrator, Scientific Review Program, DHHS/NIH/NIAID/DEA, Room 3139, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2592, *pricebd@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: June 26, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3242 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Community Based Participatory Research.

Date: July 25, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 26, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3247 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–07–259: Improving Diet and Physical Activity Assessment.

Date: July 9, 2007.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR/STTR Cell Biology.

Date: July 11, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Structure and Function of Neuronal Receptors and Channels.

Date: July 11, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol Hamelink, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892, (301) 451–1328, *hamelinc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Ear.

Date: July 12–13, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Judith A. Finkelstein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *finkelsj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral and Social SBIR Applications.

Date: July 20, 2007.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Chemosensory Neuroscience.

Date: July 23–24, 2007.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral, Dental and Craniofacial Sciences Member Conflict Panel.

Date: July 25, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC–G (04): Caspases.

Date: July 25, 2007.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *meyerjl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Infection- and Treatment-related Pathogenesis in AIDS.

Date: July 26, 2007.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, NAME Member Conflicts.

Date: July 27, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *krosnics@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Metabolism and Nutrition.

Date: August 1, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 26, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3243 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Separation Science: Bioanalytical Technique.

Date: July 6, 2007.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 26, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3244 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the

National Institutes of Health Peer Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institutes of Health Peer Review Advisory Committee.

Date: August 27, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: Provide technical and scientific advice to the Director, National Institutes of Health (NIH), the Deputy Director for Extramural Research, NIH and the Director, Center for Scientific Review (CSR), on matters relating broadly to review and procedures and policies for the evaluation of scientific and technical merit of applications for grants and awards.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Rooms E1–E2, Bethesda, MD 20892.

Contact Person: Cheryl A. Kitt, PhD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, 301–435–1112. *kittc@csr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. the statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted the stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 26, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3246 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Method for the Diagnosis and Treatment of Vascular Disease

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to Endothelix, Inc., having a place of business in Houston TX, to practice the invention embodied in HHS Ref. Nos. E–037–2003 and E–125–2003, both entitled ''Method for the Diagnosis and Treatment of Vascular Disease'', corresponding to U.S. Patent Application No. 60/426,545 filed November 15, 2002, U.S. Patent Application No. 60/445,417 filed February 5, 2003, PCT Patent Application PCT/US03/36317 filed November 12, 2003, and U.S. Patent Application No.10/534,626 filed May 11, 2005. The contemplated exclusive license may be limited to the following field of use: an FDA-approvable vascular endothelial function diagnostic test. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before September 4, 2007 will be considered.

ADDRESSES: Requests for a copy of the patent, inquiries, comments, and other materials relating to the contemplated license should be directed to: Tara L. Kirby, PhD, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–435–4426; Facsimile: 301–402–0220; E-mail: *kirbyt@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: Cardiovascular disease is a major health risk throughout the industrialized world. Atherosclerosis, the most prevalent of cardiovascular diseases, is the primary cause of heart attack, stroke, and gangrene of the extremities. It is also the principal cause of death in the United States.

The inventors have developed a technique for evaluating vascular function by counting endothelial progenitor cells (EPCs) in a blood sample. They found that decreased numbers of EPCs correlate significantly with decreased vascular function. A diagnostic test developed utilizing this discovery would have the advantages of being minimally invasive and low cost compared to other currently available diagnostics.

The invention describes methods for diagnosing decreased vascular function, detecting increased cardiovascular risk, and diagnosing atherosclerosis. Also included are methods for assaying the number of endothelial progenitor cells and methods for treating a subject with decreased vascular function by administering a therapeutically effective amount of endothelial progenitor cells.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 26, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–12898 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of Human Therapeutics for the Treatment of Cancer

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive

patent license to practice the inventions embodied in U.S. Patent Application 60/870,050, entitled ''Human Cancer Therapy Using Anthrax Lethal Toxin Activated by Tumor Associated Proteases'' [HHS Reference E–070–2007/0–US–01], including background patent rights to U.S. Patent Application 10/088,952, entitled ''Mutated Anthrax Toxin Protective Antigen Proteins that Specifically Target Cells Containing High Amounts of Cell-Surface Metalloproteinases or Plasminogen Activator Receptors'' [HHS Reference E–293–1999/0–US–03] and foreign counterparts thereto, and U.S. Patents 5,591,631 and 5,677,274, entitled ''Anthrax Toxin Fusion Proteins and Uses Thereof'' [HHS References E–064–1993/0–US–01 and E–064–1993/1–US–01, respectively] and foreign counterparts thereto, to FP BioPharma, LLC, which has offices in Fort Mill, South Carolina. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to:

A method for the treatment of cancer involving protease activated cancer toxins, wherein the cancer toxins comprise Anthrax lethal toxin (LeTx) modified at the furin-recognized cleavage site to contain a matrix metalloproteinase cleavage site, as defined by the Licensed Patent Rights, and wherein the cancers include, but are not limited to, melanoma, colon, thyroid, prostate, pancreatic and ovarian cancer. This exclusive licensed field of use shall explicitly exclude vaccines and immunotherapeutics for the prevention or treatment of human diseases.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before September 4, 2007 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, PhD, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; E-mail: *lambertsond@od.nih.gov.*

SUPPLEMENTARY INFORMATION: Anthrax lethal toxin (LeTx) has been shown to have significant toxicity to cancer cells, particularly those associated with melanoma. However, LeTx also shows significant toxicity towards normal cells, preventing widespread use of the molecule as a cancer therapy. NIH inventors have now engineered LeTx to have increased specificity for cancer cells, with little to no effect on normal cells, enhancing the effectiveness of LeTx for cancer treatment.

Modifying the LeTx to be activated by a matrix metalloprotease (MMP) increases the specificity of LeTx for cancer cells because those cells are more likely to activate the toxin, resulting in more efficient therapy. Mouse data shows that the modified LeTx (called PrAg–L1/LF) is less cytotoxic to ''normal'' cells in vivo when compared to wild-type LeTx, while maintaining high toxicity towards implanted human tumors. Modification of the LeTx to contain various protease recognition and cleavage sites can potentially extend application of the technology beyond melanomas to the treatment of lung and colon carcinomas, and various other cancers.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 26, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–12899 Filed 7–3–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amended Tribal-State compacts.

SUMMARY: This notice publishes approval of the Tribal-State Class III Gaming Compact between the State of New Mexico and the Pueblo of Isleta, Pueblo of Nambe, Pueblo of Picuris, Pueblo of San Felipe, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Tesuque, Pueblo of Taos, Pueblo of Santa Clara and Ohkay Owingeh.

DATES: *Effective Date:* July 5, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State Compacts and Amendments for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment includes a provision that would eliminate any payments to the state should the state permit any licensed horse racetrack to increase number of machines, increase hours of operation, allow operation of gaming machines outside licensed premises or operate table games. This Amendment extends the term of the Compact until June 30, 2037.

Dated: June 18, 2007.

George T. Skibine,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–12904 Filed 7–3–07; 8:45 am]

BILLING CODE 4310–4N–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for emergency processing for review and clearance of questionnaires to the Office of Management and Budget (OMB).

EFFECTIVE DATE: July 5, 2007.

Purpose of Information Collection: The form is for use by the Commission in connection with investigation No. TR–5003–1, *Textiles and Apparel: Effect of Special Rules on Trade Markets and Industries,* instituted under section 5003 of Tax Relief and Health Care Act of 2006 (TRHCA) (Public Law No. 109–432). The Commission must submit its report to Congress by June 20, 2008.

Summary of Proposal

(1) Number of forms submitted: One (1).

(2) Title of form: Questionnaire for Producers of Apparel in Haiti.

(3) Type of request: New.

(4) Frequency of use: Single data gathering, scheduled for Aug–Sept 2007.

(5) Description of respondents: Firms in Haiti that produce apparel.

(6) Estimated number of respondents: Est. 20 (Apparel assembly operators in Haiti).

(7) Estimated total number of hours for all respondents combined to complete the forms: 300 hours.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the forms and supporting documents may be obtained from the Commission's Web site at: *http://www.usitc.gov/ind_econ_ana/research_ana/Ongoing_Inv.htm,* or William Deese, Co-Project Leader (202–205–2626, *william.deese@usitc.gov*), or Russell Duncan, Co-Project Leader (202–708–4727; *russell.duncan@usitc.gov*). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Issued: June 28, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–12988 Filed 7–3–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–609]

In the Matter of Certain Buffer Systems and Components Thereof Used in Container Processing Lines; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 31, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sidel Participations of France, Sidel Canada Inc. of Canada, and Sidel Inc. of Norcross, Georgia. A supplement to the complaint was filed on June 18, 2007. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain buffer systems and components thereof used in container processing lines by reason of infringement of U.S. Patent No. 6,168,005. The complaint, as supplemented, further alleges that a domestic industry exists in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Juan S. Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 26, 2007, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain buffer systems and components thereof used in container processing lines by reason of infringement of one or more of claims 1, 3, 4, 6–8, and 17 of U.S. Patent No. 6,168,005, and whether an industry exists in the United States as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—Sidel Participations, Avenue de la Patrouille de France, BP 204 Octeville-sur-Mer, 76053 Le Havre Cedex, France; Sidel Canada Inc., 1045 Autoroute Chomedey, Laval, Quebec H7W 4V3, Canada; Sidel Inc., 5600 Sun Court, Norcross, Georgia 30092.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint, as supplemented, is to be served: Krones AG, Böhmerwaldstra e 5, 93073 Neutraubling, Germany; Krones Inc., 9600 South 58th Street, Franklin, Wisconsin 53132–6241; KHS AG, Juchostrasse 20, 44143 Dortmund, Germany; KHS USA, Inc., 880 Bahcall Court, Waukesha, Wisconsin 53186.

(c) The Commission investigative attorney, party to this investigation, is Juan S. Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in

accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 28, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–12989 Filed 7–3–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701–TA–444–446 (Final) and 731–TA–1107–1109 (Final)

Coated Free Sheet Paper From China, Indonesia, and Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation Nos. 701–TA–444–446 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation Nos. 731–TA–1107–1109 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether 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 subsidized and less-than-fair-value imports from China, Indonesia, and Korea of coated free sheet paper, provided for in subheadings 4810.13.19, 4810.13.20, 4810.13.50, 4810.13.70, 4810.14.19, 4810.14.20, 4810.14.50, 4810.14.70, 4810.19.19, and 4810.19.20 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 C (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), 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. The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China, Indonesia, and Korea of coated free sheet paper, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on October 31, 2006, by NewPage Corporation, Dayton, OH.

Participation in the investigations and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 2, 2007, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 18, 2007, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 10, 2007. A nonparty who has testimony that may aid the

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not-more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface-colored, surface-decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double-side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms ''wood free'' or ''art'' paper may also be used to describe the imported product. Excluded from the scope are (1) coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 12, 2007, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 9, 2007. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 25, 2007; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before October 25, 2007. On November 13, 2007, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 15, 2007, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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 Fed. Reg. 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).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's 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 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 8, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–12987 Filed 7–3–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–450 and 731–TA–1122 (Preliminary)]

Laminated Woven Sacks From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–450 and 731–TA–1122 (Preliminary) under section 703(a) (19 U.S.C. 1671b(a)) and 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 of laminated woven sacks, provided for in subheading 6305.33.0020 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by August 13, 2007. The Commission's views are due at Commerce within five business days thereafter, or by 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 28, 2007.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on June 28, 2007, by the Laminated Woven Sacks Committee, an ad hoc committee composed of five U.S. producers of laminated woven sacks. Members of the Laminated Woven Sacks Committee include: (1) Bancroft Bag, Inc. of West Monroe, LA; (2) Coating Excellence International, LLC of Wrightstown, WI; (3) Hood Packaging Corp. of Madison, MS; (4) Mid-America Packaging, LLC of Twinsburg, OH; and (5) Polytex Fibers Corp. of Houston, TX.

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 July 19, 2007, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202–708–5408) not later than July 17, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 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.

By order of the Commission.

Issued: June 29, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–12986 Filed 7–3–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0003]

National Security Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Registration statement (foreign agents).

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please write to U.S. Department of Justice, 10th & Constitution Avenue, NW., National Security Division, Counterespionage Section/Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at 202–514–1216.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Registration Statement (Foreign Agents).

(3) *The agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NSD–1. National Security Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, Not-for-profit institutions, and individuals or households. The form contains registration statement and information used for registering foreign agents under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* The total estimated number of responses is 67 at approximately 1.375 hours (1 hour and 22 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 92 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 28, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–12956 Filed 7–3–07; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0004]

National Security Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Supplemental Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please write to U.S. Department of Justice, 10th & Constitution Avenue, NW., National Security Division, Counterespionage Section/Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at 202–514–1216.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Supplemental Statement (Foreign Agents).

(3) *The agency form number and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NSD–2. National Security Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, Not-for-profit institutions, and individuals or households. The form is required by the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*, must be filed by the foreign agent within thirty days after the expiration of each period of six months succeeding the original filing date, and must contain accurate and complete information with respect to the foreign agent's activities, receipts and expenditures.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The total estimated number of responses is 491 respondents at 1.375 hours (1 hour and 22 minutes) per response (2 responses annually).

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,375 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 28, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–12958 Filed 7–3–07; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0006]

National Security Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Amendment to Registration Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please write to U.S. Department of Justice, 10th & Constitution Avenue, NW., National Security Division, Counterespionage Section/Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at (202) 514–1216.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Amendment to Registration Statement (Foreign Agents).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NSD–5. National Security Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, Not-for-profit institutions, and individuals or households. The form is used in registration of foreign agents when changes are required under the provisions of the Foreign Agents Registration Act of 1938 as amended, 22 U.S.C. 611 *et seq.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The estimated total number of respondents is 175 who will complete a response within 1½ hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 262 hours annually.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 28, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–12959 Filed 7–3–07; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0007]

National Security Division: Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Exhibit B to Registration Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, suggestions, or additional information, especially regarding the estimated public burden or associated response time, please write to U.S. Department of Justice, 10th & Constitution Avenue, NW., National Security Division, Counterespionage Section/Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the proposed information collection instrument with instructions, or have additional information, please contact the Registration Unit at (202) 514–1216.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Exhibit B to Registration Statement (Foreign Agents).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NSD–4. National Security Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. The form is required by the provisions of the Foreign Agents Registration Act of 1938, 22 U.S.C. 611 *et seq.*, and must set forth the agreement or understanding between the registrant and each of his foreign principals, as well as, the nature and method of performance of such agreement or understanding, and the existing or proposed activities engaged in or to be engaged in, including political activities, by the registrant for the foreign principal.

(5) *An estimate of the total number of responses and the amount of time estimated for an average response:* The total estimated number of responses is 164 at approximately .33 hours (20 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 54 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 28, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–12961 Filed 7–3–07; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0008]

National Security Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Short-Form Registration Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, suggestions, or additional information, especially regarding the estimated public burden or associated response time, please write to U.S. Department of Justice, 10th & Constitution Avenue, NW., National Security Division, Counterespionage Section/Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at 202–514–1216.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Short-form Registration Statement (Foreign Agents)

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NSD–6. National Security Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, not-for-profit institutions, and individuals or households. The form is used to register foreign agents as required by the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.* Rule 202 of the Act requires that a partner, officer, director, associate, employee and agent of a registrant who engages directly in activity in furtherance of the interests of the foreign principal, in other than a clerical, secretarial, or in a related or similar capacity, file a short-form registration statement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The total estimated number of responses is 523 at approximately .429 hours (25 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 224 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 28, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–12964 Filed 7–3–07; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0016]

Justice Management Division: Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Certification of identity.

The Department of Justice (DOJ), Justice Management Division, Facilities and Administrative Services Staff (JMD/FASS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 72 page 18668 on April 13, 2007, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 6, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Certification of Identity.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form DOJ–361. Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* American Citizens. *Other:* Federal Government. The information collection will be used by the Department to identify individuals requesting certain records under the Privacy Act. Without this form an individual cannot obtain the information requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is that 27,000 respondents will complete the form within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 13,500 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 28, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–12968 Filed 7–3–07; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 020–2007]

Office of the Inspector General; Privacy Act of 1974; Modified System of Records

The Department of Justice proposes to modify the Office of the Inspector General Investigative Records System, JUSTICE/OIG–001, first published in the **Federal Register** on March 10, 1992 (57 FR 8476) and thereafter modified by notice published at 65 FR 32125 (May 22, 2000) and 68 FR 22741 (April 29, 2003). The primary purpose of the system is to enable the Department's Office of the Inspector General (OIG) to carry out its responsibilities under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, including its responsibility to conduct and supervise investigations relating to programs and operations of the Department. The Department now proposes to modify the system by adding several new routine uses, revising several existing routine uses for consistency with other Department of Justice notices, and rearranging the list of routine uses into a more logical order. In addition, to improve ease of reference the Department is republishing the system notice in its entirety.

The Privacy Act at 5 U.S.C. 552a(e)(4) and (11) provides that the public be given 30 days in which to comment on these proposed changes. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, has 40 days in which to conclude its review of the system. Therefore please submit any comments in writing to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 by August 14, 2007.

As required by 5 U.S.C. 552a(r) and OMB implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: June 22, 2007.

Lee J. Lofthus,

Assistant Attorney for Administration.

Department of Justice

Office of the Inspector General

JUSTICE/OIG–001

SYSTEM NAME:

Office of the Inspector General Investigative Records.

SECURITY CLASSIFICATION:

The vast majority of the information in the system is Sensitive but Unclassified. However, there is some classified information as well.

SYSTEM LOCATION:

U.S. Department of Justice, Office of the Inspector General (OIG), 950 Pennsylvania Ave., NW., Washington, DC 20530–0001 and 1425 New York Ave., NW., Suites 7100 and 13100, Washington, DC 20530. During the course of an investigation, records are also kept in the investigations field and area offices, the addresses of which are listed on the OIG's Web site at *http://www.usdoj.gov/oig.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, the OIG maintains records on the following categories of individuals:

a. Individuals or entities who are or have been the subject of investigations conducted by the OIG, including current and former employees of the Department of Justice; current and former consultants, contractors, and subcontractors with whom the Department has contracted and their employees; grantees to whom the Department has awarded grants and their employees; and such other individuals or entities whose association with the Department relates to alleged violation(s) of the Department's rules of conduct, the Civil Service merit system, and/or criminal or civil law, which may affect the integrity or physical facilities of the Department.

b. Individuals who are or have been witnesses, complainants, or informants in investigations conducted by the OIG.

c. Individuals or entities who have been identified as potential subjects of or parties to an OIG investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations including:

a. Letters, memoranda, and other documents describing complaints or alleged criminal, civil, or administrative misconduct.

b. Investigative files which include: Reports of investigations and related exhibits, statements, affidavits, and records obtained during the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

PURPOSE(S):

The OIG maintains this system of records in order to carry out its responsibilities pursuant to the Inspector General Act of 1978, as amended. The OIG is statutorily directed to conduct and supervise investigations relating to programs and operations of the Department of Justice, to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and to prevent and detect fraud, waste, and abuse in such programs and operations. Accordingly, the records in this system are used in the course of investigating individuals and entities suspected of having committed illegal or unethical acts and in conducting related criminal prosecutions, civil proceedings, and administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed as follows:

(a) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

(b) To any individual or entity when necessary to elicit information that will assist an OIG investigation, inspection, or audit.

(c) To any individual or entity when necessary to elicit information relevant to an OIG decision concerning the hiring, appointment, or retention of an individual; the issuance, renewal, suspension, or revocation of a security clearance; or the letting of a contract.

(d) To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an individual; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance or revocation of a grant or other benefit.

(e) To appropriate officers and employees of state, local territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

(f) To federal, state, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(g) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(h) In an appropriate proceeding before a court, grand jury, or an administrative or adjudicative body, when the OIG determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(i) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

(j) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(k) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(l) To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(m) To the Office of the Inspector General for the Department of Homeland Security when necessitated by the transfer of Department of Justice functions and employees to the Department of Homeland Security.

(n) To other federal Offices of Inspector General and/or to the President's Council on Integrity and Efficiency for purposes of conducting the external review process required by the Homeland Security Act.

(o) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, who have a need to know such information in order to accomplish an agency function.

(p) To a former employee of the Department of Justice for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(q) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(r) To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

(s) To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information for such purposes.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not Applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Each OIG investigation is assigned a case number and all records relating to a particular investigation are filed and retrieved by that case number. Records may also be retrievable by the surnames of subjects, witnesses, and/or complainants.

SAFEGUARDS:

Information is stored in safes, locked filing cabinets, and office automation equipment in secured rooms or in guarded buildings, and is used only by authorized, screened personnel. Manual records are in locked cabinets or in safes and can be accessed by key or combination formula only. Passwords are required to access the automated data.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, Job Number NI–60–97–4.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, Office of the Inspector General, Department of Justice, 950 Pennsylvania Avenue, NW., Room 4726, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

The major part of this system is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall

be made in writing, with the envelope and the letter clearly marked ''Privacy Access Request.'' Include in the request the full name of the individual involved, his or her current address, date and place of birth, notarized signature (or submitted with date and signature under penalty of perjury), and any other identifying number or information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information. Access requests shall be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Requesters shall direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The subjects of investigations; individuals with whom the subjects of investigations are associated; current and former Department of Justice officers and employees; Federal, State, local and foreign law enforcement and non-law enforcement agencies; private citizens; witnesses; informants; and public source materials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d), and (e)(1), pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e), and have been published in the **Federal Register**. See 28 CFR 16.75.

[FR Doc. E7–12992 Filed 7–3–07; 8:45 am]

BILLING CODE 4410–BD–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 April 24, 2007, Abbott Laboratories, DBA Knoll Pharmaceutical Co., 30 North Jefferson Road, Whippany, New Jersey 07981, 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
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The company plans to manufacture bulk product and dosage units for 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 5, 2007.

Dated: June 26, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–12957 Filed 7–3–07; 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 18, 2007, Aldrich Chemical Company, Inc., DBA Isotec, 3858 Benner Road, Miamisburg, Ohio 45342–4304, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic class of controlled substance listed in schedule I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid dethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Normethadone (9635)	I
Norpipanone (9636)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	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
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Merperidine intermediate-B (9233)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene,bulk, (non-dosageforms) (9273).	II
Morphine (9300)	II
Normorphine (9313)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug testing and analysis.

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, D.C. 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. E7–12976 Filed 7–3–07; 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 2, 2007, Amri Rensselaer, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Lisdexamfetamine (1205), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for sales to its customer.

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. E7–12955 Filed 7–3–07; 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 8, 2007, Austin Pharma LLC, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, 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
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Methadone (9250)	II
Methadone Intermediate (9254)	II
Levo-alphacetylmethadol (9648)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. This controlled substance will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

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. E7–12978 Filed 7–3–07; 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 8, 2007, Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Lisdexamfetamine (1205), a basic class of controlled substance listed in schedule II.

The company plans to qualify as a bulk manufacturer of the above listed controlled substance.

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. E7–12967 Filed 7–3–07; 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), Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 10, 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 Morphine (9300), a basic class of controlled substance listed in schedules II.

The company plans to manufacture the listed controlled substance for sale as an intermediate to generic drug 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. E7–12966 Filed 7–3–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 18, 2006, and published in the Federal Register on April 25, 2006, (71 FR 23948), Cody Laboratories, Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414, 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
Codeine (9050)	II
Dihydrocodeine (9120)	II
Methadone (9250)	II
Alfentanil (9737)	II

The company plans to manufacture in bulk, for distribution to its customers.

An objection and a request for a hearing were received by the DEA. In accordance with 21 1301.33 bulk manufacturers applying for or registered in the same basic class of narcotic or non-narcotic controlled substances may submit to the DEA any comments on or objections to the issuance of a proposed application. This regulation does not provide bulk manufacturers the right to request a hearing on the proposed application. No hearing was scheduled to be heard on this matter. DEA has reviewed the objection made against this pending application and has determined that the registration of Cody Laboratories, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Cody Laboratories, 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. E7–12948 Filed 7–3–07; 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 1, 2007, Dade Behring Inc., Regulatory Affairs, Quality Systems, 20400 Mariani Avenue, Cupertino, California 95014, 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 manufacturer 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. E7–12960 Filed 7–3–07; 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 28, 2007, Lin Zhi International Inc., 687 North Pastoria Avenue, Sunnyvale, California 94085, 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
3,4–Methylenedioxymethamphetamine (7405).	I
Cocaine (9041)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II

Drug	Schedule
Methadone (9250)	II
Dextropropoxyphene, bulk, (9273)	II
Morphine (9300)	II

The company plans to manufacture the listed controlled substances as bulk reagents for use in drug abuse testing.

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. E7–12973 Filed 7–3–07; 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 February 14, 2007, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, 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
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for conversion and sale to dosage form manufacturers.

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. E7–12974 Filed 7–3–07; 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 April 9, 2007, Siegfried (USA), Inc., Industrial Park 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 I and II:

Drug	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances in bulk for 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. E7–12975 Filed 7–3–07; 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 29, 2007, Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760, 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
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I

Drug	Schedule
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy methamphetamine (MDMA) (7405).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (TCP) (7470).	I
1-Benzylpiperazine (BZP) (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Nabilone (7379)	II
1–Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture reference standards.

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. E7–12971 Filed 7–3–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,298]

American Manufacturing International, Inc. Patterson, NJ; Notice of Negative Determination Regarding Application for Reconsideration; Correction

ACTION: Notice; correction.

SUMMARY: The Department of Labor, Employment and Training Administration published a document in the **Federal Register** on May 30, 2007, concerning a Notice of Negative Determination Regarding Application for Reconsideration. The office restructured a paragraph for clarification purposes.

Correction

In the **Federal Register** of May 30, 2007, in FR Doc. E7–10310, on page 30029, in the first and second column, correct the ''text'' caption to read:

Since the total number of separated workers was one during the relevant period, workers of American Manufacturing International, Inc., Patterson, New Jersey do not meet the group eligibility requirements for trade adjustment assistance.

Signed in Washington, DC, this 27th day of June 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–12914 Filed 7–3–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,876 and TA–W–60,876B]

Armstrong Wood Products, Inc., Armstrong Hardwood Flooring Company, Parquet Flooring Department and Pattern Plus Flooring Department, Oneida, TN; Notice of Revised Determination on Reconsideration; Correction

ACTION: Notice; correction.

SUMMARY: The Department of Labor, Employment and Training Administration published a document in the **Federal Register** on June 14, 2007, concerning a Notice of Revised Determination on Reconsideration. The document contained an incorrect date.

Correction.

In the **Federal Register** of June 14, 2007, in FR Doc. E7–11479, on page 32914, in the third column, correct the ''text'' caption to read:

All workers of Armstrong Wood Products, Inc., Armstrong Hardwood Flooring Company, Parquet Flooring Department, Oneida, Tennessee [TA–W–60,876], who became totally or partially separated from employment on or after March 17, 2007 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

and

All workers of Armstrong Wood Products, Inc., Armstrong Hardwood Flooring Company, Pattern Plus Flooring Department, Oneida, Tennessee [TA–W–60,876B], who became totally or partially separated from employment on or after January 31, 2006 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington DC this 27th day of June 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–12911 Filed 7–3–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,281]

Form Tech Industries, LLC, Canal Fulton, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 12, 2007, the United Automobile, Aerospace & Agricultural Implement Workers of America, Local 1112 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The determination was signed on May 9, 2007 and published in the **Federal Register** on May 24, 2007 (72 FR 29182).

The initial investigation resulted in a negative determination based on the finding that imports of machine parts, such as shafts and sheaves for CVT

transmissions did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 27th day of June, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–12913 Filed 7–3–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,825]

Golden Ratio Woodworks, Emigrant, MT; Notice of Revised Determination on Reconsideration

On June 11, 2007, the Department of Labor (Department) issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Golden Ratio Woodworks, Emigrant, Montana (the subject firm). The Department's Notice of affirmative determination was published in the **Federal Register** on June 20, 2007 (72 FR 34047).

The negative determination was issued on May 1, 2007. The Department's Notice of determination was published in the **Federal Register** on May 17, 2007 (72 FR 27855). Workers produce massage tables, chairs, and accessories.

The negative determination was based on the Department's findings that production at the subject firm ceased to operate in January 2007, that the subject firm did not shift production abroad, and that the subject firm's major declining customers' imports did not contribute importantly to workers' separations.

In the request for reconsideration, the workers alleged that increased subject firm imports and increased foreign competition contributed to workers' separations.

On reconsideration, the Department received information that confirmed that the subject firm licensed the patents to another company to produce articles previously produced at the subject facility.

During the reconsideration investigation, the Department received new information from the company official regarding the status of the subject firm and the relationship between the subject firm and the company licensed to produce the subject firm's products (hereafter referred to as ''the partner''). The subject firm did not cease to exist, but has entered into an agreement with the partner. In this relationship, the subject firm sells its products and the partner produces them under the ''Golden Ratio'' brand at its manufacturing facilities.

During the reconsideration investigation, the Department also received information that the subject firm separated all production workers, that production ceased absolutely, and that a significant majority of the production at the subject firm was replaced with articles produced in China.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA. The Department has determined in this case that the group eligibility requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the information obtained in the reconsideration investigation, I determine that workers of Golden Ratio Woodworks, Emigrant, Montana, qualify as adversely affected workers under Section 222 of the Trade Act of 1974, as amended.

In accordance with the provisions of the Act, I make the following certification:

All workers of Golden Ratio Woodworks, Emigrant, Montana, who became totally or partially separated from employment on or after January 23, 2006, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of June 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–12909 Filed 7–3–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Negative Determination on Reconsideration

TA–W–60,835, Kimberly Clark Corporation, Kimberly Clark World-Wide, Neenah, Wisconsin.

TA–W–60,835A, Kimberly Clark Global Sales, Roswell, Georgia.

TA–W–60,835B, Kimberly Clark World-Wide, Roswell, Georgia.

TA–W–60,835C, Kimberly Clark Global Sales, Knoxville, Tennessee.

TA–W–60,835D, Kimberly Clark World-Wide, Knoxville, Tennessee.

TA–W–60,835E, Kimberly Clark Global Sales, Irving, Texas.

On May 29, 2007, the Department of Labor (Department) issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of several Kimberly Clark Corporation (the subject firm) locations: Kimberly Clark World-Wide, Neenah, Wisconsin [TA–W–60,835]; Kimberly Clark Global Sales, Roswell, Georgia [TA–W–60,835A]; Kimberly Clark World-Wide, Roswell, Georgia [TA–W–60,835B]; Kimberly Clark Global Sales, Knoxville, Tennessee [TA–W–60,835C]; Kimberly Clark World-Wide, Knoxville, Tennessee [TA–W–60,835D]; and Kimberly Clark Global Sales, Irving, Texas [TA–W–60,835E].

The Department's Notice of Affirmative Determination was published in the **Federal Register** on June 7, 2007 (72 FR 31612). Workers provided administrative support to various affiliated subject firm facilities.

The negative determination regarding the subject workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) stated that the worker separations are not caused by imports but by the subject firm's decision to outsource administrative support positions, and that the separations cannot be directly attributed to imports or a shift in production of an article. The determination also states that workers at Kimberly Clark Corporation, Kimberly-Clark Global Sales, Neenah, Wisconsin are eligible to

apply for TAA and ATAA under TA–W–60,017 (expires September 26, 2008).

In the request for reconsideration, counsel for the subject firm alleged that the petitioning worker groups either had a direct link to or directly supported production at affiliated certified production facilities. The request also states that the separated workers are members of several groups within Kimberly Clark—Consumer Sales, Corporate Innovation, Finance and Accounting, and Sourcing and Supply Management.

Subject firm counsel asserts that workers in the Consumer Sales group are directly linked to TAA-certified production facilities because they are engaged in the sale of the articles produced at those facilities.

Subject firm counsel also asserts that workers in the Corporate Innovations group directly support production at TAA-certified subject firm facilities by responding to consumer complaints and providing feedback to other groups who use the feedback to improve the articles, and by engaging in the research and development of articles produced at TAA-certified subject firm facilities. Subject firm counsel notes in the request for reconsideration that several workers in the Corporate Innovations group are eligible to apply for TAA and ATAA under TA–W–60,017.

The request for reconsideration asserts that workers in the Finance and Accounting group directly support production at the subject firm's facilities because they are engaged in accounting and financing activities that ensure the continuous operation of subject firm production facilities.

The request for reconsideration also asserts that workers in the Sourcing and Supply Management group directly support production at the subject firm's facilities because they procure materials, equipment, and services required for production at these facilities, and because they are engaged in commodity management related to articles produced by the subject firm.

The workers separated from the subject firm are categorized as follows:

World-Wide, Neenah, Wisconsin [TA–W–60,835]

The one worker separated at this site is a member of the Corporate Innovations group.

Global Sales, Roswell, Georgia [TA–W–60,835A]

One worker separated at this site is a member of the Consumer Sales group and five workers separated at this site are members of the Corporate Innovations group.

World-Wide, Roswell, Georgia [TA–W–60,835B]

The five workers separated at this site are members of the Corporate Innovations group.

Global Sales, Knoxville, Tennessee [TA–W–60,835C]

One worker separated at this site is a member the Consumer Sales group, forty-three workers separated at this site are members of the Finance and Accounting group, and four workers separated at this site are members of the Sourcing and Supply Management group.

World-Wide, Knoxville, Tennessee [TA–W–60,835D]

The one worker separated at this site is a member of the Corporate Innovations group.

Global Sales, Irving, Texas [TA–W–60,835E]

The five workers separated at this site are members of the Consumer Sales group.

The request for reconsideration also stated that, contrary to the Department's initial findings, the separated workers' positions were not outsourced but were eliminated as a result of decreased subject firm production.

Although the Department contacted the subject firm during the reconsideration investigation to request additional information, no new information was provided.

The Department has carefully reviewed the available material, and has determined that there is no evidence that the Department failed to consider any relevant fact or that the Department erred in its interpretation of the facts. As such, the Department affirms the negative determination applicable to subject firms workers at Kimberly Clark World-Wide, Neenah, Wisconsin [TA–W–60,835]; Kimberly Clark Global Sales, Roswell, Georgia [TA–W–60,835A]; Kimberly Clark World-Wide, Roswell, Georgia [TA–W–60,835B]; Kimberly Clark Global Sales, Knoxville, Tennessee [TA–W–60,835C]; Kimberly Clark World-Wide, Knoxville, Tennessee [TA–W–60,835D]; and Kimberly Clark Global Sales, Irving, Texas [TA–W–60,835E].

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Kimberly Clark Corporation located at Kimberly Clark World-Wide, Neenah, Wisconsin [TA–W–60,835]; Kimberly Clark Global Sales, Roswell, Georgia [TA–W–60,835A]; Kimberly Clark World-Wide, Roswell, Georgia [TA–W–60,835B]; Kimberly Clark Global Sales, Knoxville, Tennessee [TA–W–60,835C]; Kimberly Clark World-Wide, Knoxville, Tennessee [TA–W–60,835D]; and Kimberly Clark Global Sales, Irving, Texas [TA–W–60,835E].

Signed at Washington, DC, this 27th day of June 2007.

Elliott S. Kushner;

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–12910 Filed 7–3–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,623]

Mahle Inc., Holland, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 5, 2007 in response to a petition filed by a company official on behalf of workers at MAHLE Inc., Holland, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of June, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–12907 Filed 7–3–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,234]

Penn Mould Industries, Inc., Washington, PA; Notice of Revised Determination on Reconsideration

By letter dated June 11, 2007 the United Steelworkers of America, District 10 requested administrative reconsideration regarding the

Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

Workers of the subject firm were certified eligible to apply for trade adjustment assistance under petition number TA–W–56,570, which expired on April 28, 2007. The initial investigation resulted in a negative determination signed on May 2, 2007 was based on the finding that the subject company did not separate or threaten to separate a significant number of workers since the expiration of the previous certification. The denial notice was published in the **Federal Register** on May 17, 2007 (72 FR 27855).

To support the request for reconsideration, the petitioner supplied additional information regarding employment at the subject.

Upon further contact with the subject firm's company official, it was revealed that the subject firm separated a significant number of workers during June 2007 and there is a threat of future separations. The investigation also revealed that the subject firm is in the process of shifting production of molding equipment for glass containers to Colombia, a beneficiary country under the Andean Trade Preference Act during the relevant period. The shift contributed importantly to the layoffs at the subject firm.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that there was a shift in production from the workers' firm or subdivision to Colombia of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

''All workers of Penn Mould Industries, Inc., Washington, Pennsylvania who became totally or partially separated from employment on or after April 29, 2007 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 22nd day of June 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–12912 Filed 7–3–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 16, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 16, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of June 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 6/18/07 and 6/22/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61699	Prelude Foam Products Inc. (Comp)	Thomasville, NC	06/18/07	06/17/07
61700	Thomson Satellite Premises Systems (State)	Indianapolis, IN	06/18/07	06/15/07
61701	Hoosier Magnetics, Inc. (Comp)	Washington, IN	06/18/07	06/11/07
61702	Hewlett Packard (Wkrs)	Vancouver, WA	06/19/07	06/08/07
61703	Image Screens Inc. (State)	Paterson, NJ	06/19/07	06/18/07
61704	GTECH Corporation (Comp)	West Greenwich, RI	06/19/07	06/15/07
61705	RF Monolithics, Inc. (Comp)	Dallas, TX	06/19/07	06/18/07
61706	Wheeling/Pittsburgh Steel Corp. (Wkrs)	Wheeling, WV	06/19/07	05/31/07
61707	Dana—Torque Traction Manufacturing Inc. (Comp)	Cape Girardeau, MO	06/19/07	06/18/07
61708	Sun Chemical Corporation (State)	Winston-Salem, NC	06/19/07	06/18/07
61709	Sherman Pressure Casting Corp. (Comp)	North White Plains, NY	06/20/07	06/19/07
61710	Simkins Industries (State)	Ridgefield, NJ	06/20/07	06/19/07
61711	Amerock (Comp)	Rockford, IL	06/20/07	06/18/07

APPENDIX—Continued

[TAA petitions instituted between 6/18/07 and 6/22/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61712	GHN Neon, Inc. (Comp)	Garden Grove, CA	06/20/07	06/14/07
61713	YKK Snap Fasteners America, Inc. (Comp)	Centerville, TN	06/20/07	06/08/07
61714	Merrimac Industries (Comp)	West Caldwell, NJ	06/20/07	06/07/07
61715	Loxcreen Company, Inc. (State)	Woodburn, OR	06/20/07	06/19/07
61716	Clayton Marcus Company Inc. (Comp)	Hickory, NC	06/21/07	06/20/07
61717	Burner Systems International, Inc. (Comp)	Chattanooga, TN	06/21/07	06/20/07
61718	U.S. Optical Disc, Inc. (Comp)	Sanford, ME	06/21/07	06/20/07
61719	VCST Machined Products LLC (Comp)	Clinton Twp, MI	06/21/07	06/12/07
61720	Blue Heron Paper Company (State)	Pomona, CA	06/21/07	05/31/07
61721	Blount-Oregon Cutting Systems Group (Wkrs)	Portland, OR	06/21/07	06/19/07
61722	Seagate Technology (Wkrs)	Milpitas, CA	06/21/07	06/07/07
61723	Robin Industries, Inc. (State)	Fredericksburg, OH	06/21/07	06/18/07
61724	Nukote International (Comp)	Franklin, TN	06/22/07	06/21/07
61725	NCR (Wkrs)	Peachtree City, GA	06/22/07	05/23/07
61726	Autolign Manufacturing Group Inc. (State)	Milan, MI	06/22/07	06/20/07
61727	New River Industries, Inc. (Comp)	Radford, VA	06/22/07	06/20/07
61728	R & S Vinyl Products Group (IAMAW)	Clarion, PA	06/22/07	06/21/07
61729	North American Molded Products, Corp (Comp)	Hartville, OH	06/22/07	06/21/07
61730	Joy Mining Machinery (IAMAW)	Franklin, PA	06/22/07	06/20/07
61731	Biesemeyer Woodworking Tools (Comp)	Mesa, AZ	06/22/07	06/19/07
61732	Henry S. Wolkins Company (Comp)	Taunton, MA	06/22/07	06/21/07
61733	Tubular Textile Machinery, Inc. (Comp)	Lexington, NC	06/22/07	06/21/07

[FR Doc. E7–12908 Filed 7–3–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,415]

American & Efird, Inc. D/B/A Robison and Anton Textile Company, Bloomsburg Division, Bloomsburg, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on June 8, 2007, applicable to workers of American & Efird, Inc., d/b/a Robison Anton Textile Company, Bloomsburg Division, Bloomsburg, Pennsylvania. The notice was published in the **Federal Register** on June 22, 2007 (72 FR 34482).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of embroidery thread and yarn.

In a request for an amendment, the company provided sufficient information confirming that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Information also obtained from the company states that a significant number of workers of the subject firm are age 50 or over, workers have skills that are not easily transferable, and conditions in the industry are adverse. Review of this information shows that all eligibility criteria under Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended have been met. Accordingly, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA–W–61,415 is hereby issued as follows:

All workers of American & Efird, Inc., d/b/a Robison Anton Textile Company, Bloomsburg Division, Bloomsburg, Pennsylvania, who became totally or partially separated from employment on or after April 23, 2006 through June 8, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for Alternative Trade Adjustment Assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of June 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–12915 Filed 7–3–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,587]

Sunspring America, Inc. Formerly Gamco Products Company, Henderson, KY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 24, 2007 in response to a worker petition filed on behalf of workers of Sunspring America Inc., formerly Gamco Products Company, Henderson, Kentucky.

The petitioning group of workers is covered by an active certification (TA–W–58,640) which expires on February 24, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of June 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–12916 Filed 7–3–07; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TYPE: Quarterly Meeting ''Teleconference Call''.

DATE AND TIMES: July 11, 2007, 1 p.m.–3 p.m.

LOCATION: National Council on Disability. 1331 F St., NW., Washington, DC 20004.

STATUS: July 11, 2007, 1 p.m.–3 p.m.—Open.

AGENDA: Opening Remarks, Discussion of Strategic Planning in Preparation for Upcoming Quarterly Meeting by NCD Board Members, Closing Remarks.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax).

AGENCY MISSION: NCD is an independent federal agency and is composed of 15 members appointed by the President, by and with the advice and consent of the Senate. NCD provides advice to the President, Congress, and executive branch agencies promoting policies, programs, practices, and procedures that (A) guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and (B) empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD immediately.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English proficiency, those people with disabilities who are limited English proficient and seek translation services for these meetings should notify NCD immediately.

Dated: July 2, 2007.

Michael C. Collins,

Executive Director.

[FR Doc. 07–3293 Filed 7–2–07; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data is provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents is properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**. The NEA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Can help the agency minimize the burden of the collection of information on those who are to respond, including through the use of electronic submission of responses through Grants.gov.

ADDRESSES: Send comments to Jillian Miller, Director, Office of Guidelines and Panel Operations, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 710, Washington, DC 20506–0001; telephone (202) 682–5504 (this is not a toll-free number), fax (202) 682–5049.

Kathy Plowitz-Worden,

Office of Guidelines and Panel Operations National Endowment for the Arts.

[FR Doc. E7–12970 Filed 7–3–07; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference from the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending time is approximate):

National Initiatives (application review): July 6, 2007. This meeting, from 2 p.m. to 2:30 p.m. DST, will be closed. This meeting has been scheduled on an emergency basis, to address time sensitive issues.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 21, 2007, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 29, 2007.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E7–13012 Filed 7–3–07; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The NSF management officials having responsibility for the advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq*. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

CNo	Committee name
1110	Advisory Committee for Biological Sciences.
1119	Advisory Committee for Education and Human Resources.

CNo	Committee name
1130	Advisory Committee for Polar Programs.
1170	Advisory Committee for Engineering.
1172	Alan T. Waterman Award Committee.
1373	Advisory Panel for Integrative Activities.
1569	Proposal Review Panel for Earth Sciences.
1755	Advisory Committee for Geosciences.
1756	Proposal Review Panel for Geosciences.
1766	Proposal Review Panel for Social Behavioral and Economic Sciences.
5195	NSB Public Service Award Committee.
10743	Proposal Review Panel for Biological Infrastructure.
10744	Proposal Review Panel for Environmental Biology.
10745	Proposal Review Panel for Integrative Organismal Systems.
10746	Proposal Review Panel for Molecular and Cellular Biosciences.
10747	Proposal Review Panel for Behavioral and Cognitive Sciences.
10748	Proposal Review Panel for Social and Economic Sciences.
10749	Proposal Review Panel for International Science and Engineering.
10751	Proposal Review Panel for Atmospheric Sciences.
10752	Proposal Review Panel for Ocean Sciences.
25150	Advisory Committee for Cyberinfrastructure.

Effective date for renewal is July 2, 2007. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: June 28, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–12821 Filed 7–3–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide: Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory Guide: Withdrawal.

FOR FURTHER INFORMATION CONTACT: John N. Ridgely, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–6555 or e-mail *JNR@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 1.49, ''Power Levels of Nuclear Power Plants,'' which was issued in response to a NRC Commission policy statement dated March 5, 1973. Revision 1 of the RG was issued in December 1973. The RG established the normal operating core thermal power level of 3800 megawatts as the limit for any nuclear power plant until January 1, 1979. This limit was set to encourage greater standardization of nuclear power plants and to stabilize the maximum size of nuclear plants until sufficient experience was gained with the design, construction, and operation of large plants. Since 1979, substantial experience has been gained with large power plants and standardization of plant designs has proceeded by use of the design certification process. The staff has approved plant designs with the core thermal operating power levels in excess of 3800 megawatts and has approved increased core thermal operating power levels for existing operating plants on a case-by-case basis. The staff has determined that RG 1.49 is no longer necessary. Furthermore, it is not referenced by any other documents in association with nuclear plant licensing actions.

II. Further Information

Withdrawal of RG 1.49 does not, in and of itself, alter any prior or existing licensing commitments based on its use. The guidance provided in this RG is no longer applicable. Regulatory guides may be withdrawn when methods and techniques no longer define an acceptable approach to comply with NRC regulations or otherwise do not provide useful information.

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections.* Regulatory guides are also available for inspection at the NRC's Public Document Room (PDR), Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR staff can be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 27th day of June 2007.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E7–12980 Filed 7–3–07; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; Public Hearing

July 5, 2007

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 72, Number 118, Page 34051) on June 20, 2007. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., June 5 2007 in conjunction with OPIC's July 12, 2007 Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 218-0136, or via e-mail at *cdown@opic.gov.*

Dated: July 2, 2007.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 07–3290 Filed 7–2–07; 12:59 pm]

BILLING CODE 3210–01–M

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 17a–8; SEC File No. 270–225; OMB Control No. 3235–0235

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), 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 (''OMB'') for extension and approval.

Rule 17a–8 (17 CFR 270.17a–8) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled

''Mergers of affiliated companies.'' Rule 17a–8 exempts certain mergers and similar business combinations (''mergers'') of affiliated registered investment companies (''funds'') from prohibitions under section 17(a) of the Act (15 U.S.C. 80a–17(a)) on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The rule requires the directors of any fund merging with an unregistered entity to approve procedures for the valuation of assets received from that entity. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair value of each such asset for which market quotations are not readily available. The rule also requires a fund being acquired to obtain approval of the merger transaction by a majority of its outstanding voting securities, except in certain situations, and requires any surviving fund to preserve written records describing the merger and its terms for six years after the merger (the first two in an easily accessible place).

The average annual burden of meeting the requirements of rule 17a–8 is estimated to be 7 hours for each fund. The Commission staff estimates that each year approximately 920 funds rely on the rule. The estimated total average annual burden for all respondents therefore is 6,440 hours.

This estimate represents an increase of 2,240 hours from the prior estimate of 4,200 hours. The increase results from an increase in the estimated number of mergers of affiliated funds and fund portfolios.

The average cost burden of preparing a report by an independent evaluator in a merger with an unregistered entity is estimated to be $15,000. The average net cost burden of obtaining approval of a merger transaction by a majority of a fund's outstanding voting securities is estimated to be $75,000. The Commission staff estimates that each year approximately 15 mergers with unregistered entities occur and approximately 22 funds hold shareholder votes that would not otherwise have held a shareholder vote to comply with state law. The total annual cost burden of meeting these requirements is estimated to be $1,875,000.

The estimates of average burden hours and average cost burdens are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of 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 email to: *PRA_Mailbox@sec.gov.*

Dated: June 26, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12939 Filed 7–3–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27876]

Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

June 28, 2007.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June 2007. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 2007, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE.,Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Boyle Fund [File No. 811–8501]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 31, 2007, applicant made its final liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on June 6, 2007, and amended on June 25, 2007.

Applicant's Address: 1401 Woodsong Dr., Hendersonville, NC 28791.

GAM Avalon Multi-Strategy (TEI), LLC [File No. 811–21026]

GAM Institutional Multi-Strategy, LLC [File No. 811–21027]

GAM Multi-Strategy Investments, LLC [File No. 811–21736]

Summary: Eaach applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Dates: The applications were filed on June 11, 2007, and amended on June 25, 2007.

Applicants' Address: 330 Madison Ave., New York, NY 10017.

Evergreen Income & Growth Fund [File No. 811–2829]

Evergreen Growth & Income Fund [File No. 811–4715]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 22, 1997, each applicant transferred its assets to corresponding series of Evergreen Equity Trust, based on net asset value. Expenses incurred in connection with the reorganizations were paid by applicants.

Filing Dates: The applications were filed on June 11, 2007, and Evergreen Growth & Income Fund (File No. 811–4715) filed an amendment on June 20, 2007.

Applicants' Address: 200 Berkeley St., Boston, MA 02116.

TIAA–CREF Mutual Funds [File No. 811–8055]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 18, 2007, applicant transferred its assets to TIAA–CREF Institutional Mutual Funds, based on net asset value. Expenses of approximately $1,837,497 incurred in connection with the reorganization were paid by Teachers Advisors, Inc., applicant's investment adviser.

Filing Date: The application was filed on May 30, 2007.

Applicant's Address: 730 Third Ave., New York, NY 10017–3206.

GAM Avalon Lancelot, LLC [File No. 811–10245]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 31, 2007, applicant made a final liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation. Applicant's custodian, PFPC, Inc., is holding a cash reserve of $228,525 to pay certain outstanding accrued expenses.

Filing Date: The application was filed on June 7, 2007.

Applicant's Address: 330 Madison Ave., New York, NY 10017.

The Primary Income Funds, Inc. [File No. 811–5831]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 31, 2007, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $7,500 incurred in connection with the liquidation were paid by Arnold Investment Counsel Incorporated, applicant's investment adviser.

Filing Date: The application was filed on June 6, 2007.

Applicant's Address: 700 North Water St., Milwaukee, WI 53202.

BlackRock Global Value Fund, Inc. [File No. 811–7561]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2007, applicant transferred its assets to BlackRock Global Dynamic Equity Fund, based on net asset value. Expenses of $389,590 incurred in connection with the reorganization were paid by BlackRock, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on June 14, 2007.

Applicant's Address: BlackRock, Inc., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Curan Fund, LLC [File No. 811–21091]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 31, 2006, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $3,333 incurred in connection with the liquidation were paid by Prospero Capital Management, LLC, investment adviser to applicant.

Filing Dates: The application was filed on April 20, 2007, and amended on May 23, 2007.

Applicant's Address: c/o Prospero Capital Management, LLC, Wall Street Plaza, 88 Pine St., 31st Floor, New York, NY 10005.

Morgan Stanley Total Return Trust [File No. 811–8600]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 23, 2006, applicant transferred its assets to Morgan Stanley Strategic Fund, based on net asset value. Expenses of approximately $280,500 incurred in connection with the reorganization were paid by Morgan Stanley Investment Advisors Inc., applicant's investment adviser.

Filing Dates: The application was filed on May 24, 2007, and amended on June 20, 2007.

Applicant's Address: Morgan Stanley Investment Advisors Inc., 1221 Avenue of the Americas, New York, NY 10020.

The Catholic Funds, Inc. [File No. 811–9177]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 30, 2007, applicant transferred its assets to Schwartz Investment Trust, based on net asset value. Expenses of $149,111 incurred in connection with the reorganization were paid by Catholic Financial Services, applicant's investment adviser, and Schwartz Investment Counsel, Inc., investment adviser for the acquiring fund.

Filing Dates: The application was filed on May 16, 2007, and amended on June 14, 2007.

Applicant's Address: 1100 West Wells St., Milwaukee, WI 53233.

Morgan Stanley Institutional Fund of Hedge Funds II LP [File No. 811–21768]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on April 24, 2007, and amended on May 30, 2007.

Applicant's Address: c/o Morgan Stanley Alternative Investment Partners, One Tower Bridge, 100 Front St., Suite 1100, West Conshohocken, PA 19428.

Pioneer Emerging Growth Fund [File No. 811–21105]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 29, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $1,000 incurred in connection with the liquidation were paid by Pioneer Investment Management, Inc., applicant's investment adviser.

Filing Dates: The application was filed on March 5, 2007, and amended on May 30, 2007.

Applicant's Address: 60 State St., Boston, MA 02109.

MBIA Capital First Trust Relative Value Municipal Fund [File No. 811–21572]

First Trust/Pequot Energy Income Fund [File No. 811–21688]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Dates: The applications were filed on March 16, 2006, and amended on May 22, 2007.

Applicants' Address: First Trust Advisors, L.P., 1001 Warrenville Rd., Suite 300, Lisle, IL 60532.

Jefferson National Life Annuity Account M [File No. 811–21513]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. Applicant did not commence operations and is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on May 25, 2007.

Applicant's Address: 9920 Corporate Campus Drive, Suite 1000, Louisville, KY 40223.

Jefferson National Life Annuity Account N [File No. 811–21514]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. Applicant did not commence operations and is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on May 25, 2007.

Applicant's Address: 9920 Corporate Campus Drive, Suite 1000, Louisville, KY 40223.

Jefferson National Life Annuity Account O [File No. 811–21512]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. Applicant did not commence operations and is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on May 25, 2007.

Applicant's Address: 9920 Corporate Campus Drive, Suite 1000, Louisville, KY 40223.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12944 Filed 7–3–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27877; 812–13399]

RealNetworks, Inc.; Notice of Application

June 28, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 3(b)(2) of the Investment Company Act of 1940 (the ''Act'').

Summary of Application: RealNetworks, Inc. (''RealNetworks'') seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. RealNetworks, directly and through its wholly-owned subsidiaries, creates digital media services and software.

Filing Date: The application was filed on June 22, 2007.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 23, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicant, 2601 Elliott Avenue, Suite 1000, Seattle, Washington 98121.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicant's Representations

1. RealNetworks, a Washington corporation, is in the business of creating digital media services and software. Consumers use RealNetworks' services and software to discover, play, purchase and manage digital content, including music, games and video. Broadcasters, cable and wireless communications companies, media companies and enterprises use RealNetworks' products and services to create, secure and deliver digital media to personal computers, MP3 players, mobile phones and other consumer electronic devices and to provide entertainment services to their subscribers.

2. RealNetworks states that the market for software and services for media delivery over the Internet is relatively new, constantly changing and intensely competitive. RealNetworks states that it requires substantial liquid capital to fund operations, fund research and development, license content and technology for its subscription service and software products, and fund acquisitions. Because of the pace of technological change in the industry sectors in which RealNetworks competes, RealNetworks needs to use cash to develop new products and fund capital expenditures, enhance its existing products and technology, and make strategic acquisitions. In addition, from time to time, RealNetworks also makes non-controlling investments in entities that complement or enhance RealNetworks' media delivery and digital distribution business (''Strategic Investments''). RealNetworks seeks to preserve its capital and maintain liquidity, pending the use of such capital for its current and future operations, by investing in short-term investment grade and liquid fixed income and money market investments that earn competitive market returns and provide a low level of credit risk (''Capital Preservation Investments''). RealNetworks' board of directors (''Board'') has approved a corporate investment policy establishing limits and guidelines governing its cash management investments, consistent with the goal of capital preservation (''Policy''). RealNetworks states that it does not invest in securities for short-term speculative purposes.

Applicant's Legal Analysis

1. RealNetworks seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies, and (b) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act. RealNetworks states that as of December 31, 2006, approximately 18% of its total assets (exclusive of Government securities and cash items), on an unconsolidated basis, consisted of investment securities as defined in section 3(a)(2) of the Act.

3. Rule 3a–1 provides an exemption from the definition of investment company if no more than 45% of a company's total assets consist of, and not more than 45% of its net income over the last four quarters is derived from, securities other than Government securities, securities of majority-owned subsidiaries and primarily controlled companies. RealNetworks states that it cannot rely upon rule 3a–1 under the Act because the percentage of its total assets invested in securities fluctuates and may, from time to time, exceed 45% of its total assets.

4. Rule 3a–8 under the Act provides an exemption from the definition of investment company if, among other factors, a company's research and development expenses are a substantial percentage of its total expenses for the last four fiscal quarters combined. While Real Networks believes it could satisfy the other factors in the rule, RealNetworks' research and development expenses, as a percentage of its total expenses, fluctuate and may not account for a substantial percentage of its total expenses. For the last four fiscal quarters ended on December 31, 2006, RealNetworks' research and development expenses represented approximately 18% of its total expenses, including cost of goods sold. RealNetworks also states that as its revenues increase its research and development expenses as a percentage of its total expenses are expected to decline even if research and development expenses increase on an absolute basis because sales and marketing expense and cost of goods sold, which are closely related to revenues, are likely to increase faster than research and development expenses.

5. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or through majority-owned subsidiaries or through controlled companies conducting similar types of businesses. RealNetworks requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

6. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the Commission considers: (a) The issuer's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[1]

a. *Historical Development.* RealNetworks states that since its inception in 1994 it has been developing and providing media delivery and digital distribution products and services for the Internet. Since its initial public offering in 1997, RealNetworks has used its revenue and raised cash to expand its operations into foreign countries, to expand its product and service lines, to license content and to acquire companies with complementary products or services.

b. *Public Representations of Policy.* RealNetworks states that it has never represented that it is involved in any business other than developing and providing branded software products and services that enable the creation, delivery and consumption of streaming media content. RealNetworks asserts that it has consistently stated in its annual reports to stockholders, press releases, filings with the Commission, marketing materials and website that it is a digital media technology and digital media distribution company. RealNetworks states that it generally does not make public representations regarding its investment securities except as required by its obligation to file periodic reports to comply with federal securities laws. RealNetworks further states that it has never emphasized either its investment income or the possibility of significant appreciation from its cash management investment strategies as a material factor in its business or future growth.

c. *Activities of Officers and Directors.* RealNetworks states that its directors and officers spend substantially all of their time managing RealNetworks core digital media technology and digital media distribution business. Other than establishing the Policy and receiving periodic reports on its implementation, the Board's involvement with RealNetworks' cash management investments is minimal. Applicant states that the Board is more actively involved in RealNetworks' Strategic Investments, but the amount of time dedicated to such matters is small relative to the amount of time dedicated to RealNetworks' direct ongoing business activities. Only three of RealNetworks' employees oversee the cash management process: RealNetworks' Treasurer is the only employee involved in the day-to-day management of cash management investments, and spends from 25–75% of his time doing so; one other member of the Treasurer's staff is involved in trade settlement and portfolio accounting, representing 15–20% of this person's time; and one member of the Treasurer's staff spends approximately 5% of his time on cash management in Korea. RealNetworks has approximately 1,500 employees worldwide.

d. *Nature of Assets.* RealNetworks states that as of December 31, 2006, its investment securities (as defined in Section 3(a)(2) of the Act) constituted approximately 18% of its total assets (excluding Government securities and cash items) on an unconsolidated basis. On a consolidated basis, that figure was 27%. RealNetworks states that in the future, the percentage of its total assets (other than Government securities and cash items) that will consist of investment securities other than Capital Preservation Investments will not exceed ten percent. RealNetworks further states that a significant portion of its assets consist of intangible assets, such as intellectual property and goodwill, which, with limited exceptions, do not appear on its balance sheet and are not included in the value of RealNetworks total assets for purposes of determining its status under the Act. RealNetworks states that the asset tests used in connection with sections 3(a)(1)(C) and 3(b) of the Act therefore significantly understate the relative value of RealNetworks' non-investment security assets.

e. *Sources of Income and Revenue.* RealNetworks states that for the year ended December 31, 2005, it had net income of $312.3 million, of which net investment income was $33.9 million or approximately 11%. RealNetworks states that for the year ended December 31, 2006, it had net income of $145.2 million, of which net investment income was $37.4 million, or approximately 26%. RealNetworks states that its net investment income was 9% of its total revenue for each of its last two fiscal years. In the future, RealNetworks expects substantially all of its revenues to come from operations and less than 10% from investment securities. RealNetworks states that since substantially all of its revenue is attributable to its operations, rather than investments, RealNetworks' revenue supports a determination that RealNetworks is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

7. RealNetworks thus asserts that it satisfies the standards for an order under section 3(b)(2) of the Act.

[1] *Tonopah Mining Company of Nevada,* 26 SEC 426, 427 (1947).

Applicant's Conditions

RealNetworks agrees that any order granted pursuant to the application will be subject to the following conditions:

1. RealNetworks will continue to allocate and utilize its accumulated cash and investment securities for bona fide business purposes.

2. RealNetworks will refrain from investing or trading in securities for short-term speculative purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12943 Filed 7–3–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55991/File No. S7–12–01]

Order Extending Temporary Exemption of Banks From the Definition of ''Broker'' Under Section 3(a)(4) of the Securities Exchange Act of 1934

June 29, 2007.

I. Background

The Gramm-Leach-Bliley Act (''GLBA'') repealed the blanket exception of banks from the definitions of ''broker'' and ''dealer'' under the Securities Exchange Act of 1934 (''Exchange Act'') [1] and replaced it with functional exceptions incorporated in amended definitions of ''broker'' and ''dealer.'' Under the GLBA, banks that engage in securities activities either must conduct those activities through a registered broker-dealer or ensure that their securities activities fit within the terms of a functional exception to the amended definition of ''broker.''

The GLBA provided that the amended definitions of ''broker'' and ''dealer'' were to become effective May 12, 2001. Starting on May 11, 2001, in connection with various rulemaking proposals,[2] the Securities and Exchange Commission (''Commission'') extended, most recently until July 2, 2007, a temporary exemption that gave banks time to come into full compliance with the more narrowly-tailored exceptions from broker-dealer registration under the GLBA.[3]

On October 13, 2006, President Bush signed into law the Financial Services Regulatory Relief Act of 2006 (''Regulatory Relief Act'').[4] Among other things, the Regulatory Relief Act requires the Commission and the Board of Governors of the Federal Reserve (''Board'') jointly to adopt final rules implementing the bank broker exceptions in Section 3(a)(4) of the Exchange Act.[5] It also requires the Commission and the Board jointly to issue proposed rules within 180 days of passage of the Regulatory Relief Act.[6]

Consistent with the Regulatory Relief Act, on December 18, 2006, the Commission and the Board jointly proposed implementing rules, which were designated as Regulation R.[7] At that time, the Commission also granted banks [8] an exemption from compliance with the definition of broker until July 2, 2007 in order to permit the Commission and the Board time to receive and evaluate comments and to take final action on the implementing rules.

To date, the Commission and the Board have received over 70 comments on proposed Regulation R. The Commission and the Board are carefully considering the comments, in consultation with the other Federal banking agencies, and expect to take final action on proposed Regulation R shortly.

II. Extension of Temporary Exemption From Definition of ''Broker''

In light of the need to carefully consider, together with the Board and the other Federal banking agencies, the comments on proposed Regulation R, the Commission finds that extending the temporary exemption for banks from the definition of ''broker'' until September 28, 2007 is necessary and appropriate in the public interest, and is consistent with the protection of investors. The extension of this temporary exemption will prevent banks from incurring interim business disruption, as well as interim implementation and compliance costs before the Commission and the Board jointly adopt final implementing rules. It will also provide the Commission and the Board time fully to consider the comments, consult with and seek the concurrence of the other Federal banking regulators, and take final action on the proposal.

III. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,[9] *it is hereby ordered* that banks are exempt from the definition of the term ''broker'' under the Exchange Act until September 28, 2007.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13058 Filed 7–3–07; 8:45 am]

BILLING CODE 8010–01–P

[1] As defined in Exchange Act Sections 3(a)(4) and 3(a)(5) [15 U.S.C. 78c(a)(4) and 78c(a)(5)].

[2] *See* Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001) (the ''Interim Rules''). *See also* Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682 (June 30, 2004) (''Regulation B''). In the Interim Rules, the Commission adopted Exchange Act Rule 15a–7, 17 CFR 240.15a–7, which, as proposed to be amended, would provide banks and other financial institutions until January 1, 2006, to begin complying with the GLBA. In proposing Regulation B, the Commission proposed Rule 781 as a re-designation of Rule 15a–7. *See* 17 CFR 242.781.

[3] *See* Exchange Act Release No. 44570 (July 18, 2001); Exchange Act Release No. 45897 (May 8, 2002); Exchange Act Release No. 46751 (Oct. 30, 2002); Exchange Act Release No. 47649 (April 8, 2003); Exchange Act Release No. 50618 (Nov. 1, 2004); Exchange Act Release No. 51328 (March 8, 2005); Exchange Act Release No. 52405 (Sept. 9, 2005); Exchange Act Release No. 54544 (September 29, 2006), 71 FR 58891 (October 5, 2006) (extending the exemption from the definition of ''broker'' until January 15, 2007); and Exchange Act Release No. 34–54948 (Dec. 18, 2006), 71 FR 247 (Dec. 18, 2006) (extending the exemption from the definition of ''broker'' until July 2, 2007); During this time, the Commission also extended the temporary exemption from the definition of ''dealer'' to September 30, 2003. *See* Exchange Act Release No. 47366 (Feb. 13, 2003). On February 13, 2003, the Commission adopted amendments to certain parts of the Interim Rules that define terms used in the dealer exceptions, as well as certain dealer exemptions (''Dealer Release''), *see* Exchange Act Release No. 47364 (Feb. 13, 2003), 68 FR 8686 (Feb. 24, 2003). Therefore, this order is limited to an extension of the temporary exemption from the definition of ''broker.''

[4] Pub. L. 109–351, 120 Stat. 1966 (2006).

[5] The Regulatory Relief Act also directs the Commission and the Board to consult with and seek the concurrence of the other Federal banking agencies on the content of the rulemaking. Section 101(c) of the Exchange Act defines the term ''Federal banking agencies'' as ''the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation.'' In another provision of the Regulatory Relief Act, Congress extended the bank exceptions and exemptions to thrifts by amending the definition of ''bank'' in Exchange Act Section 3(a)(6).

[6] Under the Regulatory Relief Act, a final single set of rules or regulations jointly adopted in accordance with that Act shall supersede any other proposed or final rule issued by the Commission on or after the date of enactment of Section 201 of the GLBA with regard to the definition of ''broker'' under Exchange Act Section 3(a)(4).

[7] *See* Exchange Act Release No. 54946 (Dec. 18, 2006), 71 FR 77522 (Dec. 26, 2006).

[8] Section 401 of the Regulatory Relief Act also amended the definition of ''bank'' in Section 3(a)(6) of the Exchange Act to include any Federal savings association or other savings association the deposits of which are insured by the FDIC. Accordingly, as used in this order, the term ''bank'' includes any savings association that qualifies as a ''bank'' under Section 3(a)(6) of the Exchange Act, as amended.

[9] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55981; File No. SR–Amex–2007–67]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Prohibit Specialists in Exchange-Traded Funds From Charging Commissions on Transactions in Their Specialty Securities

June 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2007, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 154-AEMI(k) to prohibit specialists in exchange-traded funds (''ETFs'') from charging commissions on transactions in their specialty securities. The text of the proposed rule change is available on Amex's Web site at *http://www.amex.com*, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 154-AEMI(k)[3] to prohibit specialists in ETFs from charging commissions on transactions in their specialty securities. Previously, the Exchange has sought to place various limitations on specialist commissions in equities and ETFs. The instant proposal seeks to eliminate the ability of specialists in ETFs to charge commissions on transactions in their entirety. In addition, in connection with this proposal to eliminate specialist commissions, the Exchange is proposing in a separate filing (the ''Fee Filing'')[4] to: (i) eliminate Exchange transaction charges for specialists in ETFs; (ii) adopt a revenue sharing program for specialists and registered traders in ETFs; and (iii) revise various fees, caps, and discounts for transactions in ETFs. The Exchange is requesting that the Commission make this filing operative on July 1, 2007, the same day the changes contained in the Fee Filing become operative.

The Exchange now proposes to amend subparagraph (k) to Rule 154-AEMI to prohibit specialists from charging commissions on any ETF orders. The Exchange believes that this prohibition on specialist commissions will offset the increases in transaction charges that may be experienced by customers as the result of the revisions to or elimination of the various caps and discounts currently available.

The Exchange is proposing the prohibition on ETF specialist commissions to provide consistency and clarity to all members and the public that orders sent to Amex will not be subject to excessive or arbitrary costs, and to preserve the cost competitiveness of the Exchange. The Exchange believes that its comprehensive program of providing incentives to ETF specialists and registered traders to provide more liquid and competitive markets, in combination with the prohibition on the charging of specialist commissions on transactions in ETFs, will result in making the Exchange's pricing structure more competitive, more equitable, more transparent, and easier to understand. The Exchange consequently believes that the proposed rule would benefit investors if implemented and would strengthen the Exchange's competitive position.

[3] The Exchange received approval on June 15, 2007, of its proposal to add subparagraph (k) to Rule 154-AEMI. *See* Securities Exchange Act Release No. 55913 (June 15, 2007); 72 FR 34323 (June 21, 2007) (File No. SR–Amex–2007–13). Rule 154-AEMI(k), which applies to both equities and ETFs: (1) Extends the application of the limitations on specialist commissions to ETFs and equities trading on the AEMI System; (2) expands the prohibition on specialist commissions to market-at-the-close orders and limit-at-the-close orders; and (3) specifies that specialist commissions can be charged only on orders that are executed and not on orders that are cancelled or expire unexecuted.

[4] *See* File No. SR–Amex–2007–68, submitted June 28, 2007.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,[7] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder because the Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[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)(6).

protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The Exchange has provided the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing.

The Exchange requests that the Commission waive the 30-day operative delay specified in Rule 19b–4(f)(6)(iii) [10] with respect to the proposed rule change and that the proposed rule change be made operative on July 1, 2007, the same day the fee changes proposed in the Fee Filing take effect. The Exchange has represented that all the ETF specialist firms affected by the proposal have agreed to the elimination of commissions, contingent on the Exchange's implementation of the proposed revenue sharing program included in the Fee Filing. The proposal herein, together with the revisions to the Exchange's transaction charges and the revenue sharing program, is part of an integrated plan in which: (i) The revenues generated from the revised fees will partially offset the cost to the Exchange of the payments the Exchange will make to the specialists and registered traders under the revenue sharing program; and (ii) the cost to customers of the increased transaction charges will be offset partially by the elimination of commissions. Amex believes it is essential that the proposal in this filing become operative at the same time as the proposal set forth in the Fee Filing.

The Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative on July 1, 2007.[11] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will enable all aspects of Amex's new fee structure to become operative as of the same date. The Commission has relied on Amex's representation that all affected Amex specialists have agreed to the new fee structure.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–Amex–2007–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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–Amex–2007–67 and should be submitted on or before July 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13013 Filed 7–3–07; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55971; File No. SR–CBOE–2007–66]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Its Open Outcry Allocation Rules

June 28, 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 18, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by CBOE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its open outcry allocation rules for classes trading on the Hybrid Trading System (''Hybrid''). The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and (*http://www.cboe.org/Legal*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

[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).

comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify its open outcry allocation rules for Hybrid classes, which are contained in paragraph (b) of Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, as applicable. Under the existing allocation rules, at the same execution price: (i) Public customer orders in the electronic book have first priority, with multiple public customer orders prioritized based on time priority; (ii) in-crowd market participants and broker-dealer orders resting in the electronic book collectively have second priority, with the broker-dealer orders getting a ''book market participant'' share;[5] and (iii) electronic quotes of Market-Makers have third priority, with multiple bids or offers prioritized based on the electronic allocation algorithm in effect for the option class.[6]

The Exchange is proposing to revise the priority levels so that, at the same execution price: (i) Public customer orders in the electronic book would continue to have first priority, with multiple public customer orders prioritized based on time priority; (ii) in-crowd market participants would have second priority, with multiple bids or offers prioritized based on the allocation algorithm provided in Rule 6.45(A) or (B);[7] and (iii) broker-dealer orders resting in the electronic book and electronic quotes of Market-Makers would collectively have third priority, with multiple bids or offers prioritized based on the electronic allocation algorithm in effect for the option class.[8]

In addition, in order to transact proprietary orders [9] on the floor of the Exchange pursuant to Rule 6.45A(b) or 6.45B(b), members must also ensure that they qualify for an exemption from section 11(a)(1) of the Act.[10] Members relying on section 11(a)(1)(G) of the Act [11] and Rule 11a1–1(T) thereunder (commonly known as the ''G exemption rule'') [12] as an exemption must comply with the requirements of that exemption before executing a proprietary order, including the requirement to yield priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member (a ''non-member''), irrespective of the size of any such bid or offer or the time when entered. Because CBOE's electronic book does not distinguish between member and non-member broker-dealer orders, the revised priority provisions would further provide that members relying on the G exemption rule must yield priority to any bid (offer) at the same price of public customer orders and broker-dealer orders (whether non-member or member) resting in the electronic book, as well as any other bids and offers that would otherwise have priority over such broker-dealer orders under Rule 6.45A(b) or 6.45B(b).[13]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act [14] in general and furthers the objectives of section 6(b)(5) of the Act [15] in particular in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] Under the existing allocation rules, the cumulative number of broker-dealer orders in the electronic book at the best price are deemed to be one ''book market participant'' regardless of the number of broker-dealer orders in the book. Also under the existing rules, the allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a ''book market participant'' is as follows: If two or more bids (offers) represent the best price, one of which represents a book market participant, priority is afforded to the in-crowd market participants in the sequence in which their bids (offers) were made; provided, however, that (i) the first in-crowd market participant to respond is entitled to 70% of the order; (ii) the second in-crowd market participant to respond (if ascertainable) is entitled to 70% of the remainder of the order (*i.e.*, 70% of 30%); and (iii) the balance of the order is apportioned equally among the remaining in-crowd market participants bidding (offering) at the same price and the book market participant share. If it is not possible to determine the order in which in-crowd market participants responded, the balance of the order shall be apportioned equally among the remaining market participants bidding (offering) at the same price and, if applicable, the book market participant. If two or more bids (offers) represent the best price, each of which is NOT a book market participant, priority is afforded to the in-crowd market participants in accordance with the allocation principles contained in CBOE Rule 6.45(a) or (b), which generally provide that priority is afforded to such bids (offers) in the sequence in which they are made or, if the bids were made at the same time or in the event the sequence cannot be reasonably determined, priority is apportioned equally. *See* existing CBOE Rules 6.45A(b) and 6.45B(b).

[6] The particular algorithm is determined on a class-by- class basis and can be based on either price-time priority, pro-rata priority or the Ultimate Match Algorithm (''UMA''). The UMA allocation formula has a component based on the number of market participants quoting at the best price (''Component A'') and a component based on the size of market participant quotes. Depending on the particular algorithm and class, additional priority overlays pertaining to public customer orders, Market-Maker participation entitlements and market turner may also apply. *See* CBOE Rule 6.45A(a) or 6.45B(a), as applicable.

[7] Allocation among the in-crowd market participants in this manner is consistent with the existing CBOE Rule 6.45A(b) and 6.45B(b) allocation procedures that apply when there is NOT a book market participant. *See* note 5, *supra*.

[8] If the UMA algorithm is in effect, the cumulative number of broker-dealer orders in the electronic book at the best price are deemed one ''market participant'' for purposes of calculating Component A. *See* note 6, *supra*. In revising the priority algorithm to provide that in-crowd market participants have priority over the trading interests of both broker-dealer orders resting in the electronic and electronic quotes of Market-Makers, the Exchange notes that at least one other options exchange already has in place rules that afford in-crowd participants priority over electronic trading interests. *See* Rule 6.76(d) of NYSE Arca Inc. In addition, this change in the priority algorithm will make the open outcry priority rules for non-crossing transactions more consistent with the Exchange's open outcry priority rules for crossing transactions, which currently provide for in-crowd market participants to have priority over the trading interests of both broker-dealer orders resting in the electronic book and electronic quotes of Market-Makers. *See* CBOE Rule 6.74, *Crossing Orders*.

[9] For purposes of CBOE Rule 6.45A(b) or 6.45B(b), a ''proprietary order'' will mean an order for a member's own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion.

[10] 15 U.S.C. 78k(a)(1).

[11] 15 U.S.C. 78k(a)(1)(G).

[12] 17 CFR 240.11a1–1(T).

[13] Thus, for example, a Floor Broker that is relying on the G exemption rule must first yield priority to any same priced public customer orders and broker-dealer orders resting in the electronic book, as well as any in-crowd market participants that would otherwise have priority over those broker-dealer orders, before executing a proprietary order. In such a scenario, the Rule 6.45A(b) or Rule 6.45B(b) priority sequence described above is modified so that, at the same price, public customer orders resting in the book would have first priority, then the in-crowd market participants (to the extent each such market participant also qualifies for an exemption from Section 11(a)(1) but is not relying on the G exemption rule), then broker-dealer orders resting in the book, then the Floor Broker's proprietary order (along with any other in-crowd market participants also relying on the G exemption rule). To the extent there may be any further remaining balance, same priced electronic quotes of Market-Makers would have priority to trade next.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder.[18]

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 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–CBOE–2007–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2007–66 and should be submitted on or before July 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–12940 Filed 7–3–07; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] Pursuant to Rule 19b–4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. *See* 17 CFR 240.19b–4(f)(6)(iii).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 26, 2007, vol. 72, no. 57, page 14162. This collection establishes requirements for the certification, operation, and maintenance of light-sport aircraft.

DATES: Please submit comments by August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification of Airmen for the Operation of Light-Sport Aircraft.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0690.

Forms(s): 8130–6, 8130–7, 8130–15, 8710–11, 337, 8110–14, 8110–28, 8610–2.

Affected Public: An estimated 28,449 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 1.27 hours per response.

Estimated Annual Burden Hours: An estimated 72,582 hours annually.

Abstract: For the operation of light-sport aircraft, the FAA has established a sport pilot certificate and a flight instructor certificate with a sport pilot rating, requirements for student pilots and private pilots to operate these aircraft and to revise the recreational pilot certificate to align it with privileges proposed for the new sport pilot certificate, and a new repairman certificate with ratings for individuals who would inspect and maintain light-sport aircraft. In addition, the FAA has established a new category of special airworthiness certificate for light-sport aircraft that meet a consensus standard.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 27, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–3256 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Forty-First Meeting, RTCA Special Committee 186 Automatic Dependent Surveillance-Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 Automatic Dependent Surveillance-Broadcast (ADS–B) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186 Automatic Dependent Surveillance-Broadcast (ADS–B).

DATES: The meeting will be held July 31-August 3, 2007, at 9 a.m. (Unless Otherwise noted).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat (Hal Moses), 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. The agenda will include:

- July 31:
- All Day, ASSAP Subgroup, MacIntosh–NBAA & Hilton–ATA Rooms
- All Day, CDTI Subgroup, Colson Board Room
- August 1:
- All Day–Working Group I—Operations and Implementation, Surface Alerting Activity, Colson Board Room
- All Day, ASSAP Subgroup, MacIntosh–NBAA Room
- All Day, CDTI Subgroup, Hilton–ATA Room
- August 2:
- All Day–Working Group I—Operations and Implementation, Surface Alerting Discussion, Colson Board Room
- All Day, ASSAP Subgroup, MacIntosh–NBAA Room
- All Day, CDTI Subgroup, Hilton–ATA Room
- August 3:
- Working Groups May Meet After the Plenary Adjourns
- Opening Plenary Session (Welcome and Introductory Remarks, review of meeting agenda)
- Review/Approval of the Fortieth Meeting Summary, RTCA Paper No. 159–07/SC186–250.
- Date, Place, and Time of Next Meeting.
- Review proposed TORs for SC186 and WGI
- Working Group Reports
- WG–1—Operations and Implementation
- WG–2—TIS–B MASPS
- WG–3—1090 MHz MOPS
- WG–4—Applications Technical Requirements
- WG–5—UAT MOPS
- Final Review/Approval—Proposed Final Draft—revised DO–286A—*Minimum Aviation System Performance Standards (MASPS) for Traffic Information Service-Broadcast* (TIS–B), RTCA Paper No. 158–07/SC–186–249
- Closing Plenary Session (New/Other Business, Review Actions Items/Work Program, Adjourn)
- Note:
- AD—Application Development
- ASAS—Aircraft Surveillance Applications System
- ASSAP—Airborne Surveillance & Separation Assurance Processing
- CDTI—Cockpit Display of Traffic Information
- MASPS—Minimum Aviation System Performance Standards
- MOPS—Minimum Operational Performance Standards
- NRA—Non-Radar Airspace
- RFG—Requirements Focus Group
- STP—Surveillance Transmit Processing

Attendance is open to the interested public but limited to space availability. With the approval of the Chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **"FOR FURTHER INFORMATION CONTACT"** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 28, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–3257 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Proposed Highway Project in California

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(1)(1). These actions relate to a proposed Highway project on State Route 50 between Post Mile L0.9 to 12.8 in Sacramento County, State of California. These actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 2, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Cesar Perez, Senior Project Development Engineer, Federal Highway Administration, 650 Capitol Mall, #4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m., telephone 916–498–5065, *cesar.perez@fhwa.dot.gov,* or John Webb, Supervisory Environmental Planner, California Department of Transportation, 2389 Gateway Oaks Dr., Sacramento, CA 95833, weekdays between 8 a.m. and 4:30 p.m., (916) 274–0588, *John_Webb@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of California. This project would improve safety and provide congestion relief on State Route 50, between post mile 0.9 to 12.8, in Sacramento County, California. This would be accomplished by adding bus/carpool lanes in the existing median of U.S. 50 between the above post miles. The purpose of the project is to increase mobility, provide an option for reliable peak period travel time, improve traffic operations, use the highway facilities as efficiently as possible, and provide incentives for commuters.

Actions by the Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment for the project. The Finding of No Significant Impact (FONSI) was approved on June 25, 2007. The Final Environmental Assessment and other documents in the FHWA administrative record file are available by contacting the FHWA or the California Department of Transportation at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa) 11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d) (1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

6. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

7. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(1)(1).

Issued on: June 27, 2007.

Dennis A. Scovill,

Chief Operating Officer, Sacramento, California.

[FR Doc. E7–12900 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28480]

Commercial Driver's License (CDL) Standards: National Agricultural Aviation Association (NAAA) Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received from the National Agricultural Aviation Association (NAAA) an application for an exemption from the commercial driver's license (CDL) requirements. NAAA requests that commercial motor vehicle drivers working with agricultural aircraft operators be exempt from the required knowledge and skills tests and be eligible to receive a restricted CDL. NAAA also requests an exemption to allow these restricted CDL holders to transport fuels used to power agricultural aircraft engines if transported in quantities of 1,000 gallons or less. NAAA believes that relief from the CDL regulations will relieve a current economic hardship and will provide parity in the CDL regulations compared to other, nearly identical farm-related services. NAAA believes that the evidence provided in the exemption request demonstrates that the level of safety achieved under the exemption would be equal to or greater than the level of safety that prevails without the exemption. FMCSA requests public comment on the NAAA application for exemption.

DATES: Comments must be received on or before August 6, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2007–28480 using any of the following methods:

- *Web site: http://dmses.dot.gov/submit/.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140, Ground Floor of West Building, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room W12–140, Ground Floor of West Building, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, Federal Motor Carrier Safety Administration, telephone 202–366–4009, E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. On December 8, 1998, the Federal Highway Administration's Office of Motor Carriers, the predecessor to FMCSA, published an interim final rule implementing sec. 4007 (63 FR 67600). On August 20, 2004, FMCSA published a final rule (69 FR 51589) on this subject. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the Agency grants the exemption, the notice must specify the person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Application for Exemption

The NAAA is a trade association that represents over 1,300 members in 46 states. It requests that commercial motor vehicle (CMV) drivers supporting agricultural aircraft operations be exempted from the required knowledge and skills tests required for a CDL and that these individuals be eligible to receive restricted CDLs as described in 49 CFR 383.3(f). In addition, NAAA further requests an exemption from 49 CFR 383.3(f)(3)(v) that would allow these restricted CDL holders to transport fuels used to power agricultural aircraft engines, if transported in quantities of 1,000 gallons or less.

NAAA member operators/pilots are licensed as commercial applicators who use aircraft to enhance food and fiber production, protect forestry, and control health-threatening pests. According to the NAAA, as a part of this operation, a CMV will be driven to a satellite strip where the plane is normally located. The driver will serve as a ''mixer-loader'' of the crop protection products that go into the agricultural aircraft, and will also refuel the aircraft at the satellite strip. These activities are normally conducted at a location where the aerial application operators have permanent fuel tanks and mixing and loading facilities for crop-protection products. However, at times they work so far from their permanent facility that it is cost-effective to use a satellite landing strip and an on-site fuel truck. The fuel is pumped from the fixed base tanks into the fuel truck and then the fuel truck transports it to the satellite strip for the agricultural aircraft. More trips are made to transport fuel to the satellite strip as needed and the CMV returns to the fixed-base location at the end of the day. Some of the vehicles may also be equipped with crop protection products such as fertilizers, insecticides, fungicides, or herbicides. Due to the nature of this work, the truck drivers normally are traveling on rural, less-trafficked roads.

NAAA requests that these drivers be permitted to receive restricted CDLs without knowledge and skills testing primarily to expand the labor pool of available drivers. A shortage of available drivers may prevent use of a satellite airstrip closer to the application site. This results in an aircraft having to travel back to its home base for each load instead of using a closer landing area. In this case more fuel is burned to travel to the application site and more time elapses, resulting in fewer application jobs performed during the day. One operator surveyed responded that he loses $2,500 to $5,000 per day as a result of not having an available CDL driver. The granting of the exemption would save on fuel costs, which, according to the NAAA, have increased 142% for aerial application operations in the last three years.

In a recent survey, NAAA asked its members if they had experienced difficulties finding CDL drivers to transport chemicals and fuel to satellite application strips, and over 95% answered ''yes.'' In addition, over 90% of the respondents answered that they had found themselves without a CDL driver for such vehicles during the aerial application season. One explanation offered for this situation is that qualified CDL drivers would be more interested in all-year driving work, rather than the seasonal work that driving for an aerial application operation offers. This factor, coupled with the fact that most aerial application operations are located in rural areas, makes for a smaller pool of available, qualified drivers.

NAAA also states finding Department of Motor Vehicle (DMV) locations and scheduling testing times to take the knowledge and skill tests required for a CDL can be difficult. Its survey indicates that only a select number of DMV locations offer the knowledge and skill tests required to obtain a CDL. Over 76% of the respondents indicated that only a limited number of these DMV locations are readily available. This is an additional handicap, as these operators must take the time and resources to travel significant distances for a potential employee to be tested.

NAAA also requests an exemption from 49 CFR 383.3(f)(3)(v) provisions that limit restricted CDL holders to transporting diesel fuel in quantities of 3,785 liters, or 1,000 gallons or less. There are two fuels used in agricultural aircraft operations. One is Jet A, which is used to fuel turbine engines. The second is Avgas, which is used to fuel piston-engine aircraft. Diesel and Jet A fuel are very similar in terms of chemical characteristics. The flash point for the two chemicals is nearly identical at 100 degrees, and Avgas has a lower flashpoint than Jet A and diesel.

The time period in which the exemption would usually be needed is the 180 days from the beginning of April through the end of September. This parallels the main season for growing crops in the U.S.—the period aerial applicators are most active. However, because climatic conditions vary around the country, the season of an agricultural aircraft operation depends on where the business is located. If a restricted CDL exemption is granted, NAAA therefore requests that the operator be able to choose the six-month period that best matches the growing conditions in the area in which the business is located.

NAAA's justification for including agricultural aircraft operations among the types of employers that may use restricted CDL holders, as listed in section 383.3(f), is that these types of operations are extremely similar to agri-chemical businesses, farm retail outlets, etc. Agricultural aircraft operators transport the same types of materials, such as fertilizers, pesticides and fuel, and in the same quantities as the farm-related industries. Furthermore, agricultural aircraft drivers are transporting these materials on the same rural, lightly-trafficked roads on which farm-related industries are traveling.

NAAA's response to ensuring an equivalent level of safety for the

proposed exemption is that these operations will be required to ensure that they employ safe drivers and that safe equipment is used on the roads. NAAA states that section 383.3(f)(3) requires restricted-CDL holders to have a ''good driving record.'' These operators are required to perform random drug tests on employees and to ensure that drivers have hazardous materials endorsements, which require a background check by the Transportation Security Administration. Furthermore, under 49 CFR part 180 Subpart E, ''Qualification and Maintenance of Cargo Tanks,'' regulations are in place to ensure the structural integrity of the cargo tanks used to transport fuel in the event that the tanks are involved in a crash.

A recent NAAA survey found that 95.3% of aerial application businesses surveyed had never been involved in any type of accident while transporting fuel or chemicals. The results also show that 92.9% of those surveyed travel on roads in rural areas with minimal traffic and that a vehicle transporting fuel or chemicals travels an average of 57.81 miles per day. NAAA notes that several operators also mentioned that they do not travel this many miles every day. In many cases, driving is done only once or twice a week to a satellite facility.

To ensure that the current safety level is preserved, NAAA states that it is in a strong position to provide meaningful continuing education on highway safety to a large portion of the small business owners of agricultural aviation operations throughout the country through its education program known as the Professional Aerial Application Support System (PAASS). The focus of the PAASS program is to educate individuals in the aerial application industry on the latest techniques and technologies to mitigate agricultural aviation flying accidents and off-target application incidents, in addition to enhancing the security of aerial application operations. According to NAAA, in addition to educating its industry on security and pilot safety, PAASS can also be used to further educate its members on highway transportation safety issues.

A copy of the NAAA exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on NAAA's application for exemption from the 49 CFR part 383 CDL requirements. The Agency will consider all comments received by close of business on August 6, 2007. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: June 26, 2007.

Larry W. Minor,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. E7–13021 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below. It should be noted that this notice supersedes and corrects the **Federal Register** Notice that was published on June 11, 2007 (see 72 FR 32159), which inadvertently listed an erroneous title for the proposed study.

DATES: Comments must be received no later than September 4, 2007.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590, or Ms. Gina Christodoulou, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–New.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Christodoulou at *gina.christodoulou@dot.gov.* Please refer to the assigned OMB control number or collection title in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Gina Christodoulou, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote

its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Confidential Close Call Reporting System Evaluation-Related Interview Data Collection.

OMB Control Number: 2130–New.

Abstract: In the U.S. railroad industry, injury rates have been declining over the last 25 years. Indeed, the industry incident rate fell from a high of 12.1 incidents per 100 workers per year in 1978 to 3.66 in 1996. As the number of incidents has decreased, the mix of causes has also changed toward a higher proportion of incidents that can be attributed to human and organizational factors. This combination of trends—decrease in overall rates but increasing proportion of human factors-related incidents—has left safety managers with a need to shift tactics in reducing injuries to even lower rates than they are now.

In recognition of the need for new approaches to improving safety, FRA has instituted the Confidential Close Call Reporting System (C^3RS). The operating assumption behind C^3RS is that by assuring confidentiality, employees will report events which, if dealt with, will decrease the likelihood of accidents. C^3RS, therefore, has both a confidential reporting component, and a problem analysis/solution component. C^3RS is expected to affect safety in two ways. First, it will lead to problem solving concerning specific safety conditions. Second, it will engender an organizational culture and climate that supports greater awareness of safety and a greater cooperative willingness to improve safety.

If C^3RS works as intended, it could have an important impact on improving safety and safety culture in the railroad industry. While C^3RS has been developed and implemented with the participation of FRA, railroad labor, and railroad management, there are legitimate questions about whether it is being implemented in the most beneficial way, and whether it will have its intended effect. Further, even if C^3RS is successful, it will be necessary to know if it is successful enough to implement on a wide scale. To address these important questions, FRA is implementing a formative evaluation to guide program development, a summative evaluation to assess impact, and a sustainability evaluation to determine how C^3RS can continue after the test period is over. The evaluation is needed to provide FRA with guidance as to how it can improve the program, and how it might be scaled up throughout the railroad industry.

Program evaluation is an inherently data driven activity. Its basic tenet is that as change is implemented, data can be collected to track the course and consequences of the change. Because of the setting in which C^3RS is being implemented, that data must come from the railroad employees (labor and management) who may be affected. Critical data include beliefs about safety and issues related to safety, and opinions/observations about the operation of C^3RS.

The proposed study is a five-year demonstration project to improve rail safety, and is designed to identify safety issues and propose corrective action based on voluntary reports of close calls submitted to the Bureau of Transportation Statistics, U.S. Department of Transportation. Because of the innovative nature of this program, FRA is implementing an evaluation, which will be carried out by the Volpe National Transportation Systems Center (Volpe Center), U.S. Department of Transportation, to determine whether the program is succeeding, how it can be improved and, if successful, what is needed to spread the program throughout the railroad industry. Confidential interviews to evaluate the close call reporting system will be conducted with two groups: (1) Key stakeholders to the process (e.g., FRA officials, industry labor, and carrier management within participating railroads); and (2) Employees in participating railroads who are eligible to submit close call reports to the Confidential Close Call Reporting System. Different questions will be addressed to each of these two groups. Confidential interviews will be semi-structured, with follow-up questions asked as appropriate depending on the respondent's initial answer.

Form Number(s): FRA F 6180.126A; FRA F 6180.126B.

Affected Public: Railroad Employees and Key Non-railroad Stakeholders.

Respondent Universe: 300 Select Railroad Employees/Non-railroad Stakeholders.

Frequency of Submission: On Occasion.

Estimated Annual Burden: 267 Hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on June 28, 2007.

Belinda Ashton,

Acting Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E7–13016 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Boone & Scenic Valley Railroad

[Docket Number FRA–2007–28097]

By letter dated April 26, 2001, the Boone & Scenic Valley Railroad (BSV) petitioned FRA for a waiver of compliance from the requirements of 49 CFR 223.11, *Existing locomotives,* for four diesel electric locomotives, under Docket Number FRA–2001–9607. These four locomotives are: Numbers 1858 and 2254 (built by General Electric), Number 1098 model S–2 (American Locomotive Company), and Number 1003 model NW–2 (Electromotive Division of General Motors).

On October 2, 2001, the Railroad Safety Board approved this requested waiver for a period of 5 years, with an option for renewal. On December 6, 2006, the Board extended the waiver for an additional 5 years. However, the BSV also operates a steam locomotive, Number JS8419, over approximately 12 miles of their line from Boone, IA, in conjunction with their tourist and excursion service. Since this locomotive was built after January 1, 1946, it is required to be equipped with glazing

material compliant with the requirements of 49 CFR 223.11. Steam locomotive Number JS8419 was built in China by Datong Locomotive Works in Shanxi, China, in October 1988, purchased new by the BSV in 1989, and delivered with automotive-type safety glazing. It has been in regular summer weekend service each year since 1990, except for in 1993 and 2002.

By letter dated February 12, 2007, BSV requested that Number JS8419 be granted a waiver under the same conditions as their four diesel electric locomotives. They stated that retrofitting JS8419 with compliant glazing would be very costly, and a serious financial burden on the museum.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2007–28097) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the DOT Central Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on June 28, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Implementation.

[FR Doc. E7–13025 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Carolina Coastal Railway, Inc.

[Docket Number FRA–2007–28420]

The Carolina Coastal Railway, Inc. (CLNA) seeks a permanent waiver of compliance from *Control of Alcohol and Drug Use,* 49 CFR Part 219 Subpart G, which requires a railroad to conduct random alcohol and drug testing. CLNA has less than 16 hours of service employees and previously had no joint operations, but they plan to lease from Norfolk Southern Corporation (NS) nearly 140 miles of track from Raleigh to Plymouth, NC, on June 15, 2007. The CLNA will operate over NS tracks to reach their yards for interchange potentially at Chocowinity, NC, and at Raleigh, NC. CSX Transportation (CSX) will have overhead trackage rights over a 16-mile segment of the track, although there will be temporal separation since CLNA's operation will be during daytime hours and CSX's operations will be restricted to nighttime hours.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2007–28420) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Issued in Washington, DC on June 28, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–13028 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Maryland Transit Administration

[Modification to Waiver Petition Docket Number FRA–2000–7054/7286]

As a modification to the Maryland Transit Administration's (MTA) existing Shared Use/Temporal Separation waiver originally granted by FRA on January 19, 2001, MTA is requesting that FRA

modify the original terms and conditions of its permanent waiver of compliance from sections of Title 49 of the CFR for operation of its Cockeysville Light Rail Line (CLRL) due to changes that have recently occurred. (See ''Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment,'' 65 FR 42529 (July 10, 2000). See also ''Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems,'' 65 FR 42626 (July 10, 2000).)

In this regard, the Norfolk Southern Railway Company (NS), which operates a freight railroad sharing track temporally with the CLRL, is ceasing freight service on the CLRL from a point at Chain Marker 122 continuing northward to the end of the line. The sole exception to this is at Chain Marker 122, where NS continues to cross the CLRL via a diamond crossover to service the NS Flexi-Flo facility. In regard to this, NS has filed a Petition for Exemption for authority to abandon the freight service on the CLRL (see Surface Transportation Board (STB) Docket No. AB–290, Sub No. 237X, Norfolk Southern Ry. Co.—Abandonment Exemption—In Baltimore Co., MD), and is awaiting STB resolution at this time.

Due to the cessation of NS freight service on the CLRL from a point at Chain Marker 122 northward, MTA is requesting that FRA determine that there is no longer shared use on the CLRL and that waivers are no longer necessary because the statutes and regulations covered in the Shared Use Policy Statement no longer apply to the CLRL north of that point. Also, MTA agrees that the waivers that were approved in the January 19, 2001, decision letter that are relevant at the diamond crossing will remain in effect, and that Standard Operating Procedure LR.07.02.04, which replaces MTA Procedure No. 6.33, provides sufficient protection at the interlocked diamond crossover. Lastly, MTA requests that, to the extent FRA regulations apply in any manner, FRA waive the requirements of 49 CFR Part 219, Control of Alcohol and Drug Abuse, for MTA employees who control the operation of the NS trains across the diamond because it is adopting the Federal Transit Administration's drug and alcohol policy, which provides an equivalent level of oversight.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2000–7054/7286) and must be submitted to the Docket Clerk, DOT Docket Management Facility, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on June 28, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–13029 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket Number FRA–2007–28293]

Applicants: Rock and Rail, LLC, Mr. Franklin Lloyd, President, P.O. Box 1026, Cañon City, Colorado 81215.

Cañon City and Royal Gorge Railroad, LCC, Mr. Mark Greksa, Owner/Manager, P.O. Box 859, Georgetown, Colorado 80444.

Union Pacific Railroad, Mr. Bill Breeden, General Director, Maintenance of Way, 1400 Douglas Street, Stop 0910, Omaha, Nebraska 68179.

Rock and Rail, LLC, and Cañon City and Royal Gorge Railroad, LLC, collectively (RGX) and the Union Pacific Railroad Company (UP) jointly seek approval of the proposed conversion of the existing traffic control system to an automatic block signal system on the single main track and sidings between Cañon City, Colorado, Milepost 159.2, and East Parkdale, Colorado, Milepost 169.9, on the former UP Denver Area, Tennessee Pass Subdivision, a distance of approximately 10.7 miles. The proposed changes include the removal of the power-operated switch machines from the control points at East and West Cañon City and East and West Parkdale, and their replacement with manual switch operating devices. In addition, the proposed changes include the removal of the electric switch locks from switches at Mileposts 159.2, 159.5, 159.9, and 160.1.

The reason given for the proposed changes is due to the Applicants' operational plan, which features a significant reduction in the size and number of trains, and reduction in hours of operation compared to the time when UP operated the trackage as a mainline through route. The UP closed the trackage as a through route in August 1997, and in 1998 sold the portion of trackage from Cañon City to Parkdale to RGX. The line was severed and RGX acquired a stub-ended branch line, accessible only from the Cañon City end of the line, with no potential for through traffic.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2007–28293 and may be submitted by one of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or
- *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

Issued in Washington, DC, on June 28, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–13027 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–06–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, 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 23, 2007. No comments were received.

DATES: Comments must be submitted on or before August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Linden Houston, Program Manager, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–4839, or e-mail: *Linden.Houston@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Conveyance of Port Facility Property.

OMB Control No.: 2133–0524.

Type of Request: Extension of currently approved collection.

Affected Public: Eligible port entities.

Forms: MA–1047.

Abstract: Public Law 103–160, which is included in 40 U.S.C. 554 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for the development or operation of a port facility. The information collection will allow MARAD to approve the conveyance of property and administer the port facility conveyance program. The collection is necessary for MARAD to determine whether the community is committed to the redevelopment/reuse plan; the redevelopment/reuse plan is viable and is in the best interest of the public; and the property is being used in accordance with the terms of the conveyance and applicable statutes and regulations.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Public Law 103–160, which is included in 40 U.S.C. 554 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for the development or operation of a port facility. The information collection will allow MARAD to approve the conveyance of property and administer the port facility conveyance program.

Annual Estimated Burden Hours: 1280 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: MARAD Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: June 29, 2007.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–13015 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–27181 (Notice No. 07–5]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA) DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on an information collection under Office of Management and Budget (OMB) Control No. 2137–0586, pertaining to Hazardous Materials Public Sector Training and Planning Grants. PHMSA will request approval from OMB for a revision to the current information collection. The revision implements a statutory provision authorizing PHMSA to

request information from states concerning fees related to the transportation of hazardous materials. In addition, we are revising the current information collection to include more detailed information from grantees to enable us to more accurately evaluate the effectiveness of the grant program in meeting emergency response planning and training needs.

DATES: Interested persons are invited to submit comments on or before September 4, 2007.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2007–27181) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, 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:* Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at *http://dms.dot.gov.* Note that comments received will be posted without change to *http://dms.dot.gov* including any personal information provided.

Requests for a copy of the information collection should be directed to Deborah Boothe or T. Glenn Foster, U.S. Department of Transportation, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, U.S. Department of Transportation, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), Title 5, Code of Federal Regulations requires PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection PHMSA is submitting to OMB for revision under OMB Control Number 2137–0586. This collection is contained in 49 CFR Part 110, Hazardous Materials Public Sector Training and Planning Grants. We are proposing to revise the information collection to implement a statutory provision authorizing PHMSA to request information from states concerning fees related to the transportation of hazardous materials. In addition, we are proposing to revise the current information collection to include more detailed information from grantees to enable us to more accurately evaluate the effectiveness of the grant program in meeting emergency response planning and training needs.

State and Tribal Hazardous Materials Fees

Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) specifies that Hazardous Materials Emergency Preparedness (HMEP) grant funds are to be allocated based on the needs of states and Indian tribes for emergency response planning and training, considering a number of factors including whether the state or tribe imposes and collects a fee on the transportation of hazardous materials and whether the fee is used only to carry out a purpose related to the transportation of hazardous materials. 40 U.S.C. 5116(b)(4). Accordingly, the HMEP grant application procedures in Part 110 require applicants to submit a statement explaining whether the applicant assesses and collects fees for the transportation of hazardous materials and whether those fees are used solely to carry out purposes related to the transportation of hazardous materials.

Section 5125(f) of the Federal hazmat law permits a State, political subdivision of a state, or Indian tribe to impose a fee related to the transportation of hazardous materials only if the fee is fair and used for a purpose related to transporting hazardous materials, including enforcement and planning, developing, and maintaining a capability for emergency response. In accordance with § 5125, the Department of Transportation may require a state, political subdivision of a State, or Indian tribe to report on the fees it collects, including: (1) The basis on which the fee is levied; (2) the purposes for which the revenues from the fee are used; and (3) the total amount of annual revenues collected from the fee. Until now, we have not proposed asking States, political subdivisions, or Indian tribes to report this information.

In response to our February 26, 2007 notice [72 FR 8421] concerning the renewal of the OMB approval of the information collection required of applicants for HMEP grants, we received one comment from the Interested Parties for Hazardous Materials Transportation urging us to require grant applicants to report on the hazardous materials fees they collect in accordance with § 5125(f) of the Federal hazmat law. The commenter states that such information is important for both the agency and the regulated community to determine if States are in compliance with applicable provisions of the Federal hazmat law.

We agree that we should ask States and Indian tribes to provide more detailed information about hazardous materials fees they collect. This information will help us to evaluate more fully the emergency response funding needs of States and Indian tribes, thereby promoting more effective use of HMEP grant funds. In addition, information about fees will assist us in targeting our safety assistance team activities to specific regions. Comprehensive information on the assessment, collection, and use of State and tribal fees related to the transportation of hazardous materials is not available from other sources. Only the State or Indian tribe assessing the fee can be expected to accurately report on the purposes for which the fees are assessed and the total amount of fee revenue collected each year.

Therefore, we are revising the instructions for submitting an HMEP grant application to request that applicants expand on the currently required statement explaining whether the State or Indian tribe assesses and collects fees on the transportation of hazardous materials and whether such fees are used solely for purposes related to the transportation of hazardous materials. Beginning with the application for FY 2008 funds, applicants will be asked to respond to the following additional questions:

1. Does your State or tribe assess a fee or fees in connection with the transportation of hazardous materials?

2. If the answer to question 1 is ''yes,''

a. What State agency administers the fee?

b. What is the amount of the fee and the basis on which the fee is assessed? Examples of the bases on which fees may be assessed include: (1) An annual fee for each company which transports hazardous materials within your state or tribal territory; (2) a fee for each truck or vehicle used to transport hazardous materials within your State or tribal

territory; (3) a fee for certain commodities or quantities of hazardous materials transported in your State or tribal territory; or (4) a fee for each hazardous materials shipment transiting your state or tribal territory.

c. Is company size considered when assessing the fee? For instance, do companies meeting the Small Business Administration's (SBA) definition of a small business pay the same or lesser fee amount than companies that do not meet the SBA definition?

d. For what purpose(s) is the revenue from the fee used? For example, is the revenue used to support hazardous materials transportation enforcement programs? Is the fee used to support planning, developing, and maintaining an emergency response capability?

e. What is the total annual amount of the revenue collected for the last fiscal year or 12-month accounting period?

We do not anticipate that responding to these questions will significantly add to the total time required to complete the HMEP grant application. First, it is our understanding that many States and Indian tribes do not collect fees in connection with the transportation of hazardous materials. For those entities, there will be no additional time required to complete the application. For States and Indian tribes that do collect such fees, we estimate that responding to the question will add approximately two hours to the total time required to complete the HMEP application. Last year, 12 States and Indian tribes reported through their grant applications that they collect fees related to the transportation of hazardous materials. Therefore, for purposes of this information collection approval request, we estimate that 12 States and Indian tribes collect fees for which the additional information will be required.

HMEP Performance Reports

HMEP grant recipients are required to monitor the performance of the activities supported by the grant funds to ensure compliance with Federal requirements and achievement of performance goals. Recipients must submit performance reports covering the activities funded by the HMEP grants. The performance reports are to include a comparison of actual accomplishments to the goals and objectives established for the performance period and the reasons for not achieving those goals and objectives, if applicable.

For planning grants, activities eligible for funding include:

(1) Development, implementation, and improvement of emergency plans and exercises that test the plan;

(2) Assessments to determine hazardous materials flow patterns;

(3) Assessments of emergency response capabilities;

(4) Emergency response drills and exercises associated with emergency preparedness plans; and

(5) Technical staff to support the planning effort.

For training grants, eligible activities include:

(1) Assessments of the number of public sector employees who need training;

(2) Development and delivery of comprehensive training to public sector employees, including activities necessary to monitor this activity, such as examinations, critiques, and instructor evaluations;

(3) Management of the training program to achieve increased benefits, proficiency, and rapid deployment of emergency responders.

Grant recipients generally provide performance reports detailing how HMEP grants were expended and the state or Indian tribe's achievements related to its planning and training efforts. These performance reports are used to evaluate the effectiveness of the HMEP grant program in improving hazardous materials transportation emergency response programs nationwide. We note in this regard that the National Transportation Safety Board (NTSB) recently completed its investigation of a July 10, 2005 railroad accident involving a head-on collision of two freight trains in Anding, Mississippi. As a result of its investigation, the NTSB issued several recommendations concerning emergency response communication and coordination. The NTSB specifically recommended that PHMSA require and verify that states and their communities receiving funds through the HMEP grant program conduct training exercises and drills with the joint participation of railroads and other transporters of hazardous materials as a means to evaluate state, regional, and local emergency response plans. We are considering how to address the NTSB recommendation; in the meantime, we strongly encourage HMEP grant recipients to conduct such exercises and drills.

To increase the transparency of the programs funded by HMEP grants and to enable us to more accurately evaluate the effectiveness of the HMEP program in meeting emergency response planning and training needs, beginning in 2008, we are proposing to ask HMEP grant recipients to report the following information in their performance reports:

Planning Grants

1. Did you complete or update assessments of commodity flow patterns in your jurisdiction? If so, how many and what were the results of those assessments? What was the amount of planning dollars devoted to this effort? What percentage of total planning dollars does this represent?

2. Did you complete or update assessments of the emergency response capabilities in your jurisdiction? What factors did you consider to complete such assessments? How many assessments were completed and what were the results of those assessments? What was the amount of HMEP planning grant funds devoted to this effort? What percentage of total HMEP planning grant funds does this represent?

3. Did you develop or improve emergency plans for your jurisdiction? If so, how many plans were either developed or updated? Briefly describe the outcome of this effort. What was the amount of HMEP planning grant funds devoted to this effort? What percentage of total HMEP planning grant funds does this represent?

4. Did you conduct emergency response drills or exercises in support of your emergency plan? How many exercises or drills did you conduct? Briefly describe the drill or exercise (tabletop, computer simulation, real-world simulation, or other drill or exercise), the number and types of participants, including shipper or carrier participants, and lessons learned. What was the amount of HMEP planning grant funds devoted to this effort? What percentage of total HMEP planning grant funds does this represent?

5. Did you use HMEP planning grant funds to provide technical staff in support of your emergency response planning program? If so, what was the amount of HMEP planning grant funds devoted to this effort? What percentage of total HMEP planning grant funds does this represent?

6. How many Local Emergency Planning Committees (LEPCs) are located in your jurisdiction? How many LEPCs were assisted using HMEP funds? What was the amount of HMEP planning grant funds devoted to such assistance? What percentage of total HMEP planning grant funds does this represent?

Training Grants

1. Did you complete an assessment of the training needs of the emergency response personnel in your jurisdiction? What factors did you consider to complete the assessment? What was the result of that assessment? What was the amount of HMEP training grant funds devoted to this effort? What percentage of total HMEP training grants funds does this represent?

2. Provide details concerning the number of individuals trained in whole or in part using HMEP training grant funds. You should include separate indications for the numbers of fire, police, emergency medical services (EMS) or other personnel who were trained and the type of training provided based on the categories listed in standards published by the Occupational Safety and Health Administration at 29 CFR 1910.120 pertaining to emergency response training. (Note that ''other'' personnel include public works employees, accident clean-up crews, and liaison and support officers. Note also that if HMEP training grant funds were used in any way to support the training, such as for books or equipment, you should show that the training was partially funded by HMEP training grant funds.) What was the amount of training dollars devoted to this effort? What percentage of total training dollars does this represent?

3. Did you incur expenses associated with training and activities necessary to monitor such training, including, for example, examinations, critiques, and instructor evaluations? What was the amount of HMEP training grant funds devoted to this activity? What percentage of total HMEP training grant funds does this represent?

4. Did you provide incident command systems training? If so, provide separate indications for the numbers of fire, policy, EMS, or other personnel who were trained. What was the amount of HMEP training grant funds devoted to this effort? What percentage of total HMEP training grant funds does this represent?

5. Did you develop new training using HMEP training grant funds in whole or in part, such as training in handling specific types of incidents or specific types of materials? If so, briefly describe the new programs. Was the program qualified using the HMEP Curriculum Guidelines process? What was the amount of HMEP training grant funds devoted to this effort? What percentage of total HMEP training grant funds does this represent?

6. Did you use HMEP training grant funds to provide staff to manage your training program to increase benefits, proficiency, and rapid deployment of emergency responders? If so, what was the amount of HMEP training grant funds devoted to this effort? What percentage of total HMEP training grant funds does this represent?

7. Do you have a system in place for measuring the effectiveness of emergency response to hazardous materials incidents in your jurisdiction? Briefly describe the criteria you use (total response time, total time at an accident scene, communication among different agencies or jurisdictions, or other criteria). How many State and local response teams are located in your jurisdiction? What is the estimated coverage of these teams (*e.g.*, the percent of state jurisdictions covered)?

Overall Program Evaluation

1. Using a scale of 1–5 (with 5 being excellent and 1 being poor), how well has the HMEP grants program met your need for preparing hazmat emergency responders?

2. Using a scale of 1–5 (with 5 being excellent and 1 being poor), how well do you think the HMEP grants program will meet your future needs?

3. What areas of the HMEP grants program would you recommend for enhancement?

We do not anticipate that responding to these questions will add significantly to the total time required to complete performance reports. HMEP grant recipients are required to submit performance reports, most of which should include some or all of the information we are requesting. We estimate that providing the specific information requested will add approximately three hours to the total time required for each grant recipient to complete its performance reports.

The questions listed above are intended to ensure that performance reports focus on results and include quantitative data on the planning and training programs funded by the HMEP grants. This data will enable us to more accurately assess the planning and training activities conducted by grant recipients and, thus, to evaluate the overall effectiveness of the HMEP program in improving overall hazardous materials transportation emergency preparedness and response. The data and information requested is only available from the states and Indian tribes participating in the HMEP grants program.

The total revised information collection budget for the HMEP grants program follows:

Title: Hazardous Materials Public Sector Training and Planning Grants.

OMB Control Number: 2137–0586.

Type of Request: Revision of a currently approved information collection.

Abstract: Part 110 of 49 CFR sets forth the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of states, Indian tribes and local communities to manage hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, and reporting and requesting modifications.

Affected Public: State and local governments, Indian tribes.

Recordkeeping:

Estimated Number of Respondents: 66.

Estimated Number of Responses: 66.

Estimated Annual Burden Hours: 4,302.

Frequency of collection: On occasion.

Issued in Washington, DC on June 29, 2007.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. E7–13007 Filed 7–3–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35051]

Progressive Rail Inc.—Acquisition of Control Exemption—Central Midland Railway Company

Progressive Rail Inc. (PRI), a Class III rail carrier,[1] has filed a verified notice of exemption to acquire control of Central Midland Railway Company (CMR), also a Class III rail carrier, pursuant to a stock purchase agreement.[2] CMR currently leases and operates a rail line of Missouri Central Railway Co., and a rail line of Union Pacific Railroad Company.[3]

The transaction is scheduled to be consummated on or about July 19, 2007.

[1] PRI owns rail property interests in the States of Minnesota, Wisconsin and Iowa.

[2] A redacted version of the stock purchase agreement between CMR and PRI was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The request for a protective order is being addressed in a separate decision.

[3] Both rail lines are located in the State of Missouri.

PRI represents that: (1) The involved railroads do not connect with each other or with other railroads in their corporate families; (2) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate families; and (3) the transaction does not involve a Class I rail carrier.[4] Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35051, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 26, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams.

Secretary.

[FR Doc. E7–12753 Filed 7–3–07; 8:45 am]

BILLING CODE 4915–01–P

[4] In addition to its verified notice of exemption, PRI submitted a facsimile letter dated June 21, 2007, confirming that the qualifications at (i) and (ii) of 49 CFR 1180.2(d)(2) had been met.

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Terminations: Factory Mutual Insurance Company (NAIC #21482), Affiliated FM Insurance Company (NAIC #10014)

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury

ACTION: Notice.

SUMMARY: This is Supplement No. 17 to the Treasury Department Circular 570, 2006 Revision, published June 30, 2006, at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to the above-named companies under 31 U.S.C. 9305 to qualify as acceptable sureties on Federal bonds were terminated effective August 17, 2006. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2006 Revision to reflect this change.

With respect to any bonds currently in force with these companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these companies, and bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: June 22, 2007.

Rose M. Miller,

Acting Director, Financial Accounting and Services Division, Financial Management Service

[FR Doc. 07–3239 Filed 7–3–07; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Thursday,
July 5, 2007

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 375, 383, et al.

Amendments To Implement Certain Provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 375, 383, 384, 385, 386, 390, and 395

RIN 2126–AA96

Amendments To Implement Certain Provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Final Rule

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) adopts as final certain regulations required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). These regulations govern State compliance plans under the Motor Carrier Safety Assistance Program; withholding of Federal-aid highway funds based on State noncompliance with the Commercial Driver's License Program; intrastate operations of interstate motor carriers; civil penalties and disqualifications for violations of out-of-service orders; civil penalties for denial of access to records and property and for violations of statutes and regulations governing hazardous materials transportation; exemption from the Federal hours-of-service regulations for operators of commercial motor vehicles engaged in certain defined operations; exemption of drivers of propane service or pipeline emergency vehicles during emergency conditions requiring immediate response; and interstate transportation of household goods. The SAFETEA–LU provisions requiring these rules became effective on August 10, 2005. Adoption of the rules is a nondiscretionary ministerial action that can be taken without issuing a notice of proposed rulemaking and receiving public comment, in accordance with an exception available to Federal agencies under the Administrative Procedure Act.

EFFECTIVE DATE: September 4, 2007. *Petitions for Reconsideration* must be received by the Agency not later than September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Frederic L. Wood, Office of Chief Counsel, Regulatory Affairs Division (MC–CCR), Federal Motor Carrier Safety Administration, Room W61–307, 1200 New Jersey Avenue, SE., Washington, DC 20590; by telephone at (202) 366–0834, or by electronic mail at *frederic.wood@dot.gov*.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

This final rule is based on the authority of the Federal Motor Carrier Safety Administration (FMCSA) to implement statutory directives enacted by several provisions of the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1144 (Aug. 10, 2005) (SAFETEA–LU). SAFETEA–LU enacted a wide range of provisions modifying various regulatory programs administered by FMCSA affecting motor carriers and related entities. A number of statutory provisions made changes that were mandatory, and their implementation does not require the exercise of discretion by FMCSA.

These statutory changes went into effect upon enactment of SAFETEA–LU on August 10, 2005. However, it is necessary to make conforming changes in the regulations administered by FMCSA to ensure these rules are consistent with the applicable statutes and can be applied and enforced. The provisions enacted by SAFETEA–LU and implemented in this final rule are as follows:

1. Section 4102 Increased penalties for out-of-service violations and false records.
2. Section 4103 Penalty for denial of access to records.
3. Section 4106 Motor carrier safety grants.
4. Section 4107 High Priority Activities and New Entrant Audits.
5. Section 4114 Intrastate operations of interstate motor carriers.
6. Section 4124(c) Commercial driver's license improvements; amounts withheld.
7. Section 4130 Operators of vehicles transporting agricultural commodities and farm supplies.
8. Section 4132 Hours of service for operators of utility service vehicles.
9. Section 4133 Hours-of-service rules for operators providing transportation to movie production sites.
10. Section 4146 Exemption during harvest periods.
11. Section 4147 Emergency condition requiring immediate response.
12. Section 4202 Household goods carriers—Definitions; application of provisions.
13. Section 4203 Household goods carriers—Payment of rates.
14. Section 4205 Household goods carrier operations.
15. Section 4207 Household goods carriers—Liability of carriers under receipts and bills of lading.
16. Section 4208 Household goods carriers—Arbitration requirements.
17. Section 4210 Household goods carriers—Penalties for holding household goods hostage.
18. Section 7112 Unsatisfactory safety ratings.
19. Section 7120 Civil penalty.

Each of the statutory provisions listed above may be incorporated in regulations adopted by FMCSA under authority granted by one or more of the following provisions: 49 U.S.C. 502, 13301, 31102, 31136, or 31317. FMCSA is authorized to implement these statutory provisions by delegation from the Secretary of Transportation in 49 CFR 1.73.

As noted previously, Congress gave the Agency no discretion with respect to implementation of these SAFETEA–LU provisions, and the action taken in this final rule is necessary to conform the Agency's regulations to the statutory directives. Therefore, the Agency may adopt this rule without issuing a notice of proposed rulemaking and receiving public comment, in accordance with an exception available to Federal agencies under the Administrative Procedure Act. The *Rulemaking Analyses and Notices* section of this preamble explains why notice and comment is not required for this final rule.

The final rule adopts these nondiscretionary ministerial regulations under title 49 of the Code of Federal Regulations. The specific changes necessary to conform the regulations to the statutory provisions are described in the next section.

SAFETEA–LU Provisions Implemented by the Final Rule

The Federal Motor Carrier Safety Regulations (FMCSRs) amended by this final rule encompass diverse subject areas. These subject areas include State compliance plans under the Motor Carrier Safety Assistance Program; withholding of Federal-aid highway funds based on State noncompliance with the Commercial Driver's License Program; intrastate operations of interstate motor carriers; civil penalties and disqualifications for violations of out-of-service (OOS) orders; civil penalty assessments applicable to motor carriers, brokers, and freight forwarders for denial of access to records and property; civil penalties for violations of statutes and regulations governing hazardous materials transportation; exemption from the Federal hours-of-service regulations for operators of commercial motor vehicles (CMVs) engaged in certain defined operations; exemption of drivers of propane service or pipeline emergency vehicles during emergency conditions requiring immediate response; and interstate

transportation of household goods.[1] The following discussion organizes by FMCSR subject area the SAFETEA–LU provisions implemented by this final rule. Under *Section-by-Section Discussion of Amendments to the FMCSRs*, we discuss in order of their appearance in the Code of Federal Regulations the specific conforming amendments being adopted.

Motor Carrier Safety Assistance Program (MCSAP) Grants—State Compliance Plans

Sec. 4106 of SAFETEA–LU (119 Stat. 1717) amends 49 U.S.C. 31102(b)(1) to modify and augment the conditions a State must meet to qualify for basic program funds under the MCSAP. The statute requires a State to document in the State Commercial Vehicle Safety Plan (CVSP) its commitment to meet the following seven additional conditions:

- Deploy technology to enhance the efficiency and effectiveness of CMV safety programs;
- Establish a program to ensure that accurate, complete, and timely motor carrier safety data are collected and reported to the Secretary of Transportation (Secretary);
- Participate in a national motor carrier safety data correction system prescribed by the Secretary;
- Include, in both the training manual for the licensing examination to drive a non-CMV and the training manual for the licensing examination to drive a CMV, information on best practices for driving safely in the vicinity of noncommercial and commercial motor vehicles;
- Enforce the registration (operating authority) requirements of 49 U.S.C. 13902 by prohibiting the operation of any vehicle discovered to be operated by a motor carrier without the required operating authority or beyond the scope of the motor carrier's operating authority;
- Conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors; and
- Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.

Sec. 4106 also modifies the benchmark by which the State ensures the continuity of annual State expenditures for CMV safety programs documented in the CVSP. Prior to enactment of SAFETEA–LU, section 31102(b)(1)(E) required that the State's total annual expenditures for CMV safety programs ''be maintained at a level at least equal to the average level of such expenditures for fiscal years 1997, 1998, and 1999.'' Sec. 4106 updates and standardizes this benchmark by replacing the words ''for fiscal years 1997, 1998, and 1999'' with the words ''3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year.'' This new benchmark ensures aggregate annual expenditures for CMV safety programs reflect the States' previous levels of effort.

Additionally, sec. 4106 amends section 31102(c) to provide that a State may use a portion of MCSAP grant funds to conduct documented enforcement of State traffic laws—both laws and regulations designed to promote the safe operation of CMVs and laws and regulations relating to non-CMVs, when necessary to promote the safe operation of CMVs—provided the State maintains a level of motor carrier safety activities at least equal to its average level of such activities for fiscal years 2003, 2004, and 2005. However, the statute limits the portion of MCSAP basic program funds a State may use for noncommercial motor vehicle-related enforcement activities to no more than 5 percent, unless the Secretary determines a higher percentage will result in significant increases in CMV safety.

Sec. 4107(a) of SAFETEA–LU amends 49 U.S.C. 31104 to add a provision specifying the safety performance criteria for distribution of High Priority Activity funds as part of the MCSAP grants, as well as the set-aside amounts and eligible grant recipients. Under the newly enacted and currently effective provisions of section 31104(k)(2), the Secretary may set aside up to $15,000,000 for each fiscal year through 2009 for States, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. Sec. 31104(k)(4) provides that at least 90 percent of the amounts set aside shall be awarded in grants to State and local government agencies.

Sec. 4107(b) amends section 31144 to add a similar provision concerning New Entrant Funds. Under the newly enacted and currently effective provisions of section 31144(f), the Secretary shall set aside up to $29,000,000 from MCSAP grant funds per fiscal year and may make grants from this amount to State and local governments for new entrant motor carrier audits, without requiring a matching contribution from such governments. In addition, if the Secretary determines that a State or local government is not able to use government employees to conduct new entrant motor carrier audits, the Secretary may use the funds set aside to conduct such audits for the State or local government.

Withholding of Federal-Aid Highway Funds Based on State Noncompliance With the Commercial Driver's License Program

Sec. 4124(c) of SAFETEA–LU (119 Stat. 1730) amends 49 U.S.C. 31314(a) and (b) by providing that the Secretary shall withhold from a State, based on noncompliance with the Commercial Driver's License (CDL) Program, ''up to'' a specified percentage (5 percent and 10 percent for the first and subsequent years, respectively) of Federal-aid highway funds apportioned to the State under 23 U.S.C. 104(b)(1), (3), and (4). As the Federal-aid withholding amounts previously were fixed at the above-noted percentages, this provision allows FMCSA a certain amount of discretion in determining the amount of Federal-aid highway funds to be withheld from a given State.

Intrastate Operations of Interstate Motor Carriers

Sec. 4114 of SAFETEA–LU (119 Stat. 1725) amends 49 U.S.C. 31144 by enhancing FMCSA's regulatory authority over the intrastate operations of interstate motor carriers and by directing the Agency to consider, as part of determining the safety ratings of interstate carriers that also operate in Canada and Mexico, the carriers' safety records in those countries. Specifically, Sec. 4114(a) amends section 31144(a) to affirm the Agency's authority, for the purposes of determining safety fitness ratings, to consider ''among other things the accident record'' (i.e., record of crashes) and safety inspection records of ''an owner or operator operating in interstate commerce'' and also ''the accident record and safety inspection record of such owner or operator * * * in operations that affect interstate commerce.'' Motor carriers already are required by 49 CFR 390.15 to record intrastate accidents on their accident registers. See *Accident Recordkeeping Requirements* issued by the Federal Highway Administration (FMCSA's predecessor organization within the

[1] These FMCSR sugject areas more precisely reflect the regulatory topics affected by the SAFETEA–LU provisions than do the SAFETEA–LU section titles listed in *Legal Basis for the Rulemaking*.

U.S. Department of Transportation), which clarified the definition of ''accident'' in 49 CFR 390.5 (60 FR 44439, Aug. 28, 1995). The provisions of section 31144(a)(1)(A), as amended by SAFETEA–LU, remove any uncertainty about the Agency's authority to utilize such data in determining a carrier's safety fitness. Additionally, sec. 4114(a) authorizes the Agency to consider such data from operations in Canada and Mexico, if the owner or operator also conducts operations within the United States.

Sec. 4114(b) provides that if FMCSA determines a motor carrier is unfit and prohibits the carrier from operating in interstate commerce, the Agency also must place out of service the carrier's operations affecting interstate commerce.

Finally, section 4114(c) provides that, if a State receiving MCSAP funds and using FMCSA's safety rating methodology prohibits the intrastate operations of a carrier whose principal place of business is in that State, FMCSA must take reciprocal action by prohibiting the motor carrier from operating in interstate commerce.

It should be noted that section 4114(a) allows FMCSA to utilize, for purposes of evaluating the safety fitness of motor carriers that operate in the United States, data on ''the accident record and safety inspection record * * * in operations in Canada and Mexico'' whether the owner or operator is domiciled in Canada, Mexico, or the United States. This amendment expands the scope of 49 U.S.C. 31144(a)(1), but it is not an exercise of extraterritorial jurisdiction, because any fitness determinations resulting from utilization of this additional data would be effective only in the United States. Procedures for conducting compliance reviews on Mexico-domiciled carriers are set forth in part 385, subpart B; and FMCSA selectively conducts compliance reviews on Canada-domiciled motor carriers as appropriate. Discussions on harmonizing procedures for safety fitness determinations and expanding data sharing efforts are currently in progress with Mexico and Canada. Implementation of such agreements and procedures will be necessary to make more Canadian and Mexican data available for this purpose.

Civil Penalties and Disqualifications for Violations of Out-of-Service Orders

Sec. 4102(b)(2)–(4) of SAFETEA–LU (119 Stat. 1715) amends 49 U.S.C. 31310(i)(2) by increasing minimum CDL disqualification periods and civil penalty amounts applicable to drivers convicted of violating a driver or vehicle OOS order. It also increases the maximum civil penalty assessment applicable to employer violations of OOS orders.[2] These changes are as follows:

Minimum CDL disqualification periods. Sec. 4102(b) increases the minimum CDL disqualification periods applicable to drivers convicted of violating a driver or vehicle OOS order while transporting nonhazardous materials. Under previous 49 U.S.C. 31310(i)(2), such a driver must be disqualified from operating a CMV for no less than 90 days for the first conviction and at least 1 year for the second conviction. Sections 4102(b)(2) and (3) amend section 31310(i)(2) by increasing these minimum disqualification periods to 180 days for the first conviction and 2 years for the second conviction.

SAFETEA–LU does not affect the maximum disqualification periods prescribed in the FMCSRs for violating an OOS order. The minimum and maximum disqualification periods in the FMCSRs for OOS violations while transporting hazardous materials are also unchanged.

Minimum civil penalty assessments on drivers. Sec. 4102(b) increases the minimum civil penalty assessments applicable to drivers convicted of an OOS violation. Under previous 49 U.S.C. 31310(i)(2)(A) and (B), such violations carried a minimum civil penalty of $1,000 for both a first and second conviction. Sections 4102(b)(2) and (3) amend section 31310(i)(2) by increasing the minimum penalty amount for the first and second convictions to $2,500 and $5,000, respectively.

Maximum civil penalty assessments on employers. Under previous 49 U.S.C. 31310(i)(2)(C), an employer that knowingly allowed or required an employee to operate a CMV in violation of an OOS order was liable for a civil penalty of not more than $10,000. Sec. 4102(b)(4) amends this section by increasing the maximum civil penalty assessment to $25,000.

[2] The changes in penalties made by sec. 4102(a) of SAFETEA–LU (amending 49 U.S.C. 521(b)(2)(B) to increase the penalties for recordkeeping and reporting violation) does not require any change in the FMCSRs because they are automatically implemented by 49 CFR 386.81. The new criminal offense for knowing and willful violation of an OOS order added to 49 U.S.C. § 31310(i)(2)(D) by 4102(b)(5) of SAFETEA–LU also does not require any changes in the FMCSRs because the general provisions of Title 18 U.S.C. referred to provide for and implement penalties for violations of Federal criminal statutes.

Transportation of Hazardous Materials—Civil Penalty For Violation of Out-of-Service Order

Sec. 7112 of SAFETEA–LU (119 Stat. 1899) amends 49 U.S.C. 5113 and 31144 to provide that an interstate motor carrier owning or operating CMVs designed or used to transport hazardous materials for which placarding of a motor vehicle is required under chapter 51 of 49 U.S.C., that operates in interstate commerce after being placed out of service because of a final ''unsatisfactory'' safety rating, is subject to the civil and criminal penalties set forth in 49 U.S.C. 5123 and 5124. Those are penalties for violations of the Hazardous Materials Regulations (HMRs) that are higher than those found in the general civil and criminal penalty provisions under 49 U.S.C. 521 for violations of the FMCSRs. The maximum penalties available are increased to $100,000 per offense in cases where a violation results in death, serious illness, or severe injury to any person or substantial destruction of property.

Civil Penalties for Violations of Statutes and Regulations Governing Hazardous Materials Transportation

Sec. 7120 of SAFETEA–LU (119 Stat. 1905) amends 49 U.S.C. 5123 and 5124 to revise the maximum and minimum civil penalties pertaining to violations of the HMRs, including violations related to hazardous materials training. The maximum penalties that may be applied are increased to $100,000 per offense in cases where a violation results in death, serious illness, or severe injury to any person or substantial destruction of property. The amendments to the FMCSRs allow FMCSA, in the exercise of its concurrent authority to enforce the HMRs, to apply the penalties prescribed in the hazardous materials law.

Civil Penalties For Motor Carriers, Freight Forwarders, and Brokers That Deny FMCSA the Right To Access Their Records and Facilities

Sec. 4103 of SAFETEA–LU (119 Stat. 1716) amends 49 U.S.C. 521 by adding section 521(b)(2)(E), ''Copying of records and access to equipment, lands, and building.'' This section establishes a civil penalty applicable to a person subject to 49 U.S.C. chapter 51, or to a motor carrier, broker, freight forwarder, or CMV owner or operator subject to part B of subtitle VI, who does not allow, upon demand, the Secretary (or an employee designated by the Secretary) to inspect and copy any record or inspect and examine equipment, lands, buildings, and other

property in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b). Motor carriers and other entities or persons subject to FMCSA regulations must promptly submit accounts, books, records, memoranda, correspondence, and other documents for inspection and copying, as well as make their lands, buildings, equipment, and other property available for examination and inspection by FMCSA (or an employee designated by FMCSA) upon demand and display of a proper credential. The civil penalty established in sec. 4103 for violating this requirement is not to exceed $1,000 for each offense. Each day that access is denied is considered a separate offense; however the total penalty for all offenses related to a single violation may not exceed $10,000.

The primary goal of sec. 4103 is to compel uncooperative parties subject to the FMCSRs and/or the HMRs to promptly produce relevant records and allow access to property upon demand by credentialed FMCSA employees. As provided in the last sentence of section 521(b)(2)(E), additional remedies under 49 U.S.C. 502(d) and 507(c) are available to FMCSA to address situations not covered by the civil penalties added by sec. 4103.

Exemptions From the Federal Hours-of-Service Rules for Operators of CMVs Engaged in Certain Defined Operations

The statutory history of these provisions is complex. First, Sec. 4115 of SAFETEA–LU (119 Stat. 1726) amends title II of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748–1773) (MCSIA) to add a new sec. 229, set out as a note to 49 U.S.C. 31136.[3] Section 229 then was amended by subsequent sections of SAFETEA–LU to revise or add exemptions from the Federal hours-of-service regulations for drivers in certain defined operations. See 49 U.S.C. 31136 note. These exemptions are as follows:

Drivers transporting agricultural commodities. Sec. 4130(a) of SAFETEA–LU (119 Stat. 1743) amends the new sec. 229(a)(1) of MCSIA to restate the previous exemption of certain drivers transporting agricultural commodities or farm supplies for agricultural purposes within a State from regulations regarding maximum driving and on-duty time during planting and harvesting periods (as determined by the State), provided the transportation is limited to an area within a 100 air-mile radius of the source of the commodities or the distribution point for the farm supplies. Section 4130(c) added to section 229 of MCSIA two definitions related to this exemption. Sec. 229(c)(7) defines ''agricultural commodity'' as ''any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) and insects).'' Sec. 229(c)(8) defines ''farm supplies for agricultural purposes'' as including ''products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed at any time of the year.''

Drivers of utility service vehicles. Sec. 4132 of SAFETEA–LU (119 Stat. 1744) further amends sec. 229(a) of MCSIA to add subsection (a)(4), which exempts drivers of utility service vehicles from the Federal hours-of-service regulations under the circumstances specified in the definition in subsection 229(c)(6) and prohibits enactment of similar regulations by States and other jurisdictions.

Drivers providing transportation to or from a motion picture production site. Sec. 4133 of SAFETEA–LU (119 Stat. 1744) (set out as a note to 49 U.S.C. 31136) provides that drivers transporting property or passengers to or from a theatrical or television motion picture production site located within a 100 air-mile radius of the driver's work-reporting location are exempt from the regulations currently in effect regarding maximum daily hours of service. Such drivers are subject instead to the maximum daily hours-of-service regulations in effect on April 27, 2003. At any time the driver operates beyond 100 air miles of the work-reporting location, this exception does not apply.

Exemption for the transportation of grapes in the State of New York during harvest periods. Sec. 4146 of SAFETEA–LU (119 Stat. 1749) suspends through fiscal year 2009 the applicability of regulations regarding maximum driving and on-duty time for drivers transporting grapes west of Interstate 81 in New York State during harvest periods (as determined by the State). This exception applies only if the transportation is within a 150 air-mile radius of where the grapes are picked and distributed.

Exemption of Drivers of Propane Service or Pipeline Emergency Vehicles During Emergency Conditions Requiring Immediate Response

Section 4147 of SAFETEA–LU (119 Stat. 1749) added a new subsection (f) to sec. 229 of MCSIA to provide an exception from regulations prescribed under the authority of 49 U.S.C. 31136 or 49 U.S.C. 31502 for drivers of CMVs used primarily in the transportation of propane winter heating fuel or used to respond to a pipeline emergency, if such a regulation would prevent the driver from responding to an emergency condition requiring immediate response. This exception applies to the driver, not to the CMV. Therefore, the regulations from which these drivers will be exempted while such emergency conditions prevail are limited to those in 49 CFR parts 390–399 that apply to the driver. The driver will not be exempted from the controlled substances and alcohol use and testing regulations and the commercial driver's license regulations in parts 382 and 383, respectively, because those regulations are prescribed under 49 U.S.C. chapter 313 rather than under sections 31136 or 31502 specified in section 4147. *See also* 49 CFR 382.103(a), 382.107 (definition of commercial motor vehicle), 383.3(a), and 383.5 (definition of commercial motor vehicle), which continue to apply the controlled substance and alcohol use and testing regulations and the CDL regulations to drivers who might be exempt from other regulations under section 229(f) of MCSIA.

The exception applies only when an otherwise applicable regulation in parts 390–399 would prevent the driver from responding to an emergency condition requiring immediate response. The driver's exemption from applicable regulations is not automatic or carte blanche. Rather, the determination whether the exemption is applicable must be made on a case-by-case basis after consideration of all facts and circumstances related to the emergency condition. Further, the circumstances that may constitute emergency conditions requiring immediate response are not limited to those identified in the statute. Any claim by the motor carrier or the driver that circumstances not specified in the statute constitute such an emergency condition must be evaluated by motor carrier enforcement personnel on a case-by-case basis.

[3] Section 229 was previously enacted as sec. 345 of Public Law 104–59, 109 Stat. 613 (November 28, 1995) and was also set out as a note to 49 U.S.C. 31136.

Interstate Transportation of Household Goods

This final rule amends certain FMCSRs governing elements of the interstate transportation of household goods, as follows:

A. Definitions and Applicability

Sec. 4202(b) of SAFETEA–LU (119 Stat. 1751) amends 49 U.S.C. 13102 by adding the statutory definitions for ''household goods motor carrier'' and ''individual shipper.'' The new statutory definition for individual shipper modifies the existing definition in 49 CFR 375.103. This final rule adds to § 375.103 the statutory definition of a household goods motor carrier. Under the definition, a motor carrier that transports household goods is considered a household goods motor carrier if it offers some or all of four additional services: (1) Providing binding and nonbinding estimates; (2) inventorying; (3) protective packing and unpacking of individual items at personal residences; and (4) loading and unloading at personal residences. As required by the statute, the definition excludes a motor carrier transporting household goods in containers or trailers that are entirely loaded and unloaded by an individual who is not employed by or acting as an agent of the carrier. Only carriers that are considered household goods motor carriers are subject to the provisions of 49 CFR part 375.

Sec. 4202(c) of SAFETEA–LU provides that the statutes (and, by extension, the implementing regulations) governing the transportation of household goods apply only to household goods motor carriers, as now defined in 49 U.S.C. 13102. Household goods motor carriers are subject in addition to provisions of statutes and regulations applicable to all motor carriers of property, unless specifically excluded.

B. Payment of Transportation Charges

Sec. 4203 of SAFETEA–LU amends 49 U.S.C. 13707(b) to limit the transportation charges individual shippers must pay to household goods motor carriers to obtain delivery of a shipment of household goods and to regulate procedures concerning additional charges.

Estimated charges. The motor carrier is required to relinquish the household goods at destination upon payment by the individual shipper of either 100 percent of a binding estimate or not more than 110 percent of a non-binding estimate. However, if only partial delivery of the goods is made, the carrier may not charge more than a prorated percentage of either (1) the binding estimate or (2) up to 110 percent of the non-binding estimate. The prorated amount must be based on the percentage of the weight of that portion of household goods delivered relative to the total weight of the shipment.

Additional charges. As applicable, the carrier also may require at destination payment of charges for (1) additional services requested by the shipper and not included in the estimate (post-contract services) and (2) impracticable operations, as defined by the carrier's tariff. Charges collected at delivery for impracticable operations must not exceed 15 percent of all other charges due at delivery. However, the individual shipper must pay any remaining impracticable operations charges within 30 days after the carrier presents its freight bill.

C. Operations and Estimates

Sec. 4205 of SAFETEA–LU (119 Stat. 1753) amends 49 U.S.C. 14104(b) by requiring the household goods motor carrier to conduct a physical survey of the household goods to be transported on behalf of the individual shipper. The carrier must then provide the shipper with a written estimate, based on the physical survey, of charges for the transportation and all related services. The statute permits two exceptions to the requirement for a physical survey.

First, the motor carrier need not conduct a physical survey if the household goods are located beyond a 50-mile radius of the location of the carrier's household goods agent preparing the written estimate provided to the individual shipper.

Second, the individual shipper may elect to waive a physical survey of the household goods. Such a waiver agreement is subject to several requirements. The waiver must be in writing; it must be signed by the individual shipper before the household goods shipment is loaded; and the motor carrier must retain a copy of the waiver as an addendum to the bill of lading. The copy of the waiver agreement is subject to the same record retention requirements that apply to the bill of lading, as provided in § 375.505(d).

Section 4205 also codified or added certain requirements for household goods motor carriers to provide two informational publications to individual shippers—''Ready to Move?'' and ''Your Rights and Responsibilities When You Move'' or any successor publications.

D. Limitations on Liability and Released Rates

Sec. 4207 of SAFETEA–LU (119 Stat. 1757) amends the liability provisions in 49 U.S.C. 14706(f) to impose on the household goods motor carrier a ''full value protection obligation'' with respect to the individual shipper. The motor carrier is liable for the full value of household goods that are lost, damaged, destroyed or otherwise not delivered to the final destination unless the individual shipper waives such liability in writing. The carrier's liability is equal to the replacement value of the household goods, subject to a maximum amount equal to the declared value of the shipment and to rules issued by the Surface Transportation Board (STB) and applicable tariffs. If the household goods motor carrier receives from the individual shipper a written waiver of liability for full value protection, the released rates established by the STB shall apply.

E. Arbitration Requirements

Sec. 4208 of SAFETEA–LU (119 Stat. 1757) amends the provisions governing procedures for arbitration of disputes in 49 U.S.C. 14708 as follows—

Sec. 14708(b), as amended by section 4208(b), increases from $5,000 to $10,000 the threshold amount at which the carrier must agree to submit certain disputes to binding arbitration at the individual shipper's request. If the dispute involves a claim of $10,000 or less and the shipper requests arbitration, the arbitration shall be binding on the parties. If a shipper requests arbitration involving a claim of more than $10,000, the decision of the arbitrator shall be binding on the parties only if the carrier agrees to the arbitration. Sec. 14708(b) is further amended by section 4208(c) to provide that the arbitrator may, among other appropriate remedies listed in the statute, order the shipper to pay additional carrier charges.

F. Penalties for Holding Household Goods Hostage

Sec. 4210 of SAFETEA–LU (119 Stat. 1758) amends chapter 149 of title 49 U.S.C. to add section 14915, which makes household goods motor carriers subject to civil and criminal penalties, as well as to suspension of registration, for failure to give up possession of the household goods upon tender of appropriate payment by the individual shipper. The civil penalty shall be not less than $10,000 for each violation, and each day the household goods are held hostage constitutes a separate violation. A violation may additionally result in the suspension of the household goods

motor carrier's registration under the provisions of 49 U.S.C. chapter 139. These penalties complement the provisions for payment of rates added by sec. 4203 as discussed previously.

Section-by-Section Discussion of the FMCSR Amendments [4]

A. Part 350—Commercial Motor Carrier Safety Assistance Program

In part 350, we revise §§ 350.111, 350.201, 350.211, and 350.309 to implement the amended requirements in sec. 4106(c)(2) of SAFETEA–LU concerning MCSAP-eligible funding for documented enforcement of State and local traffic laws and regulations designed to promote the safe operation of CMVs and non-CMVs. We further amend § 350.201, and amend § 350.301, to align the qualifying conditions for MCSAP Basic Program Funds and expenditure levels with those in sec. 4106(a)(1)(A), (a)(2)(E), (a)(3)(Q), (A)(3)(U), (A)(3)(V), and (A)(3)(X). These expanded requirements are captured as well in amended § 350.211, which provides the required format of the certification necessary for receipt of MCSAP Basic Program funding. The revisions to § 350.111 include minor editorial clarifications.

Changes to part 350 also are required by sec. 4107 of SAFETEA–LU, which amends the provisions regarding High Priority Activity funds and adds provisions for New Entrant Funds. In § 350.105, we amend the definition for High Priority Activity Funds and add a definition for New Entrant Funds to implement sec. 4107(a) and (b), respectively. As required by sec. 4107(a), High Priority funds are now to be allocated only to ''State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies,'' and used for ''carrying out high priority activities and projects that improve commercial motor vehicle safety * * *.'' Additionally, projects eligible for high priority funds include demonstration of new technologies and public awareness and education.

We implement this heightened specificity regarding High Priority grant recipients not only in the amended definition under § 350.105 but also in § 350.313(c). The set-asides for High Priority and New Entrant grants provided in sec. 4107(a) and (b), respectively, are implemented in § 350.313(a). The High Priority annual set-aside (which is up to $15,000,000 for fiscal years 2006 through 2009) is implemented as well in § 350.319(d).

Similarly, § 350.321(d) provides that in each fiscal year the Administrator shall set aside for New Entrant activities an amount of MCSAP funding up to the maximum allowed by law. For each year, the maximum allowable amount is $29,000,000. To allow for future adjustments of the set-aside amounts by Congress, the regulatory text does not specify the amounts and applicable fiscal years. Section 350.321 (whose heading is revised to read, ''What are permissible uses of New Entrant Funds?'') provides in addition that FMCSA will allocate New Entrant funds to State and local governments without requiring a matching contribution.

We further implement sec. 4107 in § 350.329, whose heading is revised to read ''How may a State or local agency qualify for High Priority or New Entrant Funds?''

Finally, we remove § 350.217. This section concerns MCSAP grant funds authorized under sec. 103(b)(1) of MCSIA, which is no longer in effect.

B. Part 375—Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations

We amend § 375.103 to revise the definition of ''individual shipper'', to add a definition for ''household goods motor carrier'', as required by sec. 4202(b) of SAFETEA–LU, and to revise the related definitions of ''you'' and ''your'' to reflect the new definition. As sec. 4202(c) limits the applicability of the regulations governing interstate transportation of household goods to household goods motor carriers as defined in sec. 4202(b), we amend § 375.101, entitled ''Who must follow these regulations?'', to replace the words ''for-hire motor carrier'' with the words ''household goods motor carrier,'' consistent with the definition in § 375.103.

To implement the sec. 4207 requirement that the motor carrier provide the individual shipper with full value protection against loss of, or damage to, household goods, unless the shipper waives the carrier's full value liability in writing, we amend §§ 375.201(b) and (c), 375.501(a)(10), 375.505(b)(12), and the sections ''What Is My Mover's Normal Liability for Loss or Damage When My Mover Accepts Goods From Me?'' and ''What Actions by Me Limit or Reduce My Mover's Normal Liability?'' in subpart B of appendix A to part 375.

We amend § 375.211 to implement the sec. 4208 requirements governing arbitration of disputes between the carrier and shipper regarding loss of or damage to the household goods. The introductory text to amended § 375.211(a) implements the provision in section 4208(c) requiring arbitration on the issue of whether the individual shipper must pay additional carrier charges not collected at delivery. Sections 375.211(a)(7) and (8) implement the increased claim-amount thresholds at which arbitration requested by the individual shipper shall be binding, as provided in section 4208(b). Both provisions also are described in subpart B of appendix A to part 375, under ''Must My Mover Have an Arbitration Program?''. The section 4208(c) provision concerning payment of additional carrier charges not collected at delivery is described as well in the section ''Do I Have a Right To File a Claim To Recover Money for Property My Mover Lost or Damaged?'' under subpart H of this appendix.

We amend § 375.213 by revising paragraph (a) to implement the sec. 4205 requirement that the carrier provide the shipper a copy of the Department of Transportation publication FMCSA–ESA–03–005 entitled ''Ready to Move?'' (or its successor publication) [5] when providing the written estimate. We also make minor editorial revisions in § 375.213(c). We inform the individual shipper of the mover's obligation to provide him or her with a copy of ''Ready to Move?'' in ''What Information Must My Mover Provide Me?'' under subpart B of appendix A to part 375—the consumer pamphlet ''Your Rights and Responsibilities When You Move.''

The requirement in 49 U.S.C. 14104(b)(2) for the household goods motor carrier to provide the shipper with a copy of the publication ''Your Rights and Responsibilities When You Move'' is already contained in § 375.213. The contents of this publication are specified in Appendix A to part 375. The publication was reissued in 2006 (71 FR 17945, Apr. 7, 2006) to reflect most, but not all, of the statutory changes implemented by regulations now adopted in this final rule.[6] The revised publication, which also includes the remaining changes required by SAFETEA–LU, together

[4] To achieve a logical sequence of regulatory provisions, certain of the amended FMCSR sections include paragraphs that are redesignated (i.e., renumbered) but not otherwise revised.

[5] This publication is available on the FMCSA's Protect Your Move Web site at *http://www.protectyourmove.gov/documents/ReadyToMove-2006-april.pdf.*

[6] The current version of this publication, No. FMCSA–ESA–03–006, is also available on the same Web site at *http://www.protectyourmove.gov/documents/moving-rights-v9-final.pdf.*

with certain clarifying edits, is being published in this final rule.

We amend §§ 375.401(a), 375.403(a), and 375.405(b)(1) to implement the sec. 4205 requirement that the motor carrier's written estimate (whether binding or non-binding) be based on a physical survey of the household goods. The two exceptions to this requirement—the physical survey is not required if the household goods are located beyond a 50-mile radius of the carrier's agent preparing the estimate or if the shipper waives the requirement in writing—are found in amended §§ 375.401(a)(1) and (2). Amended §§ 375.403(a) and 375.405(b) include minor editorial revisions. Corresponding information is provided to the individual shipper in the section ''Must My Mover Estimate the Transportation and Accessorial Charges for My Move?'' under subpart D of Appendix A to part 375.

We further amend §§ 375.401, 375.403, 375.405, and 375.407 to implement certain provisions of 49 U.S.C. 13707(b), as amended by sec. 4203 of SAFETEA–LU. Under amended section 13707(b)(3)(C), the motor carrier may charge the shipper at delivery for post-contract services requested by the shipper. Post-contract services means services requested by the individual shipper after the bill of lading, which contains the terms and conditions of the contract between the carrier and the individual shipper, has been issued as provided in 49 CFR 375.505(a). Under amended section 13707(b)(3)(D), the carrier may require the shipper to pay charges at delivery for impracticable operations, provided these charges do not exceed 15 percent of all other charges due at delivery, and allow the shipper only a 30-day credit period for the remaining charges. These rules are implemented in §§ 375.401(e), 375.403(a)(9) and (10); 375.405(b); 375.407(a), (b), and (d); 375.703, 375.707(a)(2) and (3); 375.807(c)(1); and appendix A to part 375. A minor, clarifying editorial revision is included in § 375.407(b).

The Appendix A revisions noted above are found in subparts D, G, and H. See ''Must My Mover Estimate the Transportation and Accessorial Charges for My Move?''; ''How Must My Mover Estimate Charges Under the Regulations?''; and ''What Payment Arrangements Must My Mover Have in Place To Secure Delivery of My Household Goods Shipment?'' in subpart D; ''What Is the Maximum Collect-on-Delivery Amount My Mover May Demand I Pay at the Time of Delivery?'' in subpart G; and ''How Must My Mover Present Its Freight or Expense Bill to Me?''; ''If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Must My Mover Collect the Balance?''; and ''What Actions May My Mover Take To Collect From Me the Charges Upon Its Freight Bill?'' in subpart H.

We implement in § 375.707 the sec. 4203 prohibition (as codified in amended 49 U.S.C. 13707(b)(3)(B)) against a motor carrier's demanding full payment of freight charges at delivery after making only partial delivery of a shipment. Corresponding information is provided to individual shippers in the amended section ''If My Shipment Is Partially Lost or Destroyed, What Charges May My Mover Collect at Delivery?'' under subpart G of appendix A to part 375.

C. Part 383—Commercial Driver's License Standards; Requirements and Penalties

In part 383, we implement the increased civil penalty assessments against drivers and employers for violations of OOS orders (provided in sec. 4102(b)(2)–(4) of SAFETEA–LU) by amending § 383.53(b)(1) and (2), respectively. The increased minimum disqualification periods for drivers convicted of such violations are implemented in amended table 4 to § 383.51 (§ 383.51(e)).

D. Part 384—State Compliance With Commercial Driver's License Program

We implement the sec. 4124(c) provision concerning Federal-aid highway fund withholding amounts based on State noncompliance with the CDL Program in amended § 384.401(a) and (b), respectively (as renumbered as a result of the change described in the next paragraph), by replacing, in the phrase ''equal to 5 percent'' and the phrase ''equal to 10 percent,'' the words ''equal to'' with ''up to.'' We also add § 384.301(c), which allows States up to 3 years from the effective date of the final rule to come into compliance with the newly adopted requirements of subpart B to part 384. This provides sufficient time for the States to revise State legislation and establish procedures to incorporate the new requirements into existing systems.

In addition, this final rule makes a technical correction by removing §§ 384.401(a)(2) and (b)(2) and renumbers the preceding paragraphs accordingly. Like the previously discussed § 350.217, also being removed in this rule, §§ 384.401(a)(2) and (b)(2) refer to certain MCSAP grant funds authorized under sec. 103(b)(1) of MCSIA, which is no longer in effect.

E. Part 385—Safety Fitness Procedures

Sec. 4114 of SAFETEA–LU enhances FMCSA's regulatory authority over the intrastate operations of interstate motor carriers (*i.e.*, to intrastate operations affecting interstate commerce) and allows the Agency to consider, in determining the safety rating of an interstate carrier that also operates in Canada and/or Mexico, the carrier's safety records in those countries. We implement this requirement by adding a definition for ''motor carrier operations in commerce'' in § 385.3, amending the part 385 provisions concerning determination of motor carrier safety ratings, and amending the explanation of the safety rating process in appendix B to part 385.

''Motor carrier operations in commerce'' are defined as including both CMV transportation operations in interstate commerce and operations affecting interstate commerce in conformity with the statutory grant of authority. We use the term ''motor carrier operations in commerce'' throughout amended part 385—specifically §§ 385.7, 385.13, 385.17(g), and appendix B to part 385 (in new paragraph (f) and amended § II(B)). Minor editorial revisions are included in amended § 385.17(g) and § II(B) of appendix B to part 385.

To implement sec. 4114(a), which allows FMCSA to utilize among other things, for the purposes of safety ratings, the accident record and safety inspection record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of an owner or operator in operations that affect interstate commerce, both within the United States and (as such data becomes available) in operations in Canada and Mexico if the owner or operator also operates within the United States, we amend §§ 385.7(c), (d), (f), and (g).

We amend § 385.13(d)(1) to implement sec. 4114(b), which provides that if FMCSA determines that a motor carrier is unfit and then prohibits the carrier from operating in interstate commerce, the Agency also must place out of service any operations by the carrier that affect interstate commerce. Operations that affect interstate commerce are essentially any intrastate operation. We implement in § 385.13(d)(2) and (3) the complementary provision under sec. 4114(c) which requires that if a State receiving MCSAP funds and using FMCSA's safety rating methodology prohibits the intrastate operations of a carrier whose principal place of business is in that State, FMCSA must

take reciprocal action by prohibiting the motor carrier from operating in interstate commerce.

F. Part 386—Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings

In Appendix B to part 386, as required by sec. 7112 of SAFETEA–LU, we implement the increased maximum civil penalties to which motor carriers transporting hazardous materials in interstate commerce in quantities requiring placarding (in accordance with 49 U.S.C. chapter 51) are subject following receipt of a final ''unsatisfactory'' safety rating by revising paragraph (e)(1), revising and redesignating paragraph (e)(3), and adding paragraphs (e)(4) and (f)(2). The increased civil penalties in sec. 7120(a)(3) for violations of training-related HMRs are implemented in amended paragraph (e)(2) and new paragraph (f)(2) of this appendix B. New paragraphs (e)(5) and (f)(2) implement the higher civil penalties in sec. 7120(a)(2) for violations of statutes and regulations governing hazardous materials transportation where the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property.

New paragraph (g)(21) of this appendix B implements the civil penalty established in sec. 4210 of SAFETEA–LU for failure by a household goods motor carrier to relinquish a shipment for which the individual shipper has tendered payment in accordance with part 375. Lastly, we add paragraph (h) to this appendix B to implement the civil penalty established in sec. 4103 for a motor carrier, broker, or freight forwarder, or any person subject to 49 U.S.C. chapter 51, who denies FMCSA the right to access the company's records and facilities.

G. Part 390—Federal Motor Carrier Safety Regulations; General

In part 390, we implement sec. 4147 of SAFETEA–LU by adding to the existing exceptions in § 390.3(f) the exception for drivers responding to emergency conditions, and by adding in § 390.5 a definition for ''emergency condition requiring immediate response.'' As provided in §§ 382.103(c) and 383.3(b), the exceptions in § 390.3(f) are not applicable to part 382, Controlled Substances and Alcohol Use and Testing, and part 383, Commercial Driver's License Standards; Requirements and Penalties.

H. Part 395—Hours of Service of Drivers

Sec. 4130, 4132, 4133, and 4146 of SAFETEA–LU provide specific exceptions from the hours-of-service regulations for operators of vehicles transporting agricultural commodities and farm supplies, operators of utility service vehicles, transportation of property or passengers to or from motion picture production sites, and operators of CMVs transporting grapes west of Interstate 81 in the State of New York during a harvesting period, respectively. We implement sec. 4130 and 4132 by amending §§ 395.1(k)(2) and (n), respectively. Sec. 4133 is implemented by adding § 395.1(p), while the sec. 4146 exemption concerning the transportation of grapes during the harvest period in New York is implemented by adding § 395.1(q).

Rulemaking Analyses and Notices

Administrative Procedure Act

Generally agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the Administrative Procedure Act (APA), as provided in 5 U.S.C. 553(b) and (c). The APA, in 5 U.S.C. 553(b)(3)(B), provides a good cause exception from these requirements when notice and an opportunity to comment would be unnecessary. FMCSA finds that notice-and-comment is unnecessary prior to adoption of each provision in this final rule because the changes to regulations are statutorily mandated by Congress and the Agency is performing a nondiscretionary ministerial act. Therefore, notice-and-comment procedures under 5 U.S.C. 553 are not required by the APA and are not otherwise required by law.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA determined that this action does not meet the criteria for a ''significant regulatory action'' either as specified in Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, Feb. 26, 1979). Therefore, this rule has not been reviewed by the Office of Management and Budget (OMB). We anticipate the economic impact of this rulemaking will be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Costs and Benefits of Safety Regulations

Although a full regulatory evaluation is unnecessary because of the low economic impact of this rulemaking, FMCSA prepared a cost-benefit analysis of the impact of the various SAFETEA–LU provisions implemented by this final rule. This economic analysis examined each provision to determine whether it is economically significant, *i.e.*, whether it is likely to result in a cost of $100 million or more in any given year. FMCSA determined that the rule provisions, considered both individually and in the aggregate, will neither rise to the level of economic significance nor significantly impact public safety. The details of this cost-benefit analysis are provided in the Regulatory Evaluation developed by the Agency, which is available in the docket for this rulemaking.

Generally, the provisions of this final rule entail minor changes to operating procedures in specific segments of the industry that will have little if any impact on industry costs. Our analysis shows that the sec. 4114 provisions governing the intrastate operations of interstate carriers placed out of service as a result of an ''unsatisfactory'' safety rating, and the accident and safety records of interstate carriers while operating in Canada and/or Mexico, will negatively impact a small number of carriers. In addition, some motor carriers who transport household goods will bear added costs due to this rule. These provisions will not impose costs of $100 million or more in any one year. Moreover, given the poor safety ratings of the small number of motor carriers affected by the intrastate operations provision, placing their intrastate operations out of service would likely produce modest safety benefits. FMCSA believes, therefore, that the collective impacts of provisions in this final rule will not be economically significant.

Prior to prescribing any regulations under chapter 311 of title 49 U.S.C., FMCSA must consider their costs and benefits ''to the extent practicable and consistent with the purposes of'' that chapter. 49 U.S.C. 31136(c)(2)(A). The changes in 49 U.S.C. 31144 made by sec. 4114 of SAFETEA–LU are subject to this requirement. As indicated in the Regulatory Evaluation, these changes will result in a modest net safety benefit each year.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required

to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued a notice of proposed rulemaking prior to this action.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1532) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The regulations adopted in this final rule, taken together, will not impose an unfunded Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $128.1 million or more (as adjusted for inflation) in any one year. Therefore, FMCSA is not required either to consult with elected State officials or to comply with other requirements of this statute.

Executive Order 13132 (Federalism Assessment)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, Aug. 10, 1999). The requirements being promulgated in this final rule are required by statute. Although the regulation implementing sec. 4114 of SAFETEA–LU may appear, from a technical standpoint, to preempt State law, the Agency promulgates this rule exercising no discretion, since the statutory provisions are self-executing. Based on the preemptive effect of sec. 4114, FMCSA has consulted with elected State officials regarding the effects of this final rule. However, since this rule is not significant as defined by Executive Order 12866, no Federalism Summary Impact statement is required.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to the programs covered by this final rule.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. FMCSA analyzed each provision of this final rule and determined that certain provisions require changes to existing information collections (ICs). The IC revisions will require approval by OMB before taking effect. The affected ICs are titled ''Motor Carrier Safety Assistance Program'' (2126–0010), and ''Transportation of Household Goods; Consumer Protection'' (2126–0025).

In November 2006, the Agency published a **Federal Register** notice providing a 60-day comment period on its intent to request OMB approval of the revised ICs (71 FR 67198, Nov. 20, 2006). This notice sought comment on the revisions to the two ICs referred to above, as well as a third—''Commercial Driver Licensing and Test Standards'' (2126–0011). FMCSA has since determined that this final rule will not affect the currently approved information collection in this third item.

These two ICs affected by this final rule, and the total annual burden hours estimated by FMCSA, are as follows:

OMB Control Number: 2126–0010.

Title: Motor Carrier Safety Assistance Program.

Type of Review: Revision of a currently approved collection.

Respondents: State Grant Applicants.

Number of Respondents: 52 (per quarter).

Estimated Time per Response: 80 hours.

Expiration Date of OMB Approval: November 30, 2007.

Frequency: Quarterly (reports) and annually (grant application).

Total Annual Burden: 11,232 hours.

Form Numbers: MCSAP–1, MCSAP–2, and MCSAP–2A.

OMB Control Number: 2126–0025.

Title: Transportation of Household Goods; Consumer Protection.

Type of Review: Revision of a currently approved collection.

Respondents: Motor Carriers and Individual Shippers of Household Goods.

Number of Respondents: 5,400.

Estimated Time per Response: Varies from 30 minutes to distribute consumer publication to 150 minutes to conduct physical survey.

Expiration Date of OMB Approval: August 31, 2008.

Frequency: On occasion.

Total Annual Burden: 4,552,737 hours.

Form Number: MCSA–2P.

The Agency received one comment in response to the November notice, which contained no substantive remarks pertaining to any of the information collections, and consequently was not incorporated into the supporting statement. Subsequently in April 2007, FMCSA published in the **Federal Register** a notice requesting public comment to OMB within 30 days on the requested approval of the IC revisions (72 FR 20164, April 23, 2007).

National Environmental Policy Act

The Agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and determined under FMCSA environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that all except two provisions of the rule are categorically excluded (CE) based on Appendix 2 of the FMCSA Order. Not categorically excluded from environmental analysis are (1) the requirements in part 385 concerning the ''accident record and safety inspection record'' of motor carrier operations in commerce and the ''accident record and safety inspection record'' of interstate carriers while operating in Canada and/or Mexico (sec. 4114 of SAFETEA–LU) and (2) the hours-of-service exemptions in part 395 for operators of CMVs in certain defined operations (sec. 4130, 4132, 4133, and 4146 of SAFETEA–LU).

FMCSA conducted an Environmental Assessment (EA) to analyze the impacts of these two provisions. The Agency's EA finds that the provisions collectively will have no significant environmental impacts. It includes a chart indicating whether or not the provisions are categorically excluded from environmental analysis and the CE for each, where applicable.

Based upon the EA findings, no Environmental Impact Statement is required for this rule. The Agency prepared a Finding of No Significant Impact (FONSI) in accordance with the procedures in FMCSA Order 5610.1 and NEPA requirements and guidance.

We also analyzed this action under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General Conformity requirement since it implements an administrative action or organizational change via the rulemaking process. See 40 CFR 93.153(c)(2). This action will not result in any significant emissions increase, nor does it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule will not increase total commercial motor vehicle mileage, change the routing of commercial motor vehicles, change how commercial motor vehicles operate, or change the commercial motor vehicle fleet-mix of motor carriers. While the exemptions from the hours-of-service regulations in part 395 for drivers in certain defined operations may slightly

increase overall commercial motor vehicle mileage, this change should likewise be *de minimis*.

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

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this final rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. None of the alternatives analyzed in the Agency's EA, discussed under *National Environmental Policy Act*, would result in high and adverse environmental impacts.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not create an environmental risk to health or safety that would disproportionately affect children. Therefore, we have determined the rule is not a ''covered regulatory action'' as defined under Executive Order 13045.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12630 (Taking of Private Property)

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

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 383

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Motor carriers.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, FMCSA amends 49 CFR parts 350, 375, 383, 384, 385, 386, 390, and 395 as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 1. The authority citation for part 350 is revised to read as follows:

Authority: 49 U.S.C. 13902, 31100–31104, 31108, 31136, 31140–31141, 31144, 31161, 31310–31311, 31502; and 49 CFR 1.73.

■ 2. Amend § 350.105 to revise the definition for ''High Priority Activity Funds'' and to add, in correct alphabetical placement, a definition for ''New Entrant Funds'' to read as follows:

§ 350.105 What definitions are used in this part?

* * * * *

High Priority Activity Funds means funds provided for carrying out high-priority activities and projects that improve CMV safety and compliance with CMV safety regulations (including activities and projects that are national in scope), increase public awareness and education, demonstrate new technologies, and reduce the number and rate of accidents involving CMVs.

* * * * *

New Entrant Funds means funds provided to State and local governments to conduct safety audits on New Entrant motor carriers under the New Entrant Safety Assurance Program.

* * * * *

■ 3. Revise § 350.111 to read as follows:

§ 350.111 What constitutes traffic enforcement for the purpose of the MCSAP?

Traffic enforcement means enforcement activities of State or local officials, including the stopping of vehicles operating on highways, streets, or roads for moving violations of State or local motor vehicle or traffic laws (e.g., speeding, following too closely, reckless driving, improper lane changes).

■ 4. Amend § 350.201 to revise paragraphs (b), (f), (s), and (t)(1) and to add paragraphs (w), (x), and (y) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

* * * * *

(b) Implement performance-based activities, including deployment of technology to enhance the efficiency and effectiveness of CMV safety programs.

* * * * *

(f) Maintain the aggregate expenditure of funds by the State and its political subdivisions, exclusive of Federal funds, for CMV safety programs eligible for funding under this part, at a level at least equal to the average level of expenditure for the 3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year.

* * * * *

(s) Establish a program to ensure that accurate, complete, and timely motor carrier safety data are collected and reported, and ensure the State's participation in a national motor carrier

safety data correction system prescribed by FMCSA.

* * * * *

(t)(1) Enforce registration (i.e., operating authority) requirements under 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a by prohibiting the operation of (i.e., placing out of service) any vehicle discovered to be operating without the required operating authority or beyond the scope of the motor carrier's operating authority.

* * * * *

(w) Include in the training manual for the licensing examination to drive a CMV and the training manual for the licensing examination to drive a non-CMV information on best practices for driving safely in the vicinity of non-CMVs and CMVs.

(x) Conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors.

(y) Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border maintenance facility, destination, or other location where a motor carrier may make a planned stop.

■ 5. Amend § 350.211 to revise paragraphs 8., 11., and 13. through 17., and to add paragraphs 18., 19., 20., and 21. to read as follows:

§ 350.211 What is the format of the certification required by § 350.209?

* * * * *

8. The State must maintain the average aggregate expenditure of the State and its political subdivisions, exclusive of Federal assistance and State matching funds, for CMV safety programs eligible for funding under the Basic program at a level at least equal to the average level of expenditure for the 3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year. These expenditures must cover at least the following four program areas, as applicable:

a. Motor carrier safety programs in accordance with 49 CFR 350.109.

b. Size and weight enforcement programs in accordance with 49 CFR 350.309(c)(1).

c. Drug interdiction enforcement programs in accordance with 49 CFR 350.309(c)(2).

d. Traffic safety programs in accordance with 49 CFR 350.309(d).

* * * * *

11. The State will establish a program to provide FMCSA with accurate, complete, and timely reporting of motor carrier safety information that includes documenting the effects of the State's CMV safety programs; participate in a national motor carrier safety data correction program (DataQs); participate in SAFETYNET; and ensure information is exchanged in a timely manner with other States.

* * * * *

13. The State has undertaken efforts to emphasize and improve enforcement of State and local traffic laws as they pertain to CMV safety.

14. The State will ensure that MCSAP agencies have departmental policies stipulating that roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.

15. The State will ensure that requirements relating to the licensing of CMV drivers are enforced, including checking the status of CDLs.

16. The State will ensure that MCSAP-funded personnel, including sub-grantees, meet the minimum Federal standards set forth in 49 CFR part 385, subpart C for training and experience of employees performing safety audits, compliance reviews, or driver/vehicle roadside inspection.

17. The State will enforce operating authority requirements under 49 CFR 392.9a by prohibiting the operation of any vehicle discovered to be operating without the required operating authority or beyond the scope of the motor carrier's operating authority.

18. The State will enforce the financial responsibility requirements under 49 CFR part 387 as applicable to CMVs subject to the provisions of 49 CFR 392.9a.

19. The State will include, in the training manual for the licensing examination to drive a non-CMV and the training manual for the licensing examination to drive a CMV, information on best practices for safe driving in the vicinity of noncommercial and commercial motor vehicles.

20. The State will conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors.

21. The State will ensure that, except in the case of an imminent or obvious safety hazard, an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where motor carriers may make planned stops.

Date _____

Signature _____

§ 350.217 [Removed]

■ 6. Remove § 350.217.

■ 7. Amend § 350.301 to revise paragraph (a) to read as follows:

§ 350.301 What level of effort must a State maintain to qualify for MCSAP funding?

(a) The State must maintain the average aggregate expenditure of the State and its political subdivisions, exclusive of Federal funds and State matching funds, for CMV safety programs eligible for funding under this part at a level at least equal to the average level of expenditure for the 3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year.

* * * * *

■ 8. Amend § 350.309 to revise paragraph (c) and to add paragraph (d) to read as follows:

§ 350.309 What activities are eligible for reimbursement under the MCSAP?

* * * * *

(c) The following two activities, when accompanied by an appropriate North American Standard Inspection and inspection report:

(1) Enforcement of CMV size and weight limitations at locations other than fixed weight facilities; at specific locations such as steep grades or mountainous terrains where the weight of a CMV can significantly affect the safe operation of the vehicle; or at ports where intermodal shipping containers enter and leave the United States.

(2) Detection of the unlawful presence of a controlled substance in a CMV or on the person of any occupant (including the operator) of the vehicle.

(d) Documented enforcement of State traffic laws and regulations designed to promote the safe operation of CMVs, including documented enforcement of such laws and regulations relating to non-CMVs when necessary to promote the safe operation of CMVs, if the number of motor carrier safety activities (including roadside safety inspections) conducted in the State is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2003, 2004, and 2005. The State may not use more than 5 percent of its MCSAP Basic Program funds for enforcement activities relating to non-CMVs unless the Administrator determines that a higher percentage will result in significant increases in CMV safety.

■ 9. Amend § 350.313 to revise paragraphs (a)(1), (a)(2), and (c) and to add paragraph (d) to read as follows:

§ 350.313 How are MCSAP funds allocated?

(a) * * *

(1) An amount of the MCSAP funds appropriated for each fiscal year up to the maximum allowed by law may be distributed for High Priority Activities and Projects at the discretion of the Administrator.

(2) An amount of the MCSAP funds appropriated for each fiscal year up to the maximum allowed by law may be distributed for safety audits of New Entrant motor carriers under the New Entrant Safety Assurance Program at the discretion of the Administrator.

* * * * *

(c) The funding provided under paragraph (a)(1) of this section may be made available to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. At least 90 percent of the amount set aside in a fiscal year shall be awarded in grants to State agencies and local government agencies.

(d) The funding provided under paragraph (a)(2) of this section may be made available to State and local governments. If the Administrator determines that a State or local government is not able to use government employees to conduct New Entrant motor carrier audits, the Administrator may use the funds under paragraph (a)(2) to conduct audits for such State or local governments.

■ 10. Amend § 350.319 to revise paragraph (d) and to add paragraph (e) to read as follows:

§ 350.319 What are permissible uses of High Priority Activity Funds?

* * * * *

(d) The Administrator may set aside an amount of MCSAP funding up to the maximum allowed by law for these projects and activities in each fiscal year.

(e) FMCSA will reimburse up to 80 percent of the eligible costs in the administration of an approved project plan, except that approved public information and education activities may be reimbursed up to 100 percent of the eligible costs.

■ 11. Revise § 350.321 to read as follows:

§ 350.321 What are permissible uses of New Entrant Funds?

(a) These funds may be used to conduct safety audits on New Entrant motor carriers under the New Entrant Safety Assurance Program.

(b) New Entrant funds will be allocated, at the discretion of FMCSA, to State and local governments.

(c) FMCSA will notify States when such funds are available.

(d) The Administrator may designate up to the maximum amount allowed by law of MCSAP funding for these projects in each fiscal year. FMCSA will reimburse up to 100 percent of the eligible costs in the administration of an approved project plan.

■ 12. Amend § 350.329 to revise the heading and republish paragraphs (a) and (b) to read as follows:

§ 350.329 How may a State or local agency qualify for High Priority or New Entrant Funds?

(a) States must meet the requirements of § 350.201, as applicable.

(b) Local agencies must meet the following nine conditions:

(1) Prepare a proposal in accordance with § 350.213, as applicable.

(2) Coordinate the proposal with the State lead MCSAP agency to ensure the proposal is consistent with State and national CMV safety program priorities.

(3) Certify that your local jurisdiction has the legal authority, resources, and trained and qualified personnel necessary to perform the functions specified in the proposal.

(4) Designate a person who will be responsible for implementation, reporting, and administering the approved proposal and will be the primary contact for the project.

(5) Agree to fund up to 20 percent of the proposed request.

(6) Agree to prepare and submit all reports required in connection with the proposal or other conditions of the grant.

(7) Agree to use the forms and reporting criteria required by the State lead MCSAP agency and/or the FMCSA to record work activities to be performed under the proposal.

(8) Certify that the local agency will impose sanctions for violations of CMV and driver laws and regulations that are consistent with those of the State.

(9) Certify participation in national data bases appropriate to the project.

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

■ 13. The authority citation for part 375 is revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 13102, 13301, 13704, 13707, 14104, 14706, 14708; and 49 CFR 1.73.

■ 14. Revise § 375.101 to read as follows:

§ 375.101 Who must follow the regulations in this part?

You, a household goods motor carrier engaged in the interstate transportation of household goods, must follow the regulations in this part when offering your services to individual shippers. You are subject to this part only when you transport household goods for individual shippers by motor vehicle in interstate commerce. Interstate commerce is defined in § 390.5 of this subchapter.

■ 15. Amend § 375.103 to revise the definitions of ''individual shipper'' and ''you and your'' and to add, in correct alphabetical placement, the definition for ''household goods motor carrier'' to read as follows:

§ 375.103 What are the definitions of terms used in this part?

* * * * *

Household goods motor carrier means—

(1) In general, a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

(i) Binding and nonbinding estimates;

(ii) Inventorying;

(iii) Protective packing and unpacking of individual items at personal residences;

(iv) Loading and unloading at personal residences.

(2) The term includes any person considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005 (August 10, 2005).

(3) The term does not include any motor carrier providing transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier.

Individual shipper means any person who—

(1) Is the shipper, consignor, or consignee of a household goods shipment;

(2) Is identified as the shipper, consignor, or consignee on the face of the bill of lading;

(3) Owns the goods being transported; and

(4) Pays his or her own tariff transportation charges.

* * * * *

You and *your* means a household goods motor carrier engaged in the interstate transportation of household goods and its household goods agents.

■ 16. Amend § 375.201 to revise paragraph (b), to add paragraph (c), to redesignate paragraphs (c) and (d) as paragraphs (d) and (e), and to revise newly designated paragraph (d), to read as follows:

§ 375.201 What is my liability for loss and damage when I accept goods from an individual shipper?

* * * * *

(b) Full Value Protection Obligation—In general, your liability is for the household goods that are lost, damaged, destroyed, or otherwise not delivered to

the final destination in an amount equal to the replacement value of the household goods. The maximum amount is the declared value of the shipment. The declared value is subject to rules issued by the Surface Transportation Board (STB) and applicable tariffs.

(c) If the shipper waives, in writing, your liability for the full value of the household goods, then you are liable for loss of, or damage to, any household goods to the extent provided in the STB released rates order. Contact the STB for a current copy of the Released Rates of Motor Carrier Shipments of Household Goods. The rate may be increased annually by the motor carrier based on the U.S. Department of Commerce's Cost of Living Adjustment.

(d) As required by § 375.303(g), you may have additional liability if you sell liability insurance and fail to issue a copy of the insurance policy or other appropriate evidence of insurance.

(e) You must, in a clear and concise manner, disclose to the individual shipper the limits of your liability.

■ 17. Amend § 375.211 to revise the introductory text to paragraph (a), paragraph (a)(7), and paragraph (a)(8) to read as follows:

§ 375.211 Must I have an arbitration program?

(a) You must have an arbitration program for individual shippers to resolve disputes about property loss and damage and disputes about whether carrier charges in addition to those collected at delivery must be paid. You must establish and maintain an arbitration program with the following 11 minimum elements:

* * * * *

(7) Arbitration must be binding for claims of $10,000 or less, if the individual shipper requests arbitration.

(8) Arbitration must be binding for claims of more than $10,000, if the individual shipper requests arbitration and the carrier agrees to it.

* * * * *

■ 18. Revise § 375.213 to read as follows:

§ 375.213 What information must I provide to a prospective individual shipper?

(a) When you provide the written estimate to a prospective individual shipper, you must also provide the individual shipper with a copy of Department of Transportation publication FMCSA–ESA–03–005 (or its successor publication) entitled ''Ready to Move?''.

(b) Before you execute an order for service for a shipment of household goods, you must furnish to your prospective individual shipper all five of the following documents:

(1) The contents of appendix A of this part, entitled ''Your Rights and Responsibilities When You Move'' (Department of Transportation publication FMCSA–ESA–03–006, or its successor publication).

(2) A concise, easy-to-read, accurate estimate of your charges.

(3) A notice of the availability of the applicable sections of your tariff for the estimate of charges, including an explanation that individual shippers may examine these tariff sections or have copies sent to them upon request.

(4) A concise, easy-to-read, accurate summary of your arbitration program.

(5) A concise, easy-to-read, accurate summary of your customer complaint and inquiry handling procedures. Included in this description must be both of the following two items:

(i) The main telephone number the individual shipper may use to communicate with you.

(ii) A clear and concise statement concerning who must pay for telephone calls.

(c) To comply with paragraph (b)(1) of this section, you must ensure that the text and general order of the document you produce and distribute to prospective individual shippers are consistent with the text and general order of appendix A to this part. The following three items also apply:

(1) If we, the Federal Motor Carrier Safety Administration, choose to modify the text or general order of appendix A, we will provide the public appropriate notice in the **Federal Register** and an opportunity for comment as required by part 389 of this chapter before making you change anything.

(2) If you publish the document, you may choose the dimensions of the publication as long as the type font size is 10 points or larger and the size of the booklet is at least as large as 36 square inches (232 square centimeters).

(3) If you publish the document, you may choose the color and design of the front and back covers of the publication. The following words must appear prominently on the front cover in 12-point or larger bold or full-faced type: ''Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Federal Law.'' You may substitute your name or trade name in place of ''Your Mover'' if you wish (for example, *Furnished by XYZ Van Lines, as Required by Federal Law*).

(d) Paragraphs (c)(2) and (c)(3) of this section do not apply to exact copies of appendix A published in the **Federal Register** or the Code of Federal Regulations.

■ 19. Amend § 375.401 by redesignating paragraphs (a) through (g) as paragraphs (b) through (h), adding paragraph (a), and revising redesignated paragraphs (b) and (e) to read as follows:

§ 375.401 Must I conduct a physical survey and provide an estimate of the charges?

(a) You must conduct a physical survey of the household goods to be transported and provide the prospective individual shipper with a written estimate, based on the physical survey, of the charges for the transportation and all related services. There are *two exceptions* to the requirement to conduct a physical survey:

(1) If the household goods are located beyond a 50-mile radius of the location of the household goods motor carrier's agent preparing the estimate, the requirement to base the estimate on a physical survey does not apply.

(2) An individual shipper may elect to waive the physical survey. The waiver agreement is subject to the following requirements:

(i) It must be in writing;

(ii) It must be signed by the shipper before the shipment is loaded; and

(iii) The household goods motor carrier must retain a copy of the waiver agreement as an addendum to the bill of lading with the understanding that the waiver agreement will be subject to the same record retention requirements that apply to bills of lading, as provided in § 375.505(d).

(b) Before you execute an order for service for a shipment of household goods for an individual shipper, you must provide a written estimate of the total charges and *indicate whether it is a binding or a non-binding estimate*, as follows:

(1) *A binding estimate* is an agreement made in advance with your individual shipper. It guarantees the total cost of the move based upon the quantities and services shown on your estimate, which shall be based on the physical survey of the household goods, if required. You may impose a charge for providing a written binding estimate. The binding estimate must indicate that you and the shipper are bound by the charges.

(2) *A non-binding estimate* is what you believe the total cost will be for the move, based upon both the estimated weight or volume of the shipment and the accessorial services requested and the physical survey of the household goods, if required. A non-binding estimate is not binding on you. You will base the final charges upon the actual weight of the individual shipper's shipment and the tariff provisions in

effect. You may not impose a charge for providing a non-binding estimate.

* * * * *

(e) You must determine charges for any accessorial services such as elevators, long carries, etc., before preparing the order for service and the bill of lading for binding or non-binding estimates. If you fail to ask the shipper about such charges and fail to determine such charges before preparing the order for service and the bill of lading, you must deliver the goods and bill the shipper after 30 days for the additional charges, except that you may collect at delivery charges for impracticable operations that do not exceed 15 percent of all other charges due at delivery.

* * * * *

■ 20. Amend § 375.403 to revise paragraphs (a) and (b) to read as follows:

§ 375.403 How must I provide a binding estimate?

(a) You may provide a guaranteed binding estimate of the total shipment charges to the individual shipper, so long as it is provided for in your tariff. The individual shipper must pay the amount for the services included in your estimate. You must comply with the following 11 requirements:

(1) You must base the binding estimate on the physical survey unless one of the exceptions provided in § 375.401(a)(1) and (2) applies.

(2) You must provide the binding estimate in writing to the individual shipper or other person responsible for payment of the freight charges.

(3) You must retain a copy of each binding estimate as an attachment to be made an integral part of the bill of lading contract.

(4) You must clearly indicate upon each binding estimate's face that the estimate is binding upon you and the individual shipper. Each binding estimate must also clearly indicate on its face that the charges shown apply only to those services specifically identified in the estimate.

(5) You must clearly describe binding-estimate shipments and all services you are providing.

(6) If it appears an individual shipper has tendered additional household goods or requires additional services not identified in the binding estimate, you are not required to honor the estimate. If an agreement cannot be reached as to the price or service requirements for the additional goods or services, you are not required to service the shipment. However, if you do service the shipment, before loading the shipment you must do one of the following three things:

(i) Reaffirm your binding estimate.

(ii) Negotiate a revised written binding estimate listing the additional household goods or services.

(iii) Agree with the individual shipper, in writing, that both of you will consider the original binding estimate as a non-binding estimate subject to § 375.405.

(7) Once you load a shipment, failure to execute a new binding estimate or a non-binding estimate signifies you have reaffirmed the original binding estimate. You may not collect more than the amount of the original binding estimate, except as provided in paragraphs (a)(8) and (9) of this section.

(8) If you believe additional services are necessary to properly service a shipment after the bill of lading has been issued, you must inform the individual shipper what the additional services are before performing those services. You must allow the shipper at least one hour to determine whether he or she wants the additional services performed. If the individual shipper agrees to pay for the additional services, you must execute a written attachment to be made an integral part of the bill of lading contract and have the individual shipper sign the written attachment. This may be done through fax transmissions; e-mail; overnight courier; or certified mail, return receipt requested. You must bill the individual shipper for the additional services after 30 days from delivery. If the individual shipper does not agree to pay the additional services, the carrier should perform only those additional services as are required to complete the delivery, and bill the individual shipper for the additional services after 30 days from delivery, except that you may collect at delivery charges for impracticable operations that do not exceed 15 percent of all other charges due at delivery.

(9) If the individual shipper requests additional services after the bill of lading has been issued, you must inform the individual shipper of the additional charges involved. You may require full payment at destination for these additional services and for 100 percent of the original binding estimate. If applicable, you also may require payment at delivery of charges for impracticable operations (as defined in your carrier tariff) not to exceed 15 percent of all other charges due at delivery. You must bill and collect from the individual shipper any applicable charges not collected at delivery in accordance with subpart H of this part.

(10) Failure to relinquish possession of a shipment upon the individual shipper's offer to pay the binding estimate amount (or, in the case of a partial delivery, a prorated percentage of the binding estimate as set forth in paragraph (a)(11) of this section) plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for impracticable operations (subject to a maximum amount as set forth in paragraph 9 of this section), constitutes a failure to transport a shipment with ''reasonable dispatch'' and subjects you to cargo delay claims pursuant to part 370 of this chapter.

(11) If you make only a partial delivery of the shipment, you may not demand upon delivery full payment of the binding estimate. You may demand only a prorated percentage of the binding estimate. The prorated percentage must be the percentage of the weight of that portion of the shipment delivered relative to the total weight of the shipment. For example, if you deliver only 2,500 pounds of a shipment weighing 5,000 pounds, you may demand payment at destination for only 50 percent of the binding estimate.

(b) In accordance with § 375.401(a), you may impose a charge for providing a written binding estimate. If you do not provide a binding estimate to an individual shipper, you must provide a non-binding estimate in accordance with § 375.405.

* * * * *

■ 21. Amend § 375.405 to revise paragraphs (b)(1), (b)(2), (b)(5), (b)(8), (b)(9) and (b)(10) to read as follows:

§ 375.405 How must I provide a non-binding estimate?

* * * * *

(b) * * *

(1) You must provide reasonably accurate non-binding estimates based upon both the estimated weight or volume of the shipment and services required and the physical survey of the household goods, if required. If you provide a shipper with an estimate based on volume that will later be converted to a weight-based rate, you must provide the shipper an explanation in writing of the formula used to calculate the conversion to weight.

(2) You must explain to the individual shipper that final charges calculated for shipments moved on non-binding estimates will be those appearing in your tariffs applicable to the transportation. You must explain that these final charges may exceed the approximate costs appearing in your estimate.

* * * * *

(5) You must clearly indicate on the face of a non-binding estimate that the

estimate is not binding upon you and the charges shown are the approximate charges to be assessed for the service identified in the estimate. The estimate must clearly state that the shipper will not be required to pay more than 110 percent of the non-binding estimate at the time of delivery.

* * * * *

(8) Once you load a shipment, failure to execute a new non-binding estimate signifies you have reaffirmed the original non-binding estimate. You may not collect more than 110 percent of the amount of the original non-binding estimate at destination, except as provided in paragraphs (b)(9) and (10) of this section.

(9) If you believe additional services are necessary to properly service a shipment after the bill of lading has been issued, you must inform the individual shipper what the additional services are before performing those services. You must allow the shipper at least one hour to determine whether he or she wants the additional services performed. If the individual shipper agrees to pay for the additional services, you must execute a written attachment to be made an integral part of the bill of lading contract and have the individual shipper sign the written attachment. This may be done through fax transmissions; e-mail; overnight courier; or certified mail, return receipt requested. You must bill the individual shipper for the additional services after 30 days from delivery. If the individual shipper does not agree to pay the additional services, the carrier should perform only those additional services as are required to complete the delivery, and bill the individual shipper for the additional services after 30 days from delivery, except that you may collect at delivery charges for impracticable operations that do not exceed 15 percent of all other charges due at delivery.

(10) If the individual shipper requests additional services after the bill of lading has been issued, you must inform the individual shipper of the additional charges involved. You may require full payment at destination for these additional services and (unless you make only a partial delivery, in which case you must collect a prorated percentage of the original non-binding estimate as set forth in § 375.407(c) of this part) for up to 110 percent of the original non-binding estimate. If applicable, you also may require payment at delivery of charges for impracticable operations (as defined in your carrier tariff) not to exceed 15 percent of all other charges due at delivery. You must bill and collect from the individual shipper any applicable charges not collected at delivery in accordance with subpart H of this part.

* * * * *

■ 22. Revise § 375.407 to read as follows:

§ 375.407 Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?

(a) If an individual shipper pays you up to 110 percent of the non-binding estimate on a collect-on-delivery shipment (or, in the case of a partial delivery, a prorated percentage of the non-binding estimate as set forth in paragraph (c) of this section), you must relinquish possession of the shipment at the time of delivery. If there are either charges for any additional services requested by the shipper after the bill of lading has been issued and/or charges, if applicable, for impracticable operations (subject to a maximum amount as set forth in paragraph (d) of this section), and the shipper also pays you for such charges, you must relinquish possession of the shipment at the time of delivery. You must accept the form of payment agreed to at the time of estimate, unless the shipper agrees in writing to a change in the form of payment.

(b) Failure to relinquish possession of a shipment after the individual shipper offers to pay you up to 110 percent of the approximate costs of a non-binding estimate plus any additional charges described in paragraph (a) of this section constitutes a failure to transport a shipment with ''reasonable dispatch'' and subjects you to cargo delay claims pursuant to part 370 of this chapter.

(c) If you make only a partial delivery of the shipment, you may not demand full payment of the non-binding estimate. You may demand at delivery only a prorated percentage of the non-binding estimate (or a prorated percentage of an amount up to 110 percent of the non-binding estimate). The prorated percentage must be the percentage of the weight of that portion of the shipment delivered relative to the total weight of the shipment. For example, if you deliver only 2,500 pounds of a shipment weighing 5,000 pounds, you may demand payment of 50 percent of not more than 110 percent of the non-binding estimate.

(d) You may not demand payment of charges for impracticable operations, as defined in your tariff, of more than 15 percent of all other charges due at delivery. You must bill and collect from the individual shipper charges for impracticable operations not collected at delivery in accordance with subpart H of this part.

■ 23. Amend § 375.501 to revise paragraph (a)(10) to read as follows:

§ 375.501 Must I write up an order for service?

(a) * * *

(10) A statement of the declared value of the shipment, which is the maximum amount of your liability to the individual shipper under your Full Value Protection for the replacement value of any household goods that are lost, damaged, destroyed, or otherwise not delivered to the final destination. If the individual shipper waives, in writing, your Full Value Protection liability, you must include a copy of the waiver; the Surface Transportation Board's required released rates valuation statement; and the charges, if any, for optional valuation coverage (other than Full Value Protection). The released rates may be increased annually by the motor carrier based on the U.S. Department of Commerce's Cost of Living Adjustment.

* * * * *

■ 24. Amend § 375.505 to revise paragraph (b)(12) to read as follows:

§ 375.505 Must I write up a bill of lading?

* * * * *

(b) * * *

(12) A statement of the declared value of the shipment, which is the maximum amount of your liability to the individual shipper under your Full Value Protection for the replacement value of any household goods that are lost, damaged, destroyed, or otherwise not delivered to the final destination. If the individual shipper waives, in writing, your Full Value Protection liability for the declared value of the household goods, you must include a copy of the waiver; the Surface Transportation Board's required released rates valuation statement; and the charges, if any, for optional valuation coverage (other than Full Value Protection). The released rates may be increased annually by the motor carrier based on the U.S. Department of Commerce's Cost of Living Adjustment.

* * * * *

■ 25. Revise § 375.703 to read as follows:

§ 375.703 What is the maximum collect-on-delivery amount I may demand at the time of delivery?

(a) On a binding estimate, the maximum amount is the exact estimate of the charges, plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for

impracticable operations as defined in your carrier tariff. The maximum amount of charges for impracticable operations you may collect on delivery is an amount equal to 15 percent of all other charges due at delivery.

(b) On a non-binding estimate, the maximum amount is 110 percent of the non-binding estimate of the charges, plus charges for any additional services requested by the shipper after the bill of lading has been issued and charges, if applicable, for impracticable operations as defined in your carrier tariff. The maximum amount of charges for impracticable operations you may collect on delivery is an amount equal to 15 percent of all other charges due at delivery.

■ 26. Revise § 375.707 to read as follows:

§ 375.707 If a shipment is partially lost or destroyed, what charges may I collect at delivery?

(a) (1) If a shipment is partially lost or destroyed, you may collect at delivery:

(i) A prorated percentage of the binding estimate or a prorated percentage of up to 110 percent of the non-binding estimate. The prorated percentage is equal to the percentage of the weight of that portion of the shipment delivered relative to the total weight of the shipment. For example, if you deliver only 2,500 pounds of a shipment weighing 5,000 pounds, you may demand at destination, as applicable, only 50 percent of a binding estimate or 50 percent of not more than 110 percent of a non-binding estimate;

(ii) Charges for any additional services requested by the shipper after the bill of lading has been issued; and

(iii) Charges for impracticable operations, if applicable, except that such charges must not exceed 15 percent of all other charges due at delivery.

(iv) Any specific valuation charge due.

(2) You must bill and collect from the individual shipper any remaining charges not collected at delivery in accordance with subpart H of this part.

(b) You must determine, at your own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

(c) You may disregard paragraph (a)(1) of this section if loss or destruction was due to an act or omission of the individual shipper.

(d) The individual shipper's rights are in addition to, and not in lieu of, any other rights the individual shipper may have with respect to a shipment of household goods you or your agent(s) partially lost or destroyed in transit. This applies whether or not the individual shipper exercises any rights to obtain a refund of the portion of your published freight charges corresponding to the portion of the lost or destroyed shipment (including any charges for accessorial or terminal services) at the time you dispose of claims for loss, damage, or injury to articles in the shipment under part 370 of this chapter.

■ 27. Amend § 375.807 to revise paragraph (c)(1) to read as follows:

§ 375.807 What actions may I take to collect the charges upon my freight bill?

* * * * *

(c) * * *

(1) You must automatically extend the credit period to a total of 30 calendar days for any shipper who has not paid your freight bill within the 7-day period. However, for charges for impracticable operations that are not collected at delivery, you may not extend the credit period beyond 30 days after you present your freight bill.

* * * * *

■ 28. Revise Appendix A to part 375 to read as follows:

Appendix A to Part 375—Your Rights and Responsibilities When You Move

OMB No. 2126–0025

Furnished by Your Mover, as Required by Federal Law

Authority: 49 U.S.C. 13301, 13704, 13707, and 14104; 49 CFR 1.73.

What Is Included in This Pamphlet?

In this pamphlet, you will find a discussion of each of these topics:

Why Was I Given This Pamphlet?
What Are the Most Important Points I Should Remember From This Pamphlet?
What If I Have More Questions?

Subpart A—General Requirements

Who must follow the regulations?
What definitions are used in this Pamphlet?

Subpart B—Before Requesting Services From Any Mover

What is my mover's normal liability for loss or damage when my mover accepts goods from me?
What actions by me limit or reduce my mover's normal liability?
What are dangerous or hazardous materials that may limit or reduce my mover's normal liability?
May my mover have agents?
What items must be in my mover's advertisements?
How must my mover handle complaints and inquiries?
Do I have the right to inspect my mover's tariffs (schedules of charges) applicable to my move?
Must my mover have an arbitration program?
Must my mover inform me about my rights and responsibilities under Federal Law?
What other information must my mover provide to me?
How must my mover collect charges?
May my mover collect charges upon delivery?
May my mover extend credit to me?
May my mover accept charge or credit cards for my payments?

Subpart C—Service Options Provided

What service options may my mover provide?
If my mover sells liability insurance coverage, what must my mover do?

Subpart D—estimating charges

Must my mover estimate the transportation and accessorial charges for my move?
How must my mover estimate charges under the regulations?
What payment arrangements must my mover have in place to secure delivery of my household goods shipment?

Subpart E—Pickup of My Shipment of Household Goods

Must my mover write up an order for service?
Must my mover write up an inventory of the shipment?
Must my mover write up a bill of lading?
Should I reach an agreement with my mover about pickup and delivery times?
Must my mover determine the weight of my shipment?
How must my mover determine the weight of my shipment?
What must my mover do if I want to know the actual weight or charges for my shipment before delivery?

Subpart F—Transportation of My Shipment

Must my mover transport the shipment in a timely manner?
What must my mover do if it is able to deliver my shipment more than 24 hours before I am able to accept delivery?
What must my mover do for me when I store household goods in transit?

Subpart G—Delivery of My Shipment

May my mover ask me to sign a delivery receipt releasing it from liability?
What is the maximum collect-on-delivery amount my mover may demand I pay at the time of delivery?
If my shipment is transported on more than one vehicle, what charges may my mover collect at delivery?
If my shipment is partially or totally lost or destroyed, what charges may my mover collect at delivery?
How must my mover calculate the charges applicable to the shipment as delivered?

Subpart H—Collection of Charges

Does this subpart apply to most shipments?
How must my mover present its freight or expense bill to me?

If I forced my mover to relinquish a collect-on-delivery shipment before the payment of ALL charges, how must my mover collect the balance?
What actions may my mover take to collect from me the charges in its freight bill?
Do I have a right to file a claim to recover money for property my mover lost or damaged?

Subpart I—Resolving Disputes With My Mover

What may I do to resolve disputes with my mover?

Why Was I Given This Pamphlet?

The Federal Motor Carrier Safety Administration's (FMCSA) regulations protect consumers on interstate moves and define the rights and responsibilities of consumers and household goods carriers.

The household goods carrier (mover) gave you this booklet to provide information about your rights and responsibilities as an individual shipper of household goods. Your primary responsibility is to select a reputable household goods carrier, ensure that you understand the terms and conditions of the contract, and understand and pursue the remedies that are available to you in case problems arise. You should talk to your mover if you have further questions. The mover will also furnish you with additional written information describing its procedure for handling your questions and complaints. The additional written information will include a telephone number you can call to obtain additional information about your move.

What Are the Most Important Points I Should Remember From This Pamphlet?

1. Movers must give written estimates.
2. Movers may give binding estimates.
3. Non-binding estimates are not always accurate; actual charges may exceed the estimate.
4. If your mover provides you (or someone representing you) with any partially complete document for your signature, you should verify the document is as complete as possible before signing it. Make sure the document contains all relevant shipping information, except the actual shipment weight and any other information necessary to determine the final charges for all services performed.
5. You may request from your mover the availability of guaranteed pickup and delivery dates.
6. Be sure you understand the mover's responsibility for loss or damage, and request an explanation of the difference between valuation and actual insurance.
7. You have the right to be present each time your shipment is weighed.
8. You may request a reweigh of your shipment.
9. If you agree to move under a non-binding estimate, you should confirm with your mover—in writing—the method of payment at delivery as cash, certified check, cashier's check, money order, or credit card.
10. Movers must offer a dispute settlement program as an alternative means of settling loss or damage claims. Ask your mover for details.
11. You should ask the person you speak to whether he or she works for the actual mover or a household goods broker. A household goods broker must not represent itself as a mover. The broker is responsible only for arranging the transportation. It does not own the trucks used to transport the shipment and is required to find an authorized mover to provide the transportation. You should know that a household goods broker generally has no authority to provide you with an estimate for the move, unless the broker has a written agreement with the household goods carrier. If a household goods broker provides you with an estimate without a written agreement with the carrier, the estimate may not be binding and you may instead be required to pay the actual charges assessed by the mover. A household goods broker is not responsible for loss or damage.
12. You may request complaint information about movers from the Federal Motor Carrier Safety Administration under the Freedom of Information Act. You may be assessed a fee to obtain this information. See 49 CFR part 7 for the schedule of fees.
13. You should seek estimates from at least three different movers. You should not disclose any information to the different movers about their competitors, as it may affect the accuracy of their estimates.

What if I Have More Questions?

If this pamphlet does not answer all of your questions about your move, do not hesitate to ask for additional information from your mover's representative who handled the arrangements for your move, the driver who transports your shipment, or the mover's main office.

Subpart A—General Requirements

The primary responsibility for your protection lies with you in selecting a reputable household goods carrier, ensuring you understand the terms and conditions of your contract with your mover, and understanding and pursuing the remedies that are available to you in case problems arise.

Who Must Follow the Regulations?

The regulations inform motor carriers engaged in the interstate transportation of household goods (household goods motor carriers or movers) what standards they must follow when offering services to you. You, an individual shipper, are not directly subject to the regulations. However, your mover may be required by the regulations to demand that you pay on time. The regulations apply only to a mover that both transports your household goods by motor vehicle in interstate commerce—that is, when you are moving from one State to another—and provides certain types of additional services. The regulations do not apply when your interstate move takes place within a single commercial zone. A commercial zone is roughly equivalent to the local metropolitan area of a city or town. For example, a move between Brooklyn, NY, and Hackensack, NJ, would be considered within the New York City commercial zone and would not be subject to these regulations. Commercial zones are defined in 49 CFR part 372.

What Definitions Are Used in This Pamphlet?

Accessorial (Additional) Services—These are services such as packing, appliance servicing, unpacking, or piano stair carries that you request be performed (or that are necessary because of landlord requirements or other special circumstances). Charges for these services may be in addition to the line-haul charges.

Advanced Charges—These are charges for services performed by someone other than the mover. A professional, craftsman, or other third party may perform these services at your request. The mover pays for these services and adds the charges to your bill of lading charges.

Advertisement—This is any communication to the public in connection with an offer or sale of any interstate household goods transportation service. This will include written or electronic database listings of your mover's name, address, and telephone number in an online database. This excludes listings of your mover's name, address, and telephone number in a telephone directory or similar publication. However, Yellow Pages advertising is included within the definition.

Agent—A local moving company authorized to act on behalf of a larger, national company.

Appliance Service by Third Party—The preparation of major electrical appliances to make them safe for shipment. Charges for these services may be in addition to the line-haul charges.

Bill of Lading—The receipt for your goods and the contract for their transportation.

Carrier—The mover transporting your household goods.

Collect on Delivery (COD)—This means payment is required at the time of delivery at the destination residence (or warehouse).

Certified Scale—Any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform or warehouse type scale that is properly inspected and certified.

Estimate, Binding—This is a written agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on the estimate.

Estimate, Non-Binding—This is what your mover believes the cost will be, based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on the mover. The final charges will be based upon the actual weight of your shipment, the services provided, and the tariff provisions in effect.

Expedited Service—This is an agreement with the mover to perform transportation by a set date in exchange for charges based upon a higher minimum weight.

Flight Charge—A charge for carrying items up or down flights of stairs. Charges for these services may be in addition to the line-haul charges.

Guaranteed Pickup and Delivery Service—An additional level of service featuring guaranteed dates of service. Your mover will provide reimbursement to you for delays. This premium service is often subject to minimum weight requirements.

High-Value Article—These are items included in a shipment valued at more than $100 per pound ($220 per kilogram).

Household Goods, as used in connection with transportation, means the personal effects or property used, or to be used, in a dwelling, when part of the equipment or supplies of the dwelling. Transportation of the household goods must be arranged and paid for by you or by another individual on your behalf. This may include items moving from a factory or store when you purchase them to use in your dwelling. You must request that these items be transported, and you (or another individual on your behalf) must pay the transportation charges to the mover.

Household Goods Motor Carrier means a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services: (1) Binding and non-binding estimates, (2) Inventory, (3) Protective packing and unpacking of individual items at personal residences, and (4) Loading and unloading at personal residences. The term does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier.

Individual Shipper—Any person who—

1. Is the shipper, consignor, or consignee of a household goods shipment;
2. Is identified as the shipper, consignor, or consignee on the face of the bill of lading;
3. Owns the goods being transported; and
4. Pays his or her own tariff transportation charges.

Impracticable Operations generally refer to services required when operating conditions make it physically impossible for the motor carrier to perform pickup or delivery with its normally assigned road-haul equipment, so that the carrier must use smaller equipment and/or additional labor to complete pickup or delivery of the shipment. A mover may require *payment of additional charges for impracticable operations* even if you do not request these services. The specific services considered to be impracticable operations by your mover are defined in your mover's tariff.

Inventory—The detailed descriptive list of your household goods showing the number and condition of each item.

Line-Haul Charges—The charges for the vehicle transportation portion of your move. These charges, if separately stated, apply in addition to the accessorial service charges.

Long Carry—A charge for carrying articles excessive distances between the mover's vehicle and your residence. Charges for these services may be in addition to the line-haul charges.

May—An option. You or your mover may do something, but it is not a requirement.

Mover—A household goods motor carrier and its household goods agents.

Must—A legal obligation. You or your mover must do something.

Order for Service—The document authorizing the mover to transport your household goods.

Order (Bill of Lading) Number—The number used to identify and track your shipment.

Peak Season Rates—Higher line-haul charges applicable during the summer months.

Pickup and Delivery Charges—Separate transportation charges applicable to transporting your shipment between the storage-in-transit warehouse and your residence.

Reasonable Dispatch—The performance of transportation on the dates, or during the period of time, agreed upon by you and your mover and shown on the Order for Service/Bill of Lading. For example, if your mover deliberately withholds any shipment from delivery after you offer to pay the binding estimate or up to 110 percent of a non-binding estimate, plus any charges for additional services you requested that were not included in the estimate and/or permissible charges for impracticable operations, your mover has not transported the goods with reasonable dispatch. The term ''reasonable dispatch'' excludes transportation provided under your mover's tariff provisions requiring guaranteed service dates. Your mover will have the defense of force majeure, i.e., that the contract cannot be performed owing to causes that are outside the control of the parties and could not be avoided by exercise of due care.

Should—A recommendation. We recommend you or your mover do something, but it is not a requirement.

Shuttle Service—The use of a smaller vehicle to provide service to residences not accessible to the mover's normal line-haul vehicles.

Storage-In-Transit (SIT)—The temporary warehouse storage of your shipment pending further transportation, with or without notification to you. If you (or someone representing you) cannot accept delivery on the agreed-upon date or within the agreed-upon time period (for example, because your home is not quite ready to occupy), your mover may place your shipment into SIT without notifying you. In those circumstances, you will be responsible for the added charges for SIT service, as well as the warehouse handling and final delivery charges. However, your mover also may place your shipment into SIT if your mover was able to make delivery before the agreed-upon date (or before the first day of the agreed-upon delivery period) but you did not concur with early delivery. In those circumstances, your mover must notify you immediately of the SIT, and your mover is fully responsible for redelivery charges, handling charges, and storage charges.

Surface Transportation Board—An agency within the U.S. Department of Transportation that regulates household goods carrier tariffs, among other responsibilities. The Surface Transportation Board's address is 395 E Street, SW., Washington, DC 20423–0001. Tele. 202–245–0245.

Tariff—An issuance (in whole or in part) containing rates, rules, regulations, classifications, or other provisions. The Surface Transportation Board requires that a tariff contain three specific items. First, an accurate description of the services the mover offers to the public. Second, the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms for services offered to the public. Third, the mover's tariff must be arranged in a way that allows you to determine the exact rate(s) and service terms applicable to your shipment.

Valuation—The degree of worth of the shipment. The valuation charge compensates the mover for assuming a greater degree of liability than is provided for in its base transportation charges.

Warehouse Handling—A charge may be applicable each time SIT service is provided. Charges for these services may be in addition to the line-haul charges. This charge compensates the mover for the physical placement and removal of items within the warehouse.

We, Us, and *Our*—The Federal Motor Carrier Safety Administration (FMCSA).

You and *Your*—You are an individual shipper of household goods. You are a consignor or consignee of a household goods shipment and your mover identifies you as such in the bill of lading contract. You own the goods being transported and pay the transportation charges to the mover.

Where may other terms used in this pamphlet be defined? You may find other terms used in this pamphlet defined in 49 U.S.C. 13102. The statute controls the definitions in this pamphlet. If terms are used in this pamphlet and the terms are defined neither here nor in 49 U.S.C. 13102, the terms will have the ordinary practical meaning of such terms.

Subpart B—Before Requesting Services From Any Mover

What Is My Mover's Normal Liability for Loss or Damage When My Mover Accepts Goods From Me?

In general, your mover is legally liable for loss or damage that occurs during performance of any transportation of household goods and of all related services identified on your mover's lawful bill of lading.

Your mover is liable for loss of, or damage to, any household goods to the extent provided in the current Surface Transportation Board's Released Rates Order. You may obtain a copy of the current Released Rates Order by contacting the Surface Transportation Board at the address provided under the definition of the Surface Transportation Board. The rate may be increased annually by your mover based on the U.S. Department of Commerce's Cost of Living Adjustment. Your mover may have additional liability if your mover sells liability insurance to you.

All moving companies are required to assume liability for the value of the goods transported. However, there are different levels of liability, and you should be aware of the amount of protection provided and the charges for each option.

Basically, most movers offer two different levels of liability under the terms of their tariffs and the Surface Transportation Board's Released Rates Orders. These orders govern the moving industry. The levels of liability are as follows:

(1) FULL VALUE PROTECTION (FVP). This is the most comprehensive option available for the protection of your goods. Unless you waive full-value protection in writing and agree to Release Value Protection as described below, your shipment will be transported under your mover's *full (replacement) value* level of liability. If any article is lost, destroyed, or damaged while in your mover's custody, your mover will, at its option, either: repair the article to the extent necessary to restore it to the same condition as when it was received by your mover, or pay you for the cost of such repairs; replace the article with an article of like kind; or pay you for the cost of a replacement article at the current market replacement value, regardless of the age of the lost or damaged article. Your mover will charge you for this level of protection, or you may select the Alternative Level of Liability described below.

The cost for FVP is based on the value that you place on your shipment. For example, the valuation charge for a shipment valued at $25,000 would be about $250.00. However, the exact cost for full-value protection may vary by mover and may be further subject to various deductible levels of liability that could reduce your cost. Ask your mover for the details and cost of its specific plan.

Under the FVP level of liability, movers are permitted to limit their liability for loss of, or damage to, articles of extraordinary value, unless you specifically list on the shipping documents such articles for which you want liability coverage. An article of extraordinary value is any item whose value exceeds $100 per pound (for example, jewelry, silverware, china, furs, antiques, oriental rugs and computer software). Ask your mover for a complete explanation of this limitation before your move. It is your responsibility to study this provision carefully and to make the necessary declaration.

(2) RELEASED VALUE of 60 Cents Per Pound Per Article. This is the most economical protection option available; however, this no-cost option provides only minimal protection. Under this option, the mover assumes liability for no more than 60 cents per pound per article. Loss or damage claims are settled based on the weight of the article multiplied by 60 cents per pound. For example, if a 10-pound stereo component valued at $1,000 were lost or destroyed, the mover would be liable for no more than $6.00 (10 pounds × 60 cents per pound). Obviously, you should think carefully before agreeing to such an arrangement. There is no extra charge for this minimal protection, but you must sign a specific statement on the bill of lading agreeing to it. If you do not select this Alternative Level of Liability, your shipment will be transported at the Full (Replacement) Value level of liability and you will be assessed the applicable valuation charge.

These two levels of liability are not insurance agreements governed by State insurance laws but instead are contractual tariff levels of liability authorized under Released Rates Orders of the Surface Transportation Board of the U.S. Department of Transportation.

In addition to these options, some movers may also offer to sell, or procure for you, separate liability insurance from a third-party insurance company when you release your shipment for transportation at the minimum released value (60 cents per pound [$1.32 per kilogram] per article). This is not valuation coverage governed by Federal law but optional insurance regulated under State law. If you purchase this separate coverage and your mover is responsible for loss or damage, the mover is liable only for an amount not exceeding 60 cents per pound ($1.32 per kilogram) per article, and the balance of the loss is recoverable from the insurance company up to the amount of insurance purchased. The mover's representative can advise you of the availability of such liability insurance, and the cost.

If you purchase liability insurance from or through your mover, the mover is required to issue a policy or other written record of the purchase and to provide you with a copy of the policy or other document at the time of purchase. If the mover fails to comply with this requirement, the mover becomes fully liable for any claim for loss or damage attributed to its negligence.

What Actions by Me Limit or Reduce My Mover's Normal Liability?

Your actions may limit or reduce your mover's normal liability under the following three circumstances:

(1) You include perishable, dangerous, or hazardous materials in your household goods without your mover's knowledge.

(2) You choose the alternative level of liability (60 cents per pound per article) but ship household goods valued at more than 60 cents per pound ($1.32 per kilogram) per article.

(3) You fail to notify your mover in writing of articles valued at more than $100 per pound ($220 per kilogram). (If you *do* notify your mover, you will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.)

What Are Dangerous or Hazardous Materials That May Limit or Reduce My Mover's Normal Liability?

Federal law forbids you to ship hazardous materials in your household goods boxes or luggage without informing your mover. A violation can result in 5 years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124). You could also lose or damage your household goods by fire, explosion, or contamination.

If you offer hazardous materials to your mover, you are considered a hazardous materials shipper and must comply with the hazardous materials requirements in 49 CFR parts 171, 172, and 173, including but not limited to package labeling and marking, shipping papers, and emergency response information. Your mover must comply with 49 CFR parts 171, 172, 173, and 177 as a hazardous materials carrier.

Hazardous materials include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives, and radioactive materials. Examples: Nail polish remover, paints, paint thinners, lighter fluid, gasoline, fireworks, oxygen bottles, propane cylinders, automotive repair and maintenance chemicals, and radio-pharmaceuticals.

There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your household goods and certain smoking materials carried on your person. For further information, contact your mover.

May My Mover Have Agents?

Yes, your mover may have agents. If your mover has agents, your mover must have written agreements with its prime agents. Your mover and its retained prime agent must sign their agreements. Copies of your mover's prime agent agreements must be in your mover's files for a period of at least 24 months following the date of termination of each agreement.

What Items Must Be in My Mover's Advertisements?

Your mover must publish and use only truthful, straightforward, and honest advertisements. Your mover must include certain information in all advertisements for all services (including any accessorial services incidental to or part of interstate transportation). Your mover must require each of its agents to include the same information in its advertisements. The information must include the following two pieces of information about your mover:

(1) Name or trade name of the mover under whose U.S. DOT number the advertised service will originate.

(2) U.S. DOT number assigned by FMCSA authorizing your mover to operate. Your mover must display the information as: U.S. DOT No. (assigned number).

You should compare the name or trade name of the mover and its U.S. DOT number to the name and U.S. DOT number on the sides of the truck(s) that arrive at your residence. The names and numbers should be identical. If the names and numbers are not identical, you should ask your mover immediately why they are not. You should not allow the mover to load your household goods on its truck(s) until you obtain a satisfactory response from the mover's local agent. The discrepancies may warn of problems you will have later in your business dealings with this mover.

How Must My Mover Handle Complaints and Inquiries?

All movers are expected to respond promptly to complaints or inquiries from you, the customer. Should you have a complaint or question about your move, you should first attempt to obtain a satisfactory response from the mover's local agent, the sales representative who handled the arrangements for your move, or the driver assigned to your shipment.

If for any reason you are unable to obtain a satisfactory response from one of these persons, you should then contact the mover's principal office. When you make such a call, be sure to have available your copies of all documents relating to your move.

Particularly important is the number assigned to your shipment by your mover.

Interstate movers are also required to offer neutral arbitration as a means of resolving consumer disputes involving loss of or damage to your household goods shipment and disputes regarding charges that your mover billed in addition to those collected at delivery. Your mover is required to provide you with information regarding its arbitration program. You have the right to pursue court action under 49 U.S.C. 14706 to seek judicial redress directly rather than participate in your mover's arbitration program.

All interstate moving companies are required to maintain a complaint and inquiry procedure to assist their customers. At the time you make the arrangements for your move, you should ask the mover's representative for a description of the mover's procedure, the telephone number to be used to contact the mover, and whether the mover will pay for such telephone calls. Your mover's procedure must include the following four things:

(1) A communications system allowing you to communicate with your mover's principal place of business by telephone.

(2) A telephone number.

(3) A clear and concise statement about who must pay for complaint and inquiry telephone calls.

(4) A written or electronic record system for recording all inquiries and complaints received from you by any means of communication.

Your mover must give you a clear and concise written description of its procedure. You may want to be certain that the system is in place.

Do I Have the Right to Inspect My Mover's Tariffs (Schedules of Charges) Applicable to My Move?

Federal law requires your mover to advise you of your right to inspect your mover's tariffs (its schedules of rates or charges) governing your shipment. Movers' tariffs are made a part of the contract of carriage (bill of lading) between you and the mover. You may inspect the tariff at the mover's facility, or, upon request, the mover will furnish you a free copy of any tariff provision containing the mover's rates, rules, or charges governing your shipment.

Tariffs may include provisions limiting the mover's liability. This is generally described in a section on declaring value on the bill of lading. A second tariff provision may set the periods for filing claims. This is generally described in Section 6 on the reverse side of a bill of lading. A third tariff provision may reserve your mover's right to assess additional charges for additional services performed. For non-binding estimates, another tariff provision may base charges upon the exact weight of the goods transported. Your mover's tariff may contain other provisions that apply to your move. Ask your mover what they might be, and request a copy.

Must My Mover Have an Arbitration Program?

Your mover must have an arbitration program for your use in resolving disputes concerning loss of or damage to your household goods and disputes regarding charges that were billed to you in addition to those collected at delivery of your shipment. You have the right not to participate in the arbitration program. You may pursue court action under 49 U.S.C. 14706 to seek judicial remedies directly. Your mover must establish and maintain an arbitration program with the following 11 minimum elements:

(1) The arbitration program offered to you must prevent your mover from having any special advantage because you live or work in a place distant from the mover's principal or other place of business.

(2) Before your household goods are tendered for transport, your mover must provide notice to you of the availability of neutral arbitration, including the following three things:

(a) A summary of the arbitration procedure.

(b) Any applicable costs.

(c) A disclosure of the legal effects of electing to use arbitration.

(3) Upon your request, your mover must provide information and forms it considers necessary for initiating an action to resolve a dispute under arbitration.

(4) Each person authorized to arbitrate must be independent of the parties to the dispute and capable of resolving such disputes fairly and expeditiously. Your mover must ensure the arbitrator is authorized and able to obtain from you or your mover any material or relevant information to carry out a fair and expeditious decision-making process.

(5) You must not be required to pay more than one-half of the arbitration's cost. The arbitrator may determine the percentage of payment of the costs for each party in the arbitration decision, but must not make you pay more than half.

(6) Your mover must not require you to agree to use arbitration before a dispute arises.

(7) You and your mover will be bound by arbitration for claims of $10,000 or less if you request arbitration.

(8) You and your mover will be bound by arbitration for claims of more than $10,000 only if you request arbitration and your mover agrees to it.

(9) If you and your mover both agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party.

(10) The arbitrator must render a decision within 60 days of receipt of written notification of the dispute, and a decision by an arbitrator may include any remedies appropriate under the circumstances.

(11) The 60-day period may be extended for a reasonable period if either you or your mover fails to provide information in a timely manner. Your mover must produce and distribute a concise, easy-to-read, accurate summary of its arbitration program.

Must My Mover Inform Me About My Rights and Responsibilities Under Federal Law?

Yes, your mover must inform you about your rights and responsibilities under Federal law. Your mover must produce and distribute this document. It should follow the general order and contain the text of appendix A to 49 CFR part 375.

What Other Information Must My Mover Provide Me?

At the time your mover provides a written estimate, it must provide you with a copy of the U.S. Department of Transportation publication FMCSA–ESA–03–005 entitled ''Ready to Move?'' (or its successor publication). Before your mover executes an order for service for a shipment of household goods, your mover must furnish you with the following four documents:

1. The contents of Appendix A, ''Your Rights and Responsibilities When You Move''—this booklet.

2. A concise, easy-to-read, and accurate summary of your mover's arbitration program.

3. A notice of availability of the applicable sections of your mover's tariff for the estimate of charges, including an explanation that you may examine the tariff sections or have copies sent to you upon request.

4. A concise, easy-to-read, accurate summary of your mover's customer complaint and inquiry handling procedures. Included in this summary must be the following two items:

(a) The main telephone number you may use to communicate with your mover.

(b) A clear and concise statement concerning who must pay for telephone calls.

Your mover may, at its discretion, provide additional information to you.

How Must My Mover Collect Charges?

Your mover must issue you an honest, truthful freight or expense bill for each shipment transported. Your mover's freight or expense bill must contain the following 17 items:

(1) Name of the consignor.

(2) Name of the consignees.

(3) Date of the shipment.

(4) Origin point.

(5) Destination points.

(6) Number of packages.

(7) Description of the freight.

(8) Weight of the freight (if your shipment is moved under a non-binding estimate).

(9) Exact rate(s) assessed.

(10) Disclosure of the actual rates, charges, and allowances for the transportation service, when your mover electronically presents or transmits freight or expense bills to you. These rates must be in accordance with the mover's applicable tariff.

(11) An indication of whether adjustments may apply to the bill.

(12) Total charges due and acceptable methods of payment.

(13) The nature and amount of any special service charges.

(14) The points where special services were rendered.

(15) Route of movement and name of each mover participating in the transportation.

(16) Transfer points where shipments moved.

(17) Address where you must pay or address of bill issuer's principal place of business.

Your mover must present its freight or expense bill to you within 15 days of the date

of delivery of a shipment at its destination. The computation of time excludes Saturdays, Sundays, and Federal holidays. If your mover lacks sufficient information to compute its charges, your mover must present its freight bill for payment within 15 days of the date when sufficient information does become available.

May My Mover Collect Charges Upon Delivery?

Yes. Your mover must specify the form of payment acceptable at delivery when the mover prepares an estimate and order for service. The mover and its agents must honor the form of payment at delivery, except when you mutually agree to a change in writing. The mover must also specify the same form of payment when it prepares your bill of lading, unless you agree to a change. See also ''May my mover accept charge or credit cards for my payments?''

You must be prepared to pay 10 percent more than the estimated amount, if your goods are moving under a non-binding estimate. Every collect-on-delivery shipper must have available 110 percent of the estimate at the time of delivery. In addition, your mover may also collect at the time of delivery the charges for any additional services you requested after the contract with your mover was executed (charges therefore not included in the estimate) and any charges for impracticable operations needed to accomplish delivery, as defined by the carrier's tariff. Charges collected at the time of delivery for impracticable operations must not exceed 15 percent of all other charges due at the time of delivery. You must pay all remaining charges for impracticable operations within 30 days after you receive the mover's freight bill.

May My Mover Extend Credit to Me?

Extending credit to you is not the same as accepting your charge or credit card(s) as payment. Your mover may extend credit to you in the amount of the tariff charges. If your mover extends credit to you, your mover becomes like a bank offering you a line of credit, whose size and interest rate are determined by your ability to pay its tariff charges within the credit period. Your mover must ensure you will pay its tariff charges within the credit period. Your mover may relinquish possession of freight before you pay its tariff charges, at its discretion.

The credit period must begin on the day following presentation of your mover's freight bill to you. Under Federal regulation, the standard credit period is 7 days, excluding Saturdays, Sundays, and Federal holidays. Your mover must also extend the credit period to a total of 30 calendar days if the freight bill is not paid within the 7-day period. A service charge equal to one percent of the amount of the freight bill, subject to a $20 minimum, will be assessed for this extension and for each additional 30-day period the charges go unpaid.

Your failure to pay within the credit period will require your mover to determine whether you will comply with the Federal household goods transportation credit regulations in good faith in the future before extending credit again.

May My Mover Accept Charge or Credit Cards for My Payments?

Your mover may allow you to use a charge or credit card for payment of the freight charges. Your mover may accept charge or credit cards whenever you ship with it under an agreement and tariff requiring payment by cash or cash equivalents. Cash equivalents are a certified check, money order, or cashier's check (a check that a financial institution—bank, credit union, savings and loan—draws upon itself and that is signed by an officer of the financial institution).

If your mover allows you to pay for a freight or expense bill by charge or credit card, your mover deems such a payment to be equivalent to payment by cash, certified check, or cashier's check. It must note in writing on the order for service and the bill of lading whether you may pay for the transportation and related services using a charge or credit card. You should ask your mover at the time the estimate is written whether it will accept charge or credit cards at delivery.

The mover must specify what charge or credit cards it will accept, such as American Express™, Discover™, MasterCard ™, or Visa™. If your mover agrees to accept payment by charge or credit card, you must arrange with your mover for the delivery only at a time when your mover can obtain authorization for your credit card transaction. If you cause a charge or credit card issuer to reverse a transaction, your mover may consider your action tantamount to forcing your mover to provide an involuntary extension of its credit.

Subpart C—Service Options Provided

What Service Options May My Mover Provide?

Your mover may provide any service options it chooses. It is customary for movers to offer several price and service options.

The total cost of your move may increase if you want additional or special services. Before you agree to have your shipment moved under a bill of lading providing special service, you should have a clear understanding with your mover of what the additional cost will be. You should always consider whether other movers might provide the services you need without requiring you to pay the additional charges.

One service option is a *space reservation.* If you agree to have your shipment transported under a space reservation agreement, you will pay for a minimum number of cubic feet of space in the moving van regardless of how much space in the van your shipment actually occupies.

A second option is *expedited service.* This aids you if you must have your shipments transported on or between specific dates when the mover could not ordinarily agree to do so in its normal operations.

A third customary service option is exclusive use of a vehicle. If for any reason you desire or require that your shipment be moved by itself on the mover's truck or trailer, most movers will provide such service.

Another service option is *guaranteed service on or between agreed dates.* You enter into an agreement with the mover where the mover provides for your shipment to be picked up, transported to destination, and delivered on specific guaranteed dates. If the mover fails to provide the service as agreed, you are entitled to be compensated at a predetermined amount or a daily rate (per diem) regardless of the expense you might actually have incurred as a result of the mover's failure to perform.

Before requesting or agreeing to any of these price and service options, be sure to ask the mover's representatives about the final costs you will pay.

Transport of Shipments on Two or More Vehicles

Although all movers try to move each shipment on one truck, it becomes necessary, at times, to divide a shipment among two or more trucks. This may occur if your mover has underestimated the cubic feet (meters) of space required for your shipment and it will not all fit on the first truck. Your mover will pick up the remainder, or ''leave behind,'' on a second truck at a later time, and this part of your shipment may arrive at the destination later than the first truck. When this occurs, your transportation charges will be determined as if the entire shipment had moved on one truck.

If it is important for you to avoid this inconvenience of a ''leave behind,'' be sure your estimate includes an accurate calculation of the cubic feet (meters) required for your shipment. Ask your estimator to use a ''Table of Measurements'' form in making this calculation. Consider asking for a binding estimate. A binding estimate is more likely to be conservative with regard to cubic feet (meters) than a non-binding estimate. If the mover offers space reservation service, consider purchasing this service for the necessary amount of space plus some margin for error. In any case, you would be prudent to ''prioritize'' your goods in advance of the move so the driver will load the more essential items on the first truck if some are left behind.

If My Mover Sells Liability Insurance Coverage, What Must My Mover Do?

If your mover provides the service of selling additional liability insurance, your mover must follow certain regulations.

Your mover, its employees, or its agents may sell, offer to sell, or procure additional liability insurance coverage for you for loss of or damage to your shipment if you release the shipment for transportation at a value not exceeding 60 cents per pound ($1.32 per kilogram) per article.

Your mover may offer, sell, or procure any type of insurance policy covering loss or damage in excess of its specified liability.

Your mover must issue you a policy or other appropriate evidence of the insurance you purchased. Your mover must provide a copy of the policy or other appropriate evidence to you at the time your mover sells or procures the insurance. Your mover must issue policies written in plain English.

Your mover must clearly specify the nature and extent of coverage under the policy. Your mover's failure to issue you a policy, or other appropriate evidence of insurance you

purchased, will subject your mover to full liability for any claims to recover loss or damage attributed to it.

Your mover's tariff must provide for liability insurance coverage. The tariff must also provide for the base transportation charge, including its assumption of full liability for the value of the shipment. This would offer you a degree of protection in the event your mover fails to issue you a policy or other appropriate evidence of insurance at the time of purchase.

Subpart D—Estimating Charges

Must My Mover Estimate the Transportation and Accessorial Charges for My Move?

We require your mover to prepare a written estimate on every shipment transported for you. You are entitled to a copy of the written estimate when your mover prepares it. Your mover must provide you a written estimate of all charges, including transportation, accessorial, and advance charges. Your mover's ''rate quote'' is not an estimate. You and your mover must sign the estimate of charges. Your mover must provide you with a dated copy of the estimate of charges at the time you sign the estimate.

If the location you are moving from is within a 50-mile radius of your mover's (or its agent's) place of business, the estimate that your mover provides you must be based on a physical survey of your goods. You have the right to waive the requirement for a physical survey if you choose, but your waiver must be in the form of a written agreement signed by you before your shipment is loaded.

You should be aware that if you receive an estimate from a household goods broker, the mover may not be required to accept the estimate. Be sure to obtain a written estimate from a mover who tells you orally that it will accept the broker's estimate.

Your mover must specify the form of payment the mover and its delivering agent will honor at delivery. Payment forms may include but are not limited to cash, certified check, money order, cashier's check, a specific charge card such as American Express™, a specific credit card such as Visa™, and your mover's own credit.

Before loading your household goods, and upon mutual agreement between you and your mover, your mover may amend an estimate of charges. Your mover may not amend the estimate after loading the shipment.

A binding estimate is a written agreement made in advance with your mover, indicating you and the mover are bound by the charges. It guarantees the total cost of the move based upon the quantities and services shown on your mover's estimate.

A *non-binding estimate* is what your mover believes the total cost will be for the move, based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on your mover. Your mover will base the final charges upon the actual weight of your shipment, the services provided, and its tariff provisions in effect. You must be prepared to pay 10 percent more than the estimated amount at delivery.

You must also be prepared to pay at delivery the charges for any additional services you requested after the contract was executed (charges therefore not included in the estimate) and any charges for impracticable operations. Impracticable operations are defined in your mover's tariff. You should ask to see the mover's tariff to determine what services constitute impracticable operations. Charges for impracticable operations due at delivery must not exceed 15 percent of all other charges due at delivery.

How Must My Mover Estimate Charges Under the Regulations?

Binding Estimates

Your mover may charge you for providing a binding estimate. The binding estimate must clearly describe the shipment and all services provided.

When you receive a binding estimate, you cannot be required to pay any more than the estimated amount at delivery. If you have requested the mover provide more services than those included in the estimate, your mover will collect the charges for those services when your shipment is delivered. However, charges for impracticable operations due at delivery must not exceed 15 percent of all other charges due at delivery.

A binding estimate must be in writing, and a copy must be made available to you before you move.

If you agree to a binding estimate, you are responsible for paying the charges due by cash, certified check, money order, or cashier's check. The charges are due your mover at the time of delivery unless your mover agrees, before you move, to extend credit or to accept payment by a specific charge card such as American Express™ or a specific credit card such as Visa™. If you are unable to pay at the time the shipment is delivered, the mover may place your shipment in storage at your expense until you pay the charges.

Other requirements of binding estimates include the following eight elements:

(1) Your mover must retain a copy of each binding estimate as an attachment to the bill of lading.

(2) Your mover must clearly indicate upon each binding estimate's face that the estimate is binding upon you and your mover. Each binding estimate must also clearly indicate on its face that the charges shown are the charges to be assessed for only those services specifically identified in the estimate.

(3) Your mover must clearly describe binding estimate shipments and all services to be provided.

(4) If, before loading your shipment, your mover believes you are tendering additional household goods or are requiring additional services not identified in the binding estimate, and you and your mover cannot reach an agreement, your mover may refuse to service the shipment. If your mover agrees to service the shipment, your mover must do one of the following three things:

(a) Reaffirm the binding estimate.

(b) Negotiate a revised written binding estimate listing the additional household goods or services.

(c) Add an attachment to the contract, in writing, stating you both will consider the original binding estimate as a non-binding estimate. Before you agree to this option, read the information about non-binding estimates in the next section of this pamphlet. Accepting a non-binding estimate may seriously affect how much you may pay for the entire move.

(5) Once your mover loads your shipment, your mover's failure to execute a new binding estimate or to agree with you to treat the original estimate as a non-binding estimate signifies it has reaffirmed the original binding estimate. Your mover may not collect more than the amount of the original binding estimate, except as provided in the next two paragraphs.

(6) If you request additional services after the bill of lading is executed, your mover will collect the charges for these additional services when your shipment is delivered.

(7) If your mover must perform impracticable operations, as defined in its tariff, to accomplish the delivery of your shipment, your mover will collect the charges for these services when your shipment is delivered. However, charges for impracticable operations collected at delivery must not exceed 15 percent of all other charges due at delivery. Any remaining impracticable operations charges must be paid within 30 days after you receive the mover's freight bill.

(8) Failure of your mover to relinquish possession of a shipment upon your offer to pay the binding estimate amount plus the cost of any additional services you requested after the bill of lading was executed and any charges for impracticable operations (not to exceed 15 percent of all other charges due at delivery) constitutes your mover's failure to transport a shipment with ''reasonable dispatch'' and subjects your mover to cargo delay claims pursuant to 49 CFR part 370.

Non-Binding Estimates

Your mover is not permitted to charge you for giving a non-binding estimate.

A non-binding estimate is not a bid or contract. Your mover provides it to you to give you a general idea of the cost of the move, but it does not bind your mover to the estimated cost. You should expect the final cost to be more than the estimate. The actual cost will be in accordance with your mover's tariffs. Federal law requires your mover to collect the charges shown in its tariffs, regardless of what your mover writes in its non-binding estimates. That is why it is important to ask for copies of the applicable portions of the mover's tariffs before deciding on a mover. The charges contained in movers' tariffs are essentially the same for shipments of equal weight moving equal distances. Even if you obtain different non-binding estimates from different movers, you must pay only the amount specified in your mover's tariff. Therefore, a non-binding estimate may differ substantially from the amount that you ultimately will pay.

You must be prepared to pay 10 percent more than the estimated amount at the time

of delivery. Every collect-on-delivery shipper must have available 110 percent of the estimate at the time of delivery. If you order additional services from your mover after the mover issues the bill of lading, the mover will collect the charges for those additional services when your shipment is delivered.

Non-binding estimates must be in writing and clearly describe the shipment and all services provided. Any time a mover provides such an estimate, the amount of the charges estimated must be on the order for service and bill of lading related to your shipment. When you are given a non-binding estimate, do not sign or accept the order for service or bill of lading unless the mover enters the amount estimated on each form it prepares.

Other requirements of non-binding estimates include the following 10 elements:

(1) Your mover must provide reasonably accurate non-binding estimates based upon the estimated weight of the shipment and services required.

(2) Your mover must explain to you that all charges on shipments moved under non-binding estimates will be those appearing in your mover's tariffs applicable to the transportation. If your mover provides a non-binding estimate of approximate costs, your mover is not bound by such an estimate.

(3) Your mover must furnish non-binding estimates without charge and in writing to you.

(4) Your mover must retain a copy of each non-binding estimate as an attachment to the bill of lading.

(5) Your mover must clearly indicate on the face of a non-binding estimate that the estimate is not binding upon your mover and the charges shown are the approximate charges to be assessed for the services identified in the estimate.

(6) Your mover must clearly describe on the face of a non-binding estimate the entire shipment and all services to be provided.

(7) If, before loading your shipment, your mover believes you are tendering additional household goods or requiring additional services not identified in the non-binding estimate, and you and your mover cannot reach an agreement, your mover may refuse to service the shipment. If your mover agrees to service the shipment, your mover must do one of the following two things:

(a) Reaffirm the non-binding estimate.

(b) Negotiate a revised written non-binding estimate listing the additional household goods or services.

(8) Once your mover loads your shipment, your mover's failure to execute a new estimate signifies it has reaffirmed the original non-binding estimate. Your mover may not collect more than 110 percent of the amount of this estimate at destination for the services and quantities shown on the estimate.

(9) If you request additional services after the bill of lading is executed, your mover will collect the charges for these additional services when your shipment is delivered.

(10) If your mover must perform impracticable operations, as defined in its tariff, to accomplish the delivery of your shipment, your mover will collect the charges for these services when your shipment is delivered. However, charges for impracticable operations collected at delivery must not exceed 15 percent of all other charges due at delivery. Any remaining impracticable operations charges must be paid within 30 days after you receive the mover's freight bill.

If your mover furnishes a non-binding estimate, your mover must enter the estimated charges upon the order for service and the bill of lading. Your mover must retain a record of all estimates of charges for each move performed for at least one year from the date your mover made the estimate.

What Payment Arrangements Must My Mover Have in Place To Secure Delivery of My Household Goods Shipment?

If your total bill is 110 percent or less of the non-binding estimate, the mover can require payment in full upon delivery. If the bill exceeds 110 percent of the non-binding estimate, your mover must relinquish possession of the shipment at the time of delivery upon payment of 110 percent of the estimated amount, and defer billing for the remaining charges for at least 30 days.

There are two exceptions to this requirement. Your mover may demand at the time of delivery payment of the charges for any additional services you requested after the bill of lading was executed (charges therefore not included in the estimate). Your mover may also require you to pay charges for impracticable operations at the time of delivery, provided these do not exceed 15 percent of all other charges due at delivery. Impracticable operations charges that exceed 15 percent of all other charges due at delivery are due within 30 days after you receive the mover's freight bill. Your mover should have specified its acceptable form of payment on the estimate, order for service, and bill of lading.

Your mover's failure to relinquish possession of a shipment after you offer to pay 110 percent of the estimated charges, plus the charges for any additional services you requested after the bill of lading was executed (charges therefore not included in the estimate) and any charges for impracticable operations (not to exceed 15 percent of all other charges due at delivery), constitutes its failure to transport the shipment with ''reasonable dispatch'' and subjects your mover to your cargo delay claims under 49 CFR part 370.

Subpart E—Pickup of My Shipment of Household Goods

Must My Mover Write Up an Order for Service?

We require your mover to prepare an order for service on every shipment transported for you. You are entitled to a copy of the order for service when your mover prepares it.

The order for service is not a contract. Should you cancel or delay your move or decide not to use the mover, you should promptly cancel the order.

If you or your mover change any agreed-upon dates for pickup or delivery of your shipment, or agree to any change in the non-binding estimate, your mover may prepare a written change to the order for service. The written change must be attached to the order for service.

The order for service must contain the following 15 elements:

(1) Your mover's name and address and the U.S. DOT number assigned to your mover.

(2) Your name, address and, if available, telephone number(s).

(3) The name, address, and telephone number of the delivering mover's office or agent at or nearest to the destination of your shipment.

(4) A telephone number where you may contact your mover or its designated agent.

(5) One of the following three dates and times:

(i) The agreed-upon pickup date and agreed delivery date of your move.

(ii) The agreed-upon period(s) of the entire move.

(iii) If your mover is transporting the shipment on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation, and delivery. Your mover must enter any penalty or per diem requirements upon the agreement under this item.

(6) The names and addresses of any other motor carriers, when known, that will participate in interline transportation of the shipment.

(7) The form of payment your mover will honor at delivery. The payment information must be the same as was entered on the estimate.

(8) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(9) The maximum amount your mover will demand, based on the mover's estimate, for you to obtain possession of the shipment at the time of delivery, when the household goods are transported on a collect-on-delivery basis.

(10) If not provided in the Bill of Lading, the Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The STB's required released rates may be increased annually by your mover based on the U.S. Department of Commerce's Cost of Living Adjustment.

(11) A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment.

(12) Any identification or registration number your mover assigns to the shipment.

(13) For non-binding estimated charges, your mover's reasonably accurate estimate of the amount of the charges, the method of payment of total charges, and the maximum amount (110 percent of the non-binding estimate) your mover will demand at the time of delivery for you to obtain possession of the shipment.

(14) For binding estimated charges, the amount of charges your mover will demand based upon the binding estimate and the terms of payment under the estimate.

(15) An indication of whether you request notification of the charges before delivery. You must provide your mover with the telephone number(s) or address(es) where your mover will transmit such communications.

You and your mover must sign the order for service. Your mover must provide a dated copy of the order for service to you at the time your mover signs the order. Your mover must provide you the opportunity to rescind the order for service without any penalty for a 3-day period after you sign the order for service, if you scheduled the shipment to be loaded more than 3 days after you sign the order.

Your mover should provide you with documents that are as complete as possible, and with all charges clearly identified. However, as a practical matter, your mover usually cannot give you a complete bill of lading before transporting your goods. This is both because the shipment cannot be weighed until it is in transit and because other charges for service, such as unpacking, storage-in-transit, and various destination charges, cannot be determined until the shipment reaches its destination.

Therefore, your mover can require you to sign a partially complete bill of lading if it contains all relevant information except the actual shipment weight and any other information necessary to determine the final charges for all services provided. Signing the bill of lading allows you to choose the valuation option, request special services, and/or acknowledge the terms and conditions of released valuation.

Your mover also may provide you, strictly for informational purposes, with blank or incomplete documents pertaining to the move. Before loading your shipment, and upon mutual agreement between you and your mover, your mover may amend an order for service. Your mover must retain records of an order for service it transported for at least one year from the date your mover wrote the order.

Your mover must inform you, before or at the time of loading, if the mover reasonably expects a special or accessorial service is necessary to transport a shipment safely. Your mover must refuse to accept the shipment when your mover reasonably expects a special or accessorial service is necessary to transport a shipment safely but you refuse to purchase the special or accessorial service. Your mover must make a written note if you refuse any special or accessorial services that your mover reasonably expects to be necessary.

Must My Mover Write Up an Inventory of the Shipment?

Yes. Your mover must prepare an inventory of your shipment before or at the time of loading. If your mover's driver fails to prepare an inventory, you should write a detailed inventory of your shipment listing any damage or unusual wear to any items. The purpose is to make a record of the existence and condition of each item.

After completing the inventory, you should sign each page and ask the mover's driver to sign each page. Before you sign it, it is important you make sure that the inventory lists every item in the shipment and that the entries regarding the condition of each item are correct. You have the right to note any disagreement. If an item is missing or damaged when your mover delivers the shipment, your subsequent ability to dispute the items lost or damaged may depend upon your notations.

You should retain a copy of the inventory. Your mover may keep the original if the driver prepared it. If your mover's driver completed an inventory, the mover must attach the complete inventory to the bill of lading as an integral part of the bill of lading.

Must My Mover Write Up a Bill of Lading?

The bill of lading is the *contract* between you and the mover. The mover is required by law to prepare a bill of lading for every shipment it transports. *The information on a bill of lading is required to be the same information shown on the order for service.* The driver who loads your shipment must give you a copy of the bill of lading before or at the time of loading your furniture and other household goods.

It is your responsibility to read the bill of lading before you accept it. It is your responsibility to understand the bill of lading before you sign it. If you do not agree with something on the bill of lading, do not sign it until you are satisfied it is correct.

The bill of lading requires the mover to provide the service you have requested. You must pay the charges set forth in the bill of lading. *The bill of lading is an important document. Do not lose or misplace your copy.* Have it available until your shipment is delivered, all charges are paid, and all claims, if any, are settled.

A bill of lading must include the following 14 elements:

(1) Your mover's name and address, or the name and address of the motor carrier issuing the bill of lading.

(2) The names and addresses of any other motor carriers, when known, who will participate in the transportation of the shipment.

(3) The name, address, and telephone number of the office of the motor carrier you must contact in relation to the transportation of the shipment.

(4) The form of payment your mover will honor at delivery. The payment information must be the same that was entered on the estimate and order for service.

(5) When your mover transports your shipment under a collect-on-delivery basis, your name, address, and telephone number where the mover will notify you about the charges.

(6) *For non-guaranteed service,* the agreed-upon date or period of time for pickup of the shipment and the agreed-upon date or period of time for the delivery of the shipment. The agreed-upon dates or periods for pickup and delivery entered upon the bill of lading must conform to the agreed-upon dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

(7) For *guaranteed service,* the dates for pickup and delivery and any penalty or per diem entitlements due you under the agreement.

(8) The actual date of pickup.

(9) The identification number(s) of the vehicle(s) in which your mover loads your shipment.

(10) The terms and conditions for payment of the total charges including notice of any minimum charges.

(11) The maximum amount your mover, based on the estimate, will demand from you at the time of delivery for you to obtain possession of your shipment, when your mover transports under a collect-on-delivery basis.

(12) If not provided for in the Order for Service, the Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage. The Board's required released rates may be increased annually by your mover based on the U.S. Department of Commerce's Cost of Living Adjustment.

(13) Evidence of any insurance coverage sold to or procured for you from an independent insurer, including the amount of the premium for such insurance.

(14) Each attachment to the bill of lading. Each attachment is an integral part of the bill of lading contract. If not provided to you elsewhere by the mover, the following three items must be added as attachments:

(i) The binding or non-binding estimate.

(ii) The order for service.

(iii) The inventory.

A copy of the bill of lading must accompany your shipment at all times while it is in the possession of your mover or its agent(s). When your mover loads the shipment on a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment. Your mover must retain bills of lading for shipments it transported for at least one year from the date your mover created the bill of lading.

Should I Reach an Agreement With My Mover About Pickup and Delivery Times?

You and your mover should reach an agreement for pickup and delivery times. It is your responsibility to determine on what date, or between what dates, you need to have the shipment picked up and on what date, or between what dates, you require delivery. It is your mover's responsibility to tell you if it can provide service on or between those dates, or, if not, on what other dates it can provide the service.

In the process of reaching an agreement with your mover, you may find it necessary to alter your moving and travel plans if no mover can provide service on the specific dates you desire.

Do not agree to have your shipment picked up or delivered ''as soon as possible.'' The dates or periods you and your mover agree upon should be definite.

Once an agreement is reached, your mover must enter those dates upon the order for service and the bill of lading.

Once your goods are loaded, your mover is contractually bound to provide the service described in the bill of lading. Your mover's only defense for not providing the service on the dates called for is the defense of force majeure. This is a legal term. It means that when circumstances change, were not foreseen, and are beyond the control of your mover, preventing your mover from performing the service agreed to in the bill of lading, your mover is not responsible for damages resulting from its nonperformance.

This may occur when you do not inform your mover of the exact delivery

requirements. For example, because of restrictions trucks must follow at your new location, the mover may not be able to take its truck down the street of your residence and may need to shuttle the shipment using another type of vehicle.

Must My Mover Determine the Weight of My Shipment?

Generally, yes. If your mover transports your household goods on a non-binding estimate, your mover must determine the actual weight of the shipment in order to calculate its lawful tariff charge. If your mover provided a binding estimate and has loaded your shipment without claiming you have added additional items or services, the weight of the shipment will not affect the charges you will pay.

Your mover must determine the weight of your shipment before requesting you to pay for any charges dependent upon your shipment's weight.

Most movers have a minimum weight charge for transporting a shipment. Generally, the minimum is the charge for transporting a shipment of at least 3,000 pounds (1,362 kilograms).

If your shipment appears to weigh less than the mover's minimum weight, your mover must advise you on the order for service of the minimum cost before transporting your shipment. Should your mover fail to advise you of the minimum charges and your shipment is less than the minimum weight, your mover must base your final charges upon the actual weight, not upon the minimum weight.

How Must My Mover Determine the Weight of My Shipment?

Your mover must weigh your shipment upon a certified scale.

The weight of your shipment must be obtained by using one of two methods:

Origin Weighing—Your mover may weigh your shipment in the city or area where it loads your shipment. If it elects this option, the driver must weigh the truck before coming to your residence. This is called the *tare weight.* At the time of this first weighing, the truck may already be partially loaded with another shipment(s). This will not affect the weight of your shipment. The truck should also contain the pads, dollies, hand trucks, ramps, and other equipment normally used in the transportation of household goods shipments.

After loading, the driver will weigh the truck again to obtain the loaded weight, called the *gross weight.* The net weight of your shipment is then obtained by subtracting the *tare weight* before loading from the *gross weight.*

Gross Weight less the Tare Weight Before Loading = Net Weight.

Destination Weighing (Also called *Back Weighing*)—The mover is also permitted to determine the weight of your shipment at the destination after it delivers your load. Weighing your shipment at destination instead of at origin will not affect the accuracy of the shipment weight. *The most important difference is that your mover will not determine the exact charges on your shipment before it is unloaded.*

Destination weighing is done in reverse of origin weighing. After arriving in the city or area where you are moving, the driver will weigh the truck. Your shipment will still be on the truck. Your mover will determine the *gross weight* before coming to your new residence to unload. After unloading your shipment, the driver will again weigh the truck to obtain the *tare weight.* The net weight of your shipment will then be obtained by subtracting the *tare weight* after delivery from the *gross weight.*

Gross Weight less the Tare Weight After Delivery = Net Weight.

At the time of both weighings, your mover's truck must have installed or loaded all pads, dollies, hand trucks, ramps, and other equipment required in the transportation of your shipment. The driver and other persons must be off the vehicle at the time of both weighings. The fuel tanks on the vehicle must be full at the time of each weighing; or, if the fuel tanks are not full, your mover must not add fuel between the two weighings when the tare weighing is the first weighing performed.

Your mover may detach the trailer of a tractor-trailer vehicle combination from the tractor and have the trailer weighed separately at each weighing, provided the length of the scale platform is adequate to accommodate and support the entire trailer.

Your mover may use an alternative method to weigh your shipment if it weighs 3,000 pounds (1,362 kilograms) or less. The only alternative method allowed is weighing the shipment upon a platform or warehouse certified scale before loading your shipment for transportation or after unloading.

Your mover must use the net weight of shipments transported in large containers, such as ocean or railroad containers. Your mover will calculate the difference between the tare weight of the container (including all pads, blocking and bracing used in the transportation of your shipment) and the gross weight of the container with your shipment loaded in the container.

You have the right, and your mover must inform you of your right, to observe all weighings of your shipment. Your mover must tell you where and when each weighing will occur. Your mover must give you a reasonable opportunity to be present to observe the weighings.

You may waive your right to observe any weighing or reweighing. This does not affect any of your other rights under Federal law.

Your mover may request that you waive your right to have a shipment weighed upon a certified scale. Your mover may want to weigh the shipment upon a trailer's on-board, non-certified scale. You should demand your right to have a certified scale used. The use of a non-certified scale may cause you to pay a higher final bill for your move, if the non-certified scale does not accurately weigh your shipment. Remember that certified scales are inspected and approved for accuracy by a government inspection or licensing agency. Non-certified scales are not inspected and approved for accuracy by a government inspection or licensing agency.

Your mover must obtain a separate weight ticket for each weighing. The weigh master must sign each weight ticket. Each weight ticket must contain the following six items:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) Identification of the weight entries as being the tare, gross, or net weights.

(4) The company or mover identification of the vehicle.

(5) Your last name as it appears on the Bill of Lading.

(6) Your mover's shipment registration or Bill of Lading number.

Your mover must retain the original weight ticket or tickets relating to the determination of the weight of your shipment as part of its file on your shipment. When both weighings are performed on the same scale, one weight ticket may be used to record both weighings.

Your mover must present all freight bills with true copies of all weight tickets. If your mover does not present its freight bill with all weight tickets, your mover is in violation of Federal law.

Before the driver actually begins unloading your shipment weighed at origin and after your mover informs you of the billing weight and total charges, you have the right to demand a reweigh of your shipment. If you believe the weight is not accurate, you have the right to request your mover reweigh your shipment before unloading.

You have the right, and your mover must inform you of your right, to observe all reweighings of your shipment. Your mover must tell you where and when each reweighing will occur. Your mover must give you a reasonable opportunity to be present to observe the reweighing. You may waive your right to observe any reweighing; however, you must waive that right in writing. You may send the written waiver via fax or e-mail, as well as by overnight courier or certified mail, return receipt requested. This does not affect any of your other rights under Federal law.

Your mover is prohibited from charging you for the reweighing. If the weight of your shipment at the time of the reweigh is different from the weight determined at origin, your mover must recompute the charges based upon the reweigh weight.

Before requesting a reweigh, you may find it to your advantage to estimate the weight of your shipment using the following three-step method:

1. Count the number of items in your shipment. Usually there will be either 30 or 40 items listed on each page of the inventory. For example, if there are 30 items per page and your inventory consists of four complete pages and a fifth page with 15 items listed, the total number of items will be 135. *If an automobile is listed on the inventory, do not include this item in the count of the total items.*

2. Subtract the weight of any automobile included in your shipment from the total weight of the shipment. If the automobile was not weighed separately, its weight can be found on its title or license receipt.

3. Divide the number of items in your shipment into the weight. If the average weight resulting from this exercise ranges between 35 and 45 pounds (16 and 20 kilograms) per article, it is unlikely a reweigh will prove beneficial to you. In fact, it could result in your paying higher charges.

Experience has shown that the average shipment of household goods will weigh about 40 pounds (18 kilograms) per item. If a shipment contains a large number of heavy items, such as cartons of books, boxes of tools or heavier than average furniture, the average weight per item may be 45 pounds or more (20 kilograms or more).

What Must My Mover Do if I Want To Know the Actual Weight or Charges for My Shipment Before Delivery?

If you request notification of the actual weight and charges of your shipment, your mover must comply with your request if it is moving your goods on a collect-on-delivery basis. This requirement is conditioned upon your supplying your mover with an address or telephone number where you will receive the communication. Your mover must make its notification by telephone; fax transmissions; e-mail; overnight courier; certified mail, return receipt requested; or in person.

You must receive the mover's notification at least one full 24-hour day before its scheduled delivery, excluding Saturdays, Sundays, and Federal holidays.

Your mover may disregard this 24-hour notification requirement on shipments subject to one of the following three things:

(1) Back weigh (when your mover weighs your shipment at its destination).

(2) Pickup and delivery encompassing two consecutive weekdays, if you agree.

(3) Maximum payment amounts at time of delivery of 110 percent of the estimated charges, if you agree.

Subpart F—Transportation of My Shipment

Must My Mover Transport the Shipment in a Timely Manner?

Yes, your mover must transport your household goods in a timely manner. This is also known as ''reasonable dispatch service.'' Your mover must provide reasonable dispatch service to you, except for transportation on the basis of guaranteed delivery dates.

When your mover is unable to perform either the pickup or delivery of your shipment on the dates or during the periods of time specified in the order for service, your mover must notify you of the delay, at the mover's expense. As soon as the delay becomes apparent to your mover, it must give you notification it will be unable to provide the service specified in the terms of the order for service. Your mover may notify you of the delay in any of the following ways: By telephone; fax transmissions; e-mail; overnight courier; certified mail, return receipt requested; or in person.

When your mover notifies you of a delay, it also must advise you of the dates or periods of time it may be able to pick up and/or deliver the shipment. Your mover must consider your needs in its advisement. Your mover must prepare a written record of the date, time, and manner of its notification.

Your mover must prepare a written record of its amended date or period for delivery. Your mover must retain these records as a part of its file on your shipment. The retention period is one year from the date of notification. Your mover must furnish a copy of the notification to you either by first class mail or in person, if you request a copy of the notice.

Your mover must tender your shipment for delivery on the agreed-upon delivery date or within the period specified on the bill of lading. Upon your request or concurrence, your mover may deliver your shipment on another day.

The establishment of a delayed pickup or delivery date does not relieve your mover from liability for damages resulting from your mover's failure to provide service as agreed. However, when your mover notifies you of alternate delivery dates, it is your responsibility to be available to accept delivery on the dates specified. If you are not available and are not willing to accept delivery, your mover has the right to place your shipment in storage at your expense or hold the shipment on its truck and assess additional charges.

If after the pickup of your shipment, *you* request your mover to change the delivery date, most movers will agree to do so provided your request will not result in unreasonable delay to its equipment or interfere with another customer's move. However, your mover is under no obligation to consent to amended delivery dates. Your mover has the right to place your shipment in storage at your expense if you are unwilling or unable to accept delivery on the date agreed to in the bill of lading.

If your mover fails to pick up and deliver your shipment on the date entered on the bill of lading and you have expenses you otherwise would not have had, you may be able to recover those expenses from your mover. This is what is called an inconvenience or delay claim. Should your mover refuse to honor such a claim and you continue to believe you are entitled to be paid damages, you may take your mover to court under 49 U.S.C. 14706. *The Federal Motor Carrier Safety Administration (FMCSA) has no authority to order your mover to pay such claims.*

While we hope your mover delivers your shipment in a timely manner, you should consider the possibility your shipment may be delayed, and find out what payment you can expect if a mover delays service through its own fault, before you agree with the mover to transport your shipment.

What Must My Mover Do if It Is Able To Deliver My Shipment More Than 24 Hours Before I Am Able To Accept Delivery?

At your mover's discretion, it may place your shipment in storage. This will be under its own account and at its own expense in a warehouse located in proximity to the destination of your shipment. Your mover may do this if you fail to request or concur with an early delivery date, and your mover is able to deliver your shipment more than 24 hours before your specified date or the first day of your specified period.

If your mover exercises this option, your mover must immediately notify you of the name and address of the warehouse where your mover places your shipment. Your mover must make and keep a record of its notification as a part of its shipment records. Your mover has full responsibility for the shipment under the terms and conditions of the bill of lading. Your mover is responsible for the charges for redelivery, handling, and storage until it makes final delivery. Your mover may limit its responsibility to the agreed-upon delivery date or the first day of the period of delivery as specified in the bill of lading.

What Must My Mover Do for Me When I Store Household Goods in Transit?

If you request your mover to hold your household goods in storage-in-transit and the storage period is about to expire, your mover must notify you, in writing, about the four following items:

(1) The date when storage-in-transit will convert to permanent storage.

(2) The existence of a 9-month period after the date of conversion to permanent storage, during which you may file claims against your mover for loss or damage occurring to your goods while in transit or during the storage-in-transit period.

(3) The date your mover's liability will end.

(4) Your property will be subject to the rules, regulations, and charges of the warehouseman.

Your mover must make this notification at least 10 days before the expiration date of one of the following two periods of time:

(1) The specified period of time when your mover is to hold your goods in storage.

(2) The maximum period of time provided in its tariff for storage-in-transit.

Your mover must notify you by facsimile transmission; overnight courier; e-mail; or certified mail, return receipt requested.

If your mover holds your household goods in storage-in-transit for less than 10 days, your mover must notify you, one day before the storage-in-transit period expires, of the same information specified above.

Your mover must maintain a record of all notifications to you as part of the records of your shipment. Under the applicable tariff provisions regarding storage-in-transit, your mover's failure or refusal to notify you will automatically extend your mover's liability until the end of the day following the date when your mover actually gives you notice.

Subpart G—Delivery of My Shipment

May My Mover Ask Me To Sign a Delivery Receipt Purporting To Release It From Liability?

At the time of delivery, your mover will expect you to sign a receipt for your shipment. Normally, you will sign each page of your mover's copy of the inventory.

Your mover's delivery receipt or shipping document must not contain any language purporting to release or discharge it or its agents from liability.

Your mover may include a statement about your receipt of your property in apparent good condition, except as noted on the shipping documents.

Do not sign the delivery receipt if it contains any language purporting to release or discharge your mover or its agents from liability. Strike out such language before

signing, or refuse delivery if the driver or mover refuses to provide a proper delivery receipt.

What Is the Maximum Collect-on-Delivery Amount My Mover May Demand I Pay at the Time of Delivery?

On a binding estimate, the maximum amount is the exact estimate of the charges, plus the charges for any additional services you requested after the bill of lading was executed (charges therefore not included in the estimate) and any charges for impracticable operations (not to exceed 15 percent of all other charges due at delivery). Your mover must specify on the estimate, order for service, and bill of lading the form of payment acceptable to it (for example, a certified check).

On a non-binding estimate, the maximum amount is 110 percent of the approximate costs, plus the charges for any additional services you requested after the bill of lading was executed (charges therefore not included in the estimate) and any charges for impracticable operations (not to exceed 15 percent of all other charges due at delivery). Your mover must specify on the estimate, order for service, and bill of lading the form of payment acceptable to it (for example, cash).

If My Shipment Is Transported on More Than One Vehicle, What Charges May My Mover Collect at Delivery?

Although all movers try to move each shipment on one truck, it becomes necessary at times to divide a shipment among two or more trucks. This frequently occurs when an automobile is included in the shipment and transported on a specially designed vehicle. When this occurs, your transportation charges are the same as if the entire shipment moved on one truck.

If your shipment is divided for transportation on two or more trucks, the mover may require payment for each portion as it is delivered.

Your mover may delay the collection of all the charges until the entire shipment is delivered, at its discretion, not yours. When you order your move, you should ask the mover about its policies in this regard.

If My Shipment Is Partially Lost or Destroyed, What Charges May My Mover Collect at Delivery?

Movers customarily make every effort to avoid losing, damaging, or destroying any of your items while your shipment is in their possession for transportation. However, despite the precautions taken, articles are sometimes lost or destroyed during the move.

In addition to any money you may recover from your mover to compensate for lost or destroyed articles, you also may recover the transportation charges represented by the portion of the shipment lost or destroyed. Your mover may apply this paragraph only to the transportation of household goods. Your mover may disregard this paragraph if loss or destruction was due to an act or omission by you. Your mover must require you to pay any specific valuation charge due.

For example, if you pack a hazardous material (i.e., gasoline, aerosol cans, motor oil, etc.) and your shipment is partially lost or destroyed by fire in storage or in the mover's trailer, your mover may require you to pay for the full cost of transportation.

If your shipment is partially lost or destroyed, your mover is permitted to collect at delivery only a prorated percentage based on the freight charges for the goods actually delivered, plus the charges for any additional services you requested after the bill of lading was executed and any charges for impracticable operations. Charges for impracticable operations collected at delivery must not exceed 15 percent of the total charges your mover collects at delivery.

Your mover is forbidden from collecting, or requiring you to pay, any freight charges (including any charges for accessorial or terminal services) when your household goods shipment is *totally lost or destroyed* in transit, unless the loss or destruction was due to an act or omission by you.

How Must My Mover Calculate the Charges Applicable to the Shipment as Delivered?

Your mover must multiply the percentage equal to the weight of the portion of the shipment delivered to the total weight of the shipment times the total charges applicable to the shipment tendered by you to obtain the total charges it must collect from you.

If your mover's computed charges exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges must apply. This will apply only to the transportation of your household goods.

Your mover must require you to pay any specific valuation charge due.

Your mover may not refund the freight charges if the loss or destruction was due to an act or omission by you. For example, you fail to disclose to your mover that your shipment contains perishable live plants. Your mover may disregard its loss or destruction of your plants because you failed to inform your mover you were transporting live plants.

Your mover must determine, at its own expense, the proportion of the shipment, based on actual or constructive weight, not lost or destroyed in transit.

Your rights are in addition to, and not in lieu of, any other rights you may have with respect to your shipment of household goods your mover lost or destroyed, or partially lost or destroyed, in transit. This applies whether or not you have exercised your rights provided above.

Subpart H—Collection of Charges

Does This Subpart Apply to Most Shipments?

It applies to all shipments of household goods that involve a balance due freight or expense bill or are shipped on credit.

How Must My Mover Present Its Freight or Expense Bill to Me?

At the time of payment of transportation charges, your mover must give you a freight bill identifying the service provided and the charge for each service. It is customary for most movers to use a copy of the bill of lading as a freight bill; however, some movers use an entirely separate document for this purpose.

Except in those instances where a shipment is moving on a binding estimate, the freight bill must specifically identify each service performed, the rate or charge per service performed, and the total charges for each service. *If this information is not on the freight bill, do not accept or pay the freight bill.*

Movers' tariffs customarily specify that freight charges must be paid in cash, by certified check, or by cashier's check. When this requirement exists, the mover will not accept personal checks. At the time you order your move, you should ask your mover about the form of payment your mover requires.

Some movers permit payment of freight charges by use of a charge or credit card. However, do not assume your nationally recognized charge, credit, or debit card will be acceptable for payment. Ask your mover at the time you request an estimate. Your mover must specify the form of payment it will accept at delivery.

If you do not pay the transportation charges at the time of delivery, your mover has the right, under the bill of lading, to refuse to deliver your goods. The mover may place them in storage, at your expense, until the charges are paid. However, the mover must deliver your goods upon payment of 100 percent of a binding estimate, plus the charges for any additional services you requested after the bill of lading was executed (charges therefore not included in the estimate) and any charges for impracticable operations (not to exceed 15 percent of all other charges due at delivery).

If, before payment of the transportation charges, you discover an error in the charges, you should attempt to correct the error with the driver or the mover's local agent, or by contacting the mover's main office. If an error is discovered after payment, you should write the mover (the address will be on the freight bill) explaining the error, and request a refund.

Movers customarily check all shipment files and freight bills after a move has been completed to make sure the charges were accurate. If an overcharge is found, you should be notified and a refund should be made. If an undercharge occurred, you may be billed for the additional charges due.

On ''to be prepaid'' shipments, your mover must present its freight bill for all transportation charges within 15 days of the date your mover received the shipment. This period excludes Saturdays, Sundays, and Federal holidays.

On ''collect'' shipments, your mover must present its freight bill for all transportation charges on the date of delivery, or, at its discretion, within 15 days, calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays. (Bills for additional charges based on the weight of the shipment will be presented 30 days after delivery; charges for impracticable operations not paid at delivery are due within 30 days of the invoice.) Your mover's freight bills and accompanying written notices must state the following five items:

(1) Penalties for late payment.

(2) Credit time limits.

(3) Service or finance charges.

(4) Collection expense charges.

(5) Discount terms.

If your mover extends credit to you, freight bills or a separate written notice accompanying a freight bill or a group of freight bills presented at one time must state, ''You may be subject to tariff penalties for failure to timely pay freight charges,'' or a similar statement. Your mover must state on its freight bills or other notices when it expects payment and any applicable service charges, collection expense charges, and discount terms.

When your mover lacks sufficient information to compute its tariff charges at the time of billing, your mover must present its freight bill for payment within 15 days following the day when sufficient information becomes available. This period excludes Saturdays, Sundays, and Federal holidays.

Your mover must not extend additional credit to you if you fail to furnish sufficient information to your mover. Your mover must have sufficient information to render a freight bill within a reasonable time after shipment.

When your mover presents freight bills by mail, it must deem the time of mailing to be the time of presentation of the bills. The term ''freight bills,'' as used in this paragraph, includes both paper documents and billing by use of electronic media such as computer tapes, disks, or the Internet (e-mail).

When you mail acceptable checks or drafts in payment of freight charges, your mover must deem the act of mailing the payment within the credit period to be the proper collection of the tariff charges within the credit period for the purposes of Federal law. In case of a dispute as to the date of mailing, your mover must accept the postmark as the date of mailing.

If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Must My Mover Collect the Balance?

On ''collect-on-delivery'' shipments, your mover must present its freight bill for transportation charges within 15 days, calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays. (Bills for additional charges based on the weight of the shipment will be presented 30 days after delivery; charges for impracticable operations not paid at delivery are due within 30 days of the invoice.)

What Actions May My Mover Take To Collect From Me the Charges in Its Freight Bill?

Your mover must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at your destination. (Bills for additional charges based on the weight of the shipment will be presented 30 days after delivery; charges for impracticable operations not paid at delivery are due within 30 days of the invoice.)

Your mover must provide in its tariffs the following three things:

(1) A provision indicating its credit period is a total of 30 calendar days.

(2) A provision indicating you will be assessed a service charge by your mover equal to one percent of the amount of the freight bill, subject to a $20 minimum charge, for the extension of the credit period. The mover will assess the service charge for each 30-day extension that the charges go unpaid.

(3) A provision that your mover must deny credit to you if you fail to pay a duly presented freight bill within the 30-day period. Your mover may grant credit to you, at its discretion, when you satisfy your mover's condition that you will pay all future freight bills duly presented. Your mover must ensure all your payments of freight bills are strictly in accordance with Federal rules and regulations for the settlement of its rates and charges.

Do I Have a Right To File a Claim To Recover Money for Property My Mover Lost or Damaged?

Should your move result in the loss of or damage to any of your property, you have the right to file a claim with your mover to recover money for such loss or damage.

You should file a claim as soon as possible. If you fail to file a claim within 9 months, your mover may not be required to accept your claim. If you institute a court action and win, you may be entitled to attorney's fees if you submitted your claim to the carrier within 120 days after delivery or the scheduled date of delivery (whichever is later), and (1) the mover did not advise you during the claim settlement process of the availability of arbitration as a means for resolving the dispute; (2) a decision was not rendered through arbitration within the time required by law; or (3) you are instituting a court action to enforce an arbitration decision with which the mover has not complied.

While the Federal Government maintains regulations governing the processing of loss and damage claims (49 CFR part 370), it cannot resolve those claims. If you cannot settle a claim with the mover, you may file a civil action to recover your claim in court under 49 U.S.C. 14706. You may obtain the name and address of the mover's agent for service of legal process in your State by contacting the Federal Motor Carrier Safety Administration. You may also obtain the name of a process agent via the Internet. Go to *http://www.fmcsa.dot.gov* then click on Licensing and Insurance (L&I) section.

In addition, your mover must participate in an arbitration program. As described earlier in this pamphlet, an arbitration program gives you the opportunity to settle, through a neutral arbitrator, certain types of unresolved loss or damage claims and disputes regarding charges that were billed to you by your mover after your shipment was delivered. You may find submitting your claim to arbitration under such a program to be a less expensive and more convenient way to seek recovery of your claim. Your mover is required to provide you with information about its arbitration program before you move. If your mover fails to do so, ask the mover for details of its program.

Subpart I—Resolving Disputes With My Mover

What May I Do To Resolve Disputes With My Mover?

The Federal Motor Carrier Safety Administration Does Not Help You Settle Your Dispute With Your Mover

Generally, you must resolve your own loss and damage disputes with your mover. You enter a contractual arrangement with your mover. You are bound by each of the following three things:

(1) The terms and conditions you negotiated before your move.

(2) The terms and conditions you accepted when you signed the bill of lading.

(3) The terms and conditions you accepted when you signed for delivery of your goods.

You have the right to take your mover to court. We require your mover to offer you arbitration to settle your disputes with it.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 29. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; Sec. 214 of Pub. L. 106–159, 113 Stat. 1766; Sec. 1012(b) of Pub. L. 107–56, 115 Stat. 397; and 49 CFR 1.73.

■ 30. Amend § 383.51 to revise table 4 of paragraph (e) to read as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(e) * * *

TABLE 4 TO § 383.51

If a driver operates a CMV and is convicted of . . .	For a first conviction while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials.	No less than 180 days or more than 1 year.	No less than 2 years or more than 5 years.	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers, including the driver.	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.

■ 31. Amend § 383.53 to revise paragraph (b) to read as follows:

§ 383.53 Penalties.

* * * * *

(b) *Special penalties pertaining to violation of out-of-service orders*—(1) *Driver violations.* A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than $2,500 for a first conviction and not less than $5,000 for a second or subsequent conviction, in addition to disqualification under § 383.51(e).

(2) *Employer violations.* An employer who is convicted of a violation of § 383.37(c) shall be subject to a civil penalty of not less than $2,750 nor more than $25,000.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 32. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 et seq., 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753, 1767; Sec. 4140 of Pub. L. 109–59, 119 Stat. 1144; and 49 CFR 1.73.

■ 33. Amend § 384.301 to add paragraph (c) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(c) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of September 4, 2007 as soon as practical but, unless otherwise specifically provided in this part, not later than September 4, 2010.

■ 34. Revise § 384.401 to read as follows:

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following the first year of noncompliance.* An amount up to 5 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) *Following second and subsequent year(s) of noncompliance.* An amount up to 10 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's second or subsequent year(s) of noncompliance under this part.

PART 385—SAFETY FITNESS PROCEDURES [AMENDED]

■ 35. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

■ 36. Amend § 385.3 to add, in correct alphabetical placement, a definition for ''motor carrier operations in commerce'' to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Motor carrier operations in commerce means commercial motor vehicle transportation operations either—

(1) In interstate commerce, or

(2) Affecting interstate commerce.

* * * * *

■ 37. Amend § 385.7 to revise paragraphs (c), (d), (f), and (g) to read as follows:

§ 385.7 Factors to be considered in determining a safety rating.

* * * * *

(c) Frequency and severity of driver/vehicle regulatory violations identified during roadside inspections of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(d) Number and frequency of out-of-service driver/vehicle violations of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

* * * * *

(f) For motor carrier operations in commerce and (if the motor carrier operates in the United States) in Canada and Mexico: Frequency of accidents; hazardous materials incidents; accident rate per million miles; indicators of preventable accidents; and whether such accidents, hazardous materials incidents, and preventable accident indicators have increased or declined over time.

(g) Number and severity of violations of CMV and motor carrier safety rules, regulations, standards, and orders that are both issued by a State, Canada, or Mexico and compatible with Federal rules, regulations, standards, and orders.

■ 38. Amend § 385.13 to revise paragraphs (a)(1), (a)(2), and (d) to read as follows:

§ 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

(a) * * *

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 46th day after the date

of the FMCSA notice of proposed ''unsatisfactory'' rating.

(2) All other motor carriers rated as a result of reviews completed on or after November 20, 2000, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 61st day after the date of the FMCSA notice of proposed ''unsatisfactory'' rating. If FMCSA determines that the motor carrier is making a good-faith effort to improve its safety fitness, FMCSA may allow the motor carrier to operate for up to 60 additional days.

* * * * *

(d) *Penalties.* (1) If a proposed ''unsatisfactory'' safety rating becomes final, FMCSA will issue an order placing out of service the company's motor carrier operations in commerce. The out-of-service order shall apply both to the motor carrier's operations in interstate commerce *and to its operations affecting interstate commerce.*

(2) If a motor carrier's intrastate operations are declared out of service by a State, FMCSA must issue an order placing out of service the carrier's operations in interstate commerce, provided the following two conditions apply:

(i) The State that issued the intrastate out-of-service order participates in the Motor Carrier Safety Assistance Program *and* uses the FMCSA safety rating methodology provided in this part; and

(ii) The motor carrier has its principal place of business in the State that issued the out-of-service order.

(3) FMCSA shall prohibit the owner or operator from operating such vehicle in interstate commerce until the State determines that the owner or operator is fit.

(4) Any motor carrier that operates CMVs in violation of this section is subject to the penalty provisions of 49 U.S.C. 521(b) and appendix B to part 386 of this chapter.

■ 39. Amend § 385.17 to revise paragraph (g) to read as follows:

§ 385.17 Change to safety rating based upon corrective actions.

* * * * *

(g) FMCSA may allow a motor carrier (except a motor carrier transporting passengers or a motor carrier transporting hazardous materials in quantities requiring placarding) with a proposed rating of ''unsatisfactory'' to continue its motor carrier operations in commerce for up to 60 days beyond the 60 days specified in the proposed rating, if FMCSA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st day after the date of the notice of proposed ''unsatisfactory'' rating.

* * * * *

■ 40. Amend appendix B to part 385 to add paragraph (f) preceding section I and to amend section II(B) by republishing its heading and revising paragraph (a), to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

(f) The safety rating will be determined by applying the SFRM equally to all of a company's motor carrier operations in commerce, including if applicable its operations in Canada and/or Mexico.

* * * * *

II. * * *

B. *Accident Factor*

(a) In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate for the past 12 months. A recordable accident, consistent with the definition for ''accident'' in 49 CFR 390.5, means an occurrence involving a commercial motor vehicle on a highway in motor carrier operations in commerce or within Canada or Mexico (if the motor carrier also operates in the United States) that results in a fatality; in bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or in one or more motor vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 41. The authority citation for part 386 is revised to read as follows:

Authority: 49 U.S.C. 521, 5123, 13301, 13902, 14915, 31132–31133, 31136, 31144, 31502, 31504; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 42. Amend Appendix B to part 386 by revising paragraphs (e)(1) through (3), adding paragraphs (e)(4) and (5), revising paragraph (f), and adding paragraphs (g)(21) and (h), to read as follows:

Appendix B to Part 386—Penalty Schedule; Violations and Maximum Civil Penalties

* * * * *

(e) * * *

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $250 and not more than $50,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $450 and not more than $50,000 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations, or exemptions issued under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $250 and not more than $50,000 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not less than $250 and not more than $50,000.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $100,000 for each offense.

(f) *Operating after being declared unfit by assignment of a final ''unsatisfactory'' safety rating.* (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being placed out of service because of receiving a final ''unsatisfactory'' safety rating, to a civil penalty of not more than $11,000 (49 CFR 385.13). Each day the transportation continues in violation of a final ''unsatisfactory'' safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final ''unsatisfactory'' safety rating, to a civil penalty of not less than $250 and not more than $50,000 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $100,000 for each offense. Each day the transportation continues in violation of a final ''unsatisfactory'' safety rating constitutes a separate offense.

(g) * * *

(21) A person—

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G of this chapter, is liable for a civil penalty of not less than $10,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(ii) Who is a carrier or broker and is found to be subject to the civil penalties in paragraph (i) of this appendix may also have his or her carrier and/or broker registration suspended for not less than 12 months and not more than 36 months under 49 U.S.C. chapter 139. Such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

(h) *Copying of records and access to equipment, lands, and buildings.* A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand, the Federal Motor Carrier Safety Administration or an employee designated by the Federal Motor Carrier Safety Administration to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than $1,000 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $10,000.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 43. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; Sec. 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 44. Amend § 390.3 to add paragraph (f)(7) to read as follows:

§ 390.3 General applicability.

* * * * *

(f) * * *

(7) Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in § 390.5.

■ 45. Amend § 390.5 to add, in correct alphabetical placement, a definition for ''Emergency condition requiring immediate response'' to read as follows:

§ 390.5 Definitions.

* * * * *

Emergency condition requiring immediate response means any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property. In the case of transportation of propane winter heating fuel, such conditions shall include (but are not limited to) the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or flooding. An ''emergency condition requiring immediate response'' does not include requests to refill empty gas tanks. In the case of a pipeline emergency, such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture.

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

■ 46. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, 31502; Sec. 229, Pub. L. 106–159, 113 Stat. 1748; Sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

■ 47. Amend § 395.1 to revise paragraphs (a), (k)(2), and (n) and to add paragraphs (p) and (q), to read as follows:

§ 395.1 Scope of rules in this part.

(a) *General.* (1) The rules in this part apply to all motor carriers and drivers, except as provided in paragraphs (b) through (q) of this section.

(2) The exceptions from Federal requirements contained in paragraphs (l) and (m) of this section do not preempt State laws and regulations governing the safe operation of commercial motor vehicles.

* * * * *

(k) * * *

(2) Is conducted (except in the case of livestock feed transporters) during the planting and harvesting seasons within such State, as determined by the State.

* * * * *

(n) *Utility service vehicles.* The provisions of this part shall not apply to a driver of a utility service vehicle as defined in § 395.2.

* * * * *

(p) *Commercial motor vehicle transportation to or from a motion picture production site.* A driver of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site is exempt from the requirements of § 395.3(a) if the driver operates within a 100 air-mile radius of the location where the driver reports to and is released from work, i.e., the normal work-reporting location. With respect to the maximum daily hours of service, such a driver may not drive—

(1) More than 10 hours following 8 consecutive hours off duty;

(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty.

(3) If a driver of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site operates beyond a 100 air-mile radius of the normal work-reporting location, the driver is subject to § 395.3(a), and paragraphs (p)(1) and (2) of this section do not apply.

(q) *Transporters of grapes during harvest period in the State of New York.* The provisions of this part shall not apply to drivers transporting grapes if such transportation:

(1) Is within the State of New York;

(2) Is west of Interstate 81;

(3) Is within a 150 air-mile radius of where the grapes were picked or distributed; and

(4) Is during the harvest period as defined by the State of New York. This provision expires September 30, 2009.

■ 48. Amend § 395.2 to add, in correct alphabetical placement, the definitions for ''agricultural commodity'' and ''farm supplies for agricultural purposes'' to read as follows:

§ 395.2 Definitions.

* * * * *

Agricultural commodity means any agricultural commodity, nonprocessed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471] and insects).

* * * * *

Farm supplies for agricultural purposes means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed *at any time of the year.*

* * * * *

Issued on: June 11, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–11717 Filed 7–3–07; 8:45 am]

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Part III

General Services Administration

48 CFR Parts 6101, 6102, et al.

Board of Contract Appeals; BCA Case 2006–61–1; Rules of Procedure of the Civilian Board of Contract Appeals; Interim Rule

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 6101, 6102, 6103, 6104, and 6105

[GSA BCA Amendment 2006–01; BCA Case 2006–61–1]

RIN 3090–AI29

Board of Contract Appeals; BCA Case 2006–61–1; Rules of Procedure of the Civilian Board of Contract Appeals

AGENCY: General Services Administration (GSA), Civilian Board of Contract Appeals.

ACTION: Interim rule.

SUMMARY: This document contains the rules of procedure of the Civilian Board of Contract Appeals (Board), which will govern all proceedings before the Board. The Board was established within GSA by section 847 of the National Defense Authorization Act for Fiscal Year 2006 to hear and decide contract disputes between Government contractors and Executive agencies (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Rate Commission, and the Tennessee Valley Authority) under the provisions of the Contract Disputes Act of 1978 and regulations and rules issued thereunder. Effective January 6, 2007, boards of contract appeals that existed at the General Services Administration and the Departments of Agriculture, Energy, Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs were terminated, and their cases were transferred to the new Civilian Board of Contract Appeals. The Board has jurisdiction as provided by section 8(d) of the Contract Disputes Act of 1978, 41 U.S.C. 607(d). In addition, the Board will conduct proceedings as required or permitted under other statutes or regulations. The Board intends to issue final, revised rules after considering all comments on the interim rule.

DATES: Effective Date: This interim rule is effective July 5, 2007.

Comment Date: Interested parties should submit written comments to the Board of Contract Appeals on or before **September 28, 2007**, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by CBCA Amendment 2006–01, BCA case 2006–61–1, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''General Services Administration'' as the agency of choice. At the ''Keyword'' prompt, type in the BCA case number (for example, BCA Case 2006–61–1) and click on the ''Submit'' button. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''General Services Administration'', and typing the BCA case number in the keyword field. Select the ''Submit'' button.
- Fax: 202–606–0019.
- Mail: General Services Administration, Civilian Board of Contract Appeals, ATTN: Margaret Pfunder, 1800 F Street, NW, Washington, DC 20405.

Instructions: Please submit comments only and cite CBCA Amendment 2006–01, BCA case 2006–61–1, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT Margaret S. Pfunder, Chief Counsel, Civilian Board of Contract Appeals, telephone (202) 606–8800, internet address *Margaret.Pfunder@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Board of Contract Appeals was established within the General Services Administration (GSA) by section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163. Effective January 6, 2007, the boards of contract appeals that existed at the General Services Administration and the Departments of Agriculture, Energy, Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs were terminated, and their cases were transferred to the new Civilian Board of Contract Appeals. The Civilian Board was established to hear and decide contract disputes between Government contractors and Executive agencies (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Rate Commission, and the Tennessee Valley Authority) under the provisions of the Contract Disputes Act of 1978 and regulations and rules issued thereunder. The Board will also conduct other proceedings as required or permitted under statutes or regulations.

Such other proceedings include the resolution of disputes involving grants and contracts under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, *et seq.* Because jurisdiction over these disputes is vested by statue, 25 U.S.C. 450m–1(d), in the Department of the Interior Board of Contract Appeals, section 847(e) of the National Defense Authorization Act for Fiscal Year 2006 reassigns that jurisdiction to the Civilian Board of Contract Appeals.

Such other proceedings also include the resolution of disputes between insurance companies and the Department of Agriculture's Risk Management Agency (RMA) involving actions of the Federal Crop Insurance Corporation (FCIC) pursuant to the Federal Crop Insurance Act, 7 U.S.C. 1501, *et seq.* These disputes were formerly resolved by the Department of Agriculture Board of Contract Appeals, and this authority has been transferred to the Civilian Board of Contract Appeals under an agreement with the Secretary of Agriculture, as permitted under section 42(c)(2) of the Office of Federal Procurement Policy Act, 41 U.S.C. 438(c)(2).

In addition, other proceedings that the Civilian Board will conduct include several types of cases heard by the General Services Board of Contract Appeals by delegation from the Administrator of General Services. Effective January 6, 2007, the Administrator of General Services redelegated those cases to the Civilian Board of Contract Appeals. Those cases include the following:

- Pursuant to 31 U.S.C. 3726(i)(1), requests by carriers or freight forwarders to review actions taken by the Audit Division of the General Services Administration's Office of Transportation and Property Management;
- Pursuant to 31 U.S.C. 3702, claims by Federal civilian employees against the United States for reimbursement of (1) expenses incurred while on official temporary duty travel and (2) expenses incurred in connection with relocation to a new duty station; and
- Pursuant to section 204 of the General Accounting Office Act of 1996, Pub. L. 104–316, requests of agency disbursing or certifying officials, or agency heads, on questions involving payment of travel or relocation expenses that were formerly considered by the Comptroller General under 31 U.S.C. 3529.

These rules of procedure are based on and do not differ in any substantial way from the rules of procedure which existed at the predecessor civilian agency boards. The rules of the predecessor civilian agency boards all had the same general intent and coverage. There were differences among the rules in terms of both structure and wording, and no two civilian agency boards had identical sets of rules. In drafting rules of procedure for the Civilian Board, we studied the rules of procedure of all of the civilian agency boards and developed an interim final rule which blends those rules. The interim final rule maintains most of the rules all of the former boards had in place.

Questions have been raised about the scope of the Board's subpoena authority over federal agencies. The Department of Justice has recently provided advice concluding that the statute that granted subpoena authority to the separate agency boards of contract appeals, and that provides such authority to the consolidated Board, does not provide the necessary legal authority for a board to enforce a subpoena against a federal agency. Therefore, the agency does not interpret the term ''person'' where it is used in 6101.16 to include the United States or component federal agencies.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional costs on either small or large businesses.

C. Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled, ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order).

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Determination to Issue an Interim Rule

Pursuant to 5 U.S.C. § 553(b)(B), we have determined that it would be impracticable, unnecessary, and contrary to the public interest to publish this as a Notice of Proposed Rulemaking because to do so would result in the Board being operational but unable to perform its essential functions. Accordingly, we find that good cause exists to publish as an interim rule. For the same reasons, we have determined that this interim rule should be issued without a delayed effective date. However, we are interested in comments regarding this interim rule.

List of Subjects in 48 CFR Parts 6101, 6102, 6103, 6104, and 6105

Administrative practice and procedure, Agriculture, Freight forwarders, Government procurement, Travel and relocation expenses.

Dated: June 8, 2007.

Stephen M. Daniels,

Chairman, Civilian Board of Contract Appeals, General Services Administration.

■ Therefore, GSA amends 48 CFR chapter 61 as set forth below:

Chapter 61—Civilian Board of Contract Appeals

■ 1. Revise part 6101 to read as follows:

PART 6101—RULES OF PROCEDURE OF THE CIVILIAN BOARD OF CONTRACT APPEALS

Sec.

6101.1 Scope of rules; definitions; construction; rulings, orders, and directions; panels; location and address [Rule 1].
6101.2 Filing cases; time limits for filing; notice of docketing; consolidation [Rule 2].
6101.3 Time: enlargement; computation [Rule 3].
6101.4 Appeal file [Rule 4].
6101.5 Appearances; notice of appearance [Rule 5].
6101.6 Pleadings and amendment of pleadings [Rule 6].
6101.7 Service of papers other than subpoenas [Rule 7].
6101.8 Motions [Rule 8].
6101.9 Record of Board proceedings; review and copying [Rule 9].
6101.10 Admissibility and weight of evidence [Rule 10].
6101.11 Conferences; conference memorandum [Rule 11].
6101.12 Suspensions and dismissals [Rule 12].
6101.13 General provisions governing discovery [Rule 13].
6101.14 Interrogatories to parties; requests for admission; requests for production [Rule 14].
6101.15 Depositions [Rule 15].
6101.16 Subpoenas [Rule 16].
6101.17 Exhibits [Rule 17].
6101.18 Election of hearing or record submission [Rule 18].
6101.19 Submission on the record without a hearing [Rule 19].
6101.20 Hearings: scheduling; notice; unexcused absences [Rule 20].
6101.21 Hearing procedures [Rule 21].
6101.22 Transcripts of proceedings; corrections [Rule 22].
6101.23 Briefs and memoranda of law [Rule 23].
6101.24 Closing the record [Rule 24].
6101.25 Decisions; settlements [Rule 25].
6101.26 Reconsideration; amendment of decisions; new hearings [Rule 26].
6101.27 Relief from decision or order [Rule 27].
6101.28 Full Board consideration [Rule 28].
6101.29 Clerical mistakes; harmless error [Rule 29].
6101.30 Award of fees and other expenses [Rule 30].
6101.31 Payment of Board awards [Rule 31].
6101.32 Appeal from a Board decision [Rule 32].
6101.33 Ex parte contact; sanctions and other proceedings [Rule 33].
6101.34 Seal of the Board [Rule 34].
6101.35—6101.50 [Reserved]
6101.51 Variation from standard proceedings [Rule 51].
6101.52 Small claims procedure [Rule 52].
6101.53 Accelerated procedure [Rule 53].
6101.54 Alternate dispute resolution [Rule 54].
Appendix to Part 6101—Form Nos. 1–5.

Authority: 41 U.S.C. 601–613.

6101.1 Scope of rules; definitions; construction; rulings, orders, and directions; panels; location and address [Rule 1].

(a) *Scope.* The rules of this chapter govern proceedings in all cases filed with the Board on or after January 6, 2007, and all further proceedings in cases then pending, except to the extent that, in the opinion of the Board, their use in a particular case pending on the effective date would be infeasible or would work an injustice. The rules of this chapter will remain in effect until the Board issues final rules of procedure or June 30, 2008, whichever occurs earlier. The Board will look to the rules of this chapter for guidance in conducting other proceedings authorized by law.

(b) *Definitions*—(1) *Appeal; appellant.* The term ''appeal'' means a contract dispute filed with the Board. The term ''appellant'' means a party filing an appeal.

(2) *Application; applicant.* The term ''application'' means a submission to the Board of a request for award of fees and other expenses, under the Equal Access to Justice Act, 5 U.S.C. 504, pursuant to 6101.30 (Rule 30). The term ''applicant'' means a party filing an application.

(3) *Board judge; judge.* The term ''Board judge'' or ''judge'' means a member of the Board.

(4) *Case.* The term ''case'' means an appeal, petition, or application.

(5) *Filing.* (i) Any document, other than a notice of appeal or an application for award of fees and other expenses, is filed when it is received by the Office of the Clerk of the Board during the Board's working hours. A notice of appeal or an application for award of fees and other expenses is filed upon the earlier of its receipt by the Office of the Clerk of the Board or if mailed, the date on which it is mailed. A United States Postal Service postmark shall be prima facie evidence that the document with which it is associated was mailed on the date of the postmark.

(ii) Facsimile transmissions to the Board and the parties are permitted. The filing of a document by facsimile transmission occurs upon receipt by the Board of the entire printed submission. Parties are specifically cautioned that a deadline for filing will not be extended merely because the Board's facsimile machine is busy or otherwise unavailable when a filing is due. Parties are expected to submit their facsimile machine numbers with their filings.

(6) *Party.* The term ''party'' means an appellant, applicant, petitioner, or respondent.

(7) *Petition; petitioner.* The term ''petition'' means a request filed under 41 U.S.C. 605(c)(4) that the Board direct a contracting officer to issue a written decision on a claim. The term ''petitioner'' means a party submitting a petition.

(8) *Respondent.* The term ''respondent'' means the government agency whose decision, action, or inaction is the subject of an appeal, petition, or application.

(9) *Working day.* The term ''working day'' means any day other than a Saturday, Sunday, federal holiday, day on which the Office of the Clerk is required to close earlier than 4:30 p.m., or day on which the Office of the Clerk does not open at all, as in the event of inclement weather.

(10) *Working hours.* The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each working day.

(c) *Construction.* The rules of this chapter shall be construed to secure the just, informal, expeditious, and inexpensive resolution of every case. The Board looks to the Federal Rules of Civil Procedure for guidance in construing those Board rules which are similar to Federal Rules.

(d) *Rulings, orders, and directions.* The Board may apply the rules of this chapter and make such rulings and issue such orders and directions as are necessary to secure the just, informal, expeditious, and inexpensive resolution of every case before the Board. Any ruling, order, or direction that the Board may make or issue pursuant to the rules of this chapter may be made on the motion or request of any party or on the initiative of the Board. The Board may also amend, alter, or vacate a ruling, order, or direction upon such terms as it deems just. In making rulings and issuing orders and directions pursuant to the rules of this chapter, the Board takes into consideration those Federal Rules of Civil Procedure which address matters not specifically covered herein.

(e) *Panels.* Each case will be assigned to a panel consisting of three judges, with one member designated as the panel chair, in accordance with such procedures as may be established by the Board. The panel chair is responsible for processing the case, including scheduling and conducting proceedings and hearings. In addition, the panel chair may, without participation by other panel members, decide an appeal under the small claims procedure in 6101.52 (Rule 52), rule on nondispositive motions (except for amounts in controversy under 6101.52(a)(2) (Rule 52(a)(2))), and dismiss a case as permitted by 6101.12(e) (Rule 12(e)). All other matters, except for those before the full Board under 6101.28 (Rule 28), are decided for the Board by a majority of the panel.

(f) *Location and address.* The location of the Office of the Clerk of the Board is: 1800 M Street, NW, 6th Floor, Washington, DC 20036. The mailing address of the Office of the Clerk of the Board is: 1800 F Street, NW, Washington, DC 20405. The Clerk's telephone number is: (202) 606–8800. The Clerk's facsimile machine number is: (202) 606–0019.

6101.2 Filing cases; time limits for filing; notice of docketing; consolidation [Rule 2].

(a) *Filing cases.* Filing of a case occurs as provided in 6101.1(b)(5) (Rule 1(b)(5)).

(1) *Notice of appeal.* (i) A notice of appeal shall be in writing and shall be signed by the appellant or by the appellant's attorney or authorized representative. If the appeal is from a contracting officer's decision, the notice of appeal should describe the decision in enough detail to enable the Board to differentiate that decision from any other; the appellant can satisfy this requirement by attaching to the notice of appeal a copy of the contracting officer's decision. If an appeal is taken from the failure of a contracting officer to issue a decision, the notice of appeal should describe in detail the claim that the contracting officer has failed to decide; the appellant can satisfy this requirement by attaching a copy of the written claim submission to the notice of appeal.

(ii) A written notice in any form, including the one specified in the Appendix to the rules in this chapter, is sufficient to initiate an appeal. The notice of appeal should include the following information:

(A) The number and date of the contract;

(B) The name of the government agency and the component thereof against which the claim has been asserted;

(C) The name, address, and telephone number of the contracting officer whose decision is appealed and the date of the decision;

(D) If the appeal is from the failure of the contracting officer to decide a claim, the name, address, and telephone number of the contracting officer who received the claim;

(E) A brief account of the circumstances giving rise to the appeal; and

(F) An estimate of the amount of money in controversy, if any and if known.

(iii) The appellant must send a copy of the notice of appeal to the contracting officer whose decision is appealed or, if there has been no decision, to the contracting officer before whom the appellant's claim is pending.

(2) *Petition.* (i) A petition shall be in writing and signed by the petitioner or by the petitioner's attorney or authorized representative. The petition should describe in detail the claim that the contracting officer has failed to decide; the contractor can satisfy this requirement by attaching to the petition a copy of the written claim submission.

(ii) The petition should include the following information:

(A) The number and date of the contract;

(B) The name of the government agency and the component thereof against which the claim has been asserted; and

(C) The name, address, and telephone number of the contracting officer whose decision is sought.

(3) *Application.* An application for fees and other expenses shall meet all requirements specified in 6101.30 (Rule 30).

(b) *Time limits for filing*—(1) *Appeals.* (i) An appeal from a decision of a contracting officer shall be filed no later

than 90 calendar days after the date the appellant receives that decision.

(ii) An appeal may be filed with the Board if the contracting officer fails or refuses to issue a timely decision on a claim submitted in writing, properly certified if required.

(2) *Applications.* An application for fees and other expenses shall be filed within 30 calendar days of a final disposition in the underlying appeal, as provided in 6101.30 (Rule 30).

(c) *Notice of docketing.* Notices of appeal, petitions, and applications will be docketed by the Office of the Clerk of the Board, and a written notice of docketing will be sent promptly to all parties.

(d) *Consolidation.* When cases involving common questions of law or fact are filed, the Board may:

(1) Order the cases consolidated; or

(2) Make such other orders concerning the proceedings as are needed to avoid unnecessary costs or delay.

6101.3 Time: enlargement; computation [Rule 3].

(a) *Time for performing required actions.* All time limitations prescribed in the rules of this chapter or in any order or direction given by the Board are maximums, and the action required should be accomplished in less time whenever possible.

(b) *Enlarging time.* Upon request of a party for good cause shown, the Board may enlarge any time prescribed by the rules in this chapter or by an order or direction of the Board except the time limit for filing appeals (6101.2(b)(1) (Rule 2(b)(1))). A written request is required, but in exigent circumstances an oral request may be made and followed by a written request. An enlargement of time may be granted even though the request was filed after the time for taking the required action expired, but the party requesting the enlargement must show good cause for its inability to make the request before that time expired.

(c) *Computing time.* Except as otherwise required by law, in computing a period of time prescribed by the rules in this chapter or by order of the Board, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted unless that day is a Saturday, a Sunday, or a federal holiday, or a day on which the Office of the Clerk of the Board is required to close earlier than 4:30 p.m., or does not open at all, as in the case of inclement weather, in which event the period shall include the next working day. Except as otherwise provided in this paragraph, when the period of time prescribed or allowed is less than 11 days, any intervening Saturday, Sunday, or federal holiday shall not be counted. When the period of time prescribed or allowed is 11 days or more, intervening Saturdays, Sundays, and federal holidays shall be counted. Time for filing any document or copy thereof with the Board expires when the Office of the Clerk of the Board closes on the last day on which such filing may be made.

6101.4 Appeal file [Rule 4].

(a) *Submission to the Board by the respondent.* Within 30 calendar days from receipt of notice that an appeal has been filed, or within such time as the Board may allow, the respondent shall file with the Board appeal file exhibits consisting of all documents and other tangible things relevant to the claim and to the contracting officer's decision which has been appealed. Exhibits will be numbered as required by 6101.4(b) (Rule 4(b)) and will include:

(1) The contracting officer's decision, if any, from which the appeal is taken;

(2) The contract, if any, including amendments, specifications, plans, and drawings;

(3) All correspondence between the parties that are relevant to the appeal, including the written claim or claims that are the subject of the appeal, and evidence of their certification, if any;

(4) Affidavits or statements of any witnesses concerning the matter in dispute and transcripts of any testimony taken before the filing of the notice of appeal;

(5) All documents and other tangible things on which the contracting officer relied in making the decision, and any related correspondence;

(6) The abstract of bids, if relevant; and

(7) Any additional existing evidence or information necessary to determine the merits of the appeal, such as internal memoranda and notes to the file.

(b) *Organization of the appeal file.* Appeal file exhibits may be originals or true, legible, and complete copies. They shall be arranged in chronological order, earliest documents first; bound in a loose-leaf binder on the left margin except where size or shape makes such binding impracticable; numbered; tabbed; and indexed. The loose-leaf binders cannot exceed four inches in depth. The numbering shall be consecutive, in whole Arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. In addition, the pages within each exhibit containing more than three pages shall be numbered consecutively unless the exhibit already is paginated in a logical manner. Consecutive pagination of the entire file is not required. The index shall include the date and a brief description of each exhibit and shall identify which exhibits, if any, have been filed with the Board *in camera* or under protective order or otherwise have not been served on the other party.

(c) *Service.* The respondent shall serve a copy of the appeal file on the appellant at the same time that the respondent files it with the Board, except that the respondent need not serve on the appellant those documents furnished the Board *in camera* pursuant to 6101.9(c) (Rule 9(c)), and the respondent shall serve documents submitted under protective order only on those individuals who have been granted access to such documents by the Board. However, the respondent must serve on the appellant a list identifying the specific documents filed *in camera* or under protective order with the Board, giving sufficient details necessary for their recognition. This list must also be filed with the Board as an exhibit to the appeal file.

(d) *Submission to the Board by the appellant.* Within 30 calendar days after the respondent files its appeal file exhibits, or within such time as the Board may allow, the appellant shall file with the Board for inclusion in the appeal file documents or other tangible things relevant to the appeal that have not been submitted by the respondent. The appellant shall serve a copy of its additional exhibits upon the respondent at the same time as it files them with the Board, and shall organize the file as required by 6101.4(b) (Rule 4(b)).

(e) *Submissions on order of the Board.* The Board may, at any time during the pendency of the appeal, require any party to file other documents and tangible things as additional exhibits. The Board may also require a party to file either copies of electronic records or printed versions of electronic records.

(f) *Lengthy or bulky materials.* The Board may waive the requirement to furnish the other party copies or duplicates of bulky, lengthy, or outsized materials submitted to the Board as exhibits if furnishing copies would impose an undue burden, so long as the materials are available to the opposing party for inspection.

(g) *Use of appeal file as evidence.* All exhibits in the appeal file, except for those as to which an objection has been sustained, are part of the evidentiary record upon which the Board will render its decision. Unless otherwise ordered by the Board, objection to any exhibit may be made at any time before

the first witness is sworn or, if the appeal is submitted on the record without a hearing pursuant to 6101.19 (Rule 19), at any time prior to or concurrent with the first record submission. The Board may enlarge the time for such objections and will consider an objection made during a hearing if the ground for objection could not reasonably have been earlier known to the objecting party. If an objection is sustained, the Board will so note in the record.

(h) *When appeal file not required.* Upon motion of a party, the Board may postpone or dispense with the submission of any or all appeal file exhibits.

6101.5 Appearances; notice of appearance [Rule 5].

(a) *Appearances before the Board*—(1) *Appellant; petitioner; applicant.* Any appellant, petitioner, or applicant may appear before the Board by an attorney-at-law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia. An individual appellant, petitioner, or applicant may appear in his or her own behalf; a corporation, trust, or association may appear by one of its officers; and a partnership may appear by one of its members.

(2) *Respondent.* The respondent may appear before the Board by an attorney-at-law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia. Alternatively, if not prohibited by agency regulation or otherwise, the respondent may appear by the contracting officer or by the contracting officer's authorized representative.

(3) *Others.* The Board may, on motion, in its discretion, permit a special or limited appearance, such as by an amicus curiae. Permission to appear, if granted, will be for such purposes and in such manner as allowed by the presiding judge.

(b) *Notice of appearance.* Unless a notice of appearance is filed by some other person, the person signing the notice of appeal, petition, or application shall be deemed to have appeared on behalf of the appellant, petitioner, or applicant, and the head of the respondent agency's litigation office shall be deemed to have appeared on behalf of the respondent. Other attorneys actively participating in the proceedings before the Board must file notices of appearance. A notice of appearance in the form specified in the Appendix to the rules of this chapter is sufficient. Attorneys representing parties before the Board are required to list the state bars to which they are admitted and their state bar numbers or other bar identifiers.

(c) *Withdrawal of appearance.* Any person who has filed a notice of appearance and who wishes to withdraw from a case must file a motion which includes the name, address, telephone number, and facsimile machine number of the person who will assume responsibility for representation of the party in question. The motion shall state the grounds for withdrawal unless it is accompanied by a representation from the successor representative or existing co-counsel that the established case schedule will be met.

6101.6 Pleadings and amendment of pleadings [Rule 6].

(a) *Pleadings required and permitted.* Except as the Board may otherwise order, the Board requires the submission of a complaint and an answer. In appropriate circumstances, the Board may order or permit a reply to an answer.

(b) *Complaint.* No later than 30 calendar days after the docketing of the appeal, the appellant shall file with the Board a complaint setting forth its claim or claims in simple, concise, and direct terms. The complaint should set forth the factual basis of the claim or claims, with appropriate reference to the contract provisions, and should state the amount in controversy, or an estimate thereof, if any and if known. No particular form is prescribed for a complaint, and the Board may designate the notice of appeal, a claim submission, or any other document as the complaint, either on its own initiative or on request of the appellant, if such document sufficiently states the factual basis and amount of the claim.

(c) *Answer.* No later than 30 calendar days after the filing of the complaint or of the Board's designation of a complaint, the respondent shall file with the Board an answer setting forth simple, concise, and direct statements of its defenses to the claim or claims asserted in the complaint, as well as any affirmative defenses it chooses to assert. One-word responses stating an allegation is denied are discouraged. A dispositive motion or a motion for a more definite statement may be filed in lieu of the answer only with the permission of the Board. If no answer is timely filed, the Board may enter a general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by paragraph (e) of this section. The Board will inform the parties when it enters a general denial on behalf of the respondent.

(d) *Small claims and accelerated procedures.* When an appellant elects to use the small claims or accelerated procedures described in 6101.52 and 6101.53 (Rules 52 and 53), the Board may shorten the time for filing the complaint and the answer.

(e) *Amendment of pleadings.* Each party to an appeal may amend its pleadings once without leave of the Board at any time before a responsive pleading is filed. The Board may permit other amendments on conditions fair to both parties. A response to an amended pleading will be filed within the time set by the Board.

(f) *Amendments to conform to the evidence.* When issues within the proper scope of a case, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing or in record submissions, they shall be treated in all respects as if they had been raised in the pleadings. The Board may order the parties to amend the pleadings to conform to the proof or may order that the record be deemed to contain amended pleadings.

6101.7 Service of papers other than subpoenas [Rule 7].

(a) *On whom and when service must be made.* Except for subpoenas (6101.16 (Rule 16)) and documents filed *in camera* (6101.9(c) (Rule 9(c))), when a party sends a document to the Board it must at the same time send a copy to the other party by mail or some other equally or more expeditious means of transmittal. Any papers required to be served on a party (except requests for discovery and responses thereto, unless ordered by the Board to be filed) shall be filed with the Board before service or within a reasonable time thereafter.

(b) *Proof of service.* A party sending a document to the Board must represent to the Board that a copy has also been sent to the other party. This may be done by certificate of service, by the notation of a photostatic copy (cc:), or by any other means that can reasonably be expected to show the Board that the other party has been provided a copy.

(c) *Failure to make service.* If a document sent to the Board by a party does not show that a copy has been served on the other party, the Board may return the document to the party that submitted it with such directions as it considers appropriate, or the Board may inquire whether a party has received a copy and note on the record the fact of inquiry and the response, and may also direct the party that submitted the document to serve a copy on the

other party. In the absence of proof of service a document may be treated by the Board as not properly filed.

6101.8 Motions [Rule 8].

(a) *How motions are made.* Motions may be oral or written. A written motion shall state the relief sought and, either in the text of the motion or in an accompanying legal memorandum, the grounds therefor. In addition, a motion for summary relief shall comply with the requirements of paragraph (g) of this section. Section 6101.23 (Rule 23) prescribes the form and content of legal memoranda. Oral motions shall be made on the record and in the presence of the other party. Except for joint motions by the parties, all motions must represent that the moving party has attempted to discuss the grounds for the motion with the non-moving party and tried to resolve the matter informally.

(b) *When motions may be made.* A motion filed in lieu of an answer pursuant to 6101.6(c) (Rule 6(c)) shall be filed no later than the date on which the answer is required to be filed or such later date as may be established by the Board. Any other dispositive motion shall be made as soon as practicable after the grounds therefor are known. Any other motion shall be made promptly or as required by the rules of this chapter.

(c) *Dispositive motions.* The following dispositive motions may properly be made before the Board:

(1) Motions to dismiss for lack of jurisdiction or for failure to state a claim upon which relief can be granted;

(2) Motions to dismiss for failure to prosecute;

(3) Motions for summary relief (analogous to summary judgment); and

(4) Any other motion to dismiss.

(d) *Other motions.* Other motions may be made in good faith and in proper form. When filing a motion for an enlargement of time, the moving party shall state that it has contacted the opposing party about the request and shall inform the Board whether the opposing party consents to the request or will file an opposition.

(e) *Jurisdictional questions.* The Board may at any time consider the issue of its jurisdiction to decide a case. When all facts touching upon the Board's jurisdiction are not of record, or in other appropriate circumstances, a decision on a jurisdictional question may be deferred pending a hearing on the merits or the filing of record submissions.

(f) *Procedure.* Unless otherwise directed by the Board, a party may respond to a written motion other than a motion pursuant to 6101.26, 6101.27, 6101.28, or 6101.29 (Rules 26, 27, 28, or 29) at any time within 20 calendar days after the filing of the motion. Responses to motions pursuant to 6101.26, 6101.27, 6101.28, or 6101.29 (Rules 26, 27, 28, or 29) may be made only as permitted or directed by the Board. The Board may permit hearing or oral argument on written motions and may require additional submissions from any of the parties.

(g) *Motions for summary relief.* (1) A motion for summary relief should be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief in whole or in part as a matter of law. A motion for summary relief should be filed as soon as feasible, to allow the Board to rule on the motion in advance of a scheduled hearing date.

(2) With each motion for summary relief, there shall be served and filed a separate document titled Statement of Uncontested Facts, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the 6101.4 (Rule 4) appeal file exhibits relied upon to support such statement.

(3) An opposing party shall file with its opposition (or cross-motion) a separate document titled Statement of Genuine Issues. This document shall identify, by reference to specific paragraph numbers in the moving party's Statement of Uncontested Facts, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement and give its version of the facts. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the 6101.4 (Rule 4) appeal file exhibits that demonstrate the existence of a genuine dispute. An opposing party may also file a Statement of Uncontested Facts as to any relevant matters not covered by the moving party's statement.

(4) When a motion for summary relief is made and supported as provided in 6101.8 (Rule 8), an opposing party may not rest upon the mere allegations or denials of its pleadings. The opposing party's response, by affidavits or as otherwise provided by 6101.8 (Rule 8), must set forth specific facts showing that there is a genuine issue of material fact. If the opposing party does not so respond, summary relief, if appropriate, shall be entered against that party. For good cause shown, if an opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may make such other order as is just.

(h) *Effect of pending motion.* Except as the rules of this chpater provide or the Board may order, a pending motion shall not excuse the parties from proceeding with the case in accordance with the rules of this chapter and the orders and directions of the Board.

6101.9 Record of Board proceedings; review and copying [Rule 9].

(a) *Composition of the record for decision.* The record upon which any decision of the Board will be rendered consists of:

(1) The notice of appeal, petition, or application;

(2) Appeal file exhibits other than those as to which an objection has been sustained;

(3) Hearing exhibits other than those as to which an objection has been sustained;

(4) Pleadings;

(5) Motions and responses thereto;

(6) Memoranda, orders, rulings, and directions to the parties issued by the Board;

(7) Documents and other tangible things admitted in evidence by the Board;

(8) Written transcripts or electronic recordings of proceedings;

(9) Stipulations and admissions by the parties;

(10) Depositions, or parts thereof, received in evidence;

(11) Written interrogatories and responses received in evidence;

(12) Briefs and memoranda of law; and

(13) Anything else that the Board may designate. All other papers and documents are part of the administrative record of the proceedings and are not included in the record upon which the Board's decision will be rendered.

(b) *Enlargement of the record.* The Board may at any time require or permit enlargement of the record with additional evidence and briefs. It may reopen the record to receive additional evidence and oral argument at a hearing.

(c) *Protected and in camera submissions.* (1) A party may by motion request that the Board receive and hold materials under conditions that would limit access to them on the ground that such documents are privileged or confidential, or sensitive in some other way. The moving party must state the grounds for such limited access. The Board may also determine on its own

initiative to hold materials under such conditions. The manner in which such materials will be held, the persons who shall have access to them, and the conditions (if any) under which such access will be allowed will be specified in an order of the Board. If the materials are held under such an order, they will be part of the record of the case. If the Board denies the motion, the materials may be returned to the party that submitted them. If the moving party asks, however, that the materials be placed in the administrative record, *in camera*, for the purpose of possible later review of the Board's denial, the Board will comply with the request.

(2) A party may also ask, or the Board may direct, that testimony be received under protective order or *in camera*. The procedures under paragraph (c)(1) of this section shall be followed with respect to such request or direction.

(d) *Review and copying.* Except for any part thereof that is subject to a protective order or deemed an *in camera* submission, the record in a Board proceeding shall be made available for review at the Office of the Clerk of the Board during the Board's normal working hours, as soon as practicable given the demands on the Board of processing the subject case and other cases. If a request is made for copies of documents, and if making such copies involves more than minimal costs to the Board, reimbursement will be required. If a request is made for a copy of a transcript which was prepared pursuant to a contract with the Board, the fee charged by the Board for a copy of the transcript will be at the rate established by the contract. When required, the Office of the Clerk will certify copies of papers and documents as a true record of the Board. Except as provided in 6101.17 and 6101.32 (Rules 17 and 32), the Office of the Clerk will not release any part of the record in its possession to anyone.

6101.10 Admissibility and weight of evidence [Rule 10].

(a) *Admissibility.* In general, any relevant and material evidence will be admitted into the record. The Board may exclude evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. Hearsay evidence is admissible unless the Board finds it unreliable or untrustworthy. As a general matter, and subject to the other provisions of 6101.10 (Rule 10), the Board will look to the Federal Rules of Evidence for guidance when it makes evidentiary rulings.

(b) *Weight and credibility.* The Board will determine the weight to be given to evidence and the credibility to be accorded witnesses.

6101.11 Conferences; conference memorandum [Rule 11].

(a) *Conferences.* The Board may convene the parties in conference, either by telephone or in person, for any purpose. The conference may be stenographically or electronically recorded, at the discretion of the Board. Matters to be considered and actions to be taken at a conference may include:

(1) Simplifying, clarifying, or severing the issues;

(2) Stipulations, admissions, agreements, and rulings to govern the admissibility of evidence, understandings on matters already of record, or other similar means of avoiding unnecessary proof;

(3) Plans, schedules, and rulings to facilitate discovery;

(4) Limiting the number of witnesses and other means of avoiding cumulative evidence;

(5) Stipulations or agreements disposing of matters in dispute; or

(6) Ways to expedite disposition of the case or to facilitate settlement of the dispute, including, if the parties and the Board agree, the use of alternative dispute resolution techniques, as provided in 6101.51 and 6101.54 (Rules 51 and 54).

(b) *Conference memorandum.* The Board may issue a memorandum of the results of a conference, an order reflecting any actions taken, or both. A memorandum or order so issued shall be placed in the record of the case and sent to each party. Each party shall have 5 working days after receipt of a memorandum to object to the substance of it.

6101.12 Suspensions and dismissals [Rule 12].

(a) *Suspension of proceedings to obtain contracting officer's decision.* The Board may in its discretion suspend proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer's alleged failure to render a timely decision.

(b) *Suspension for other cause.* The Board may suspend proceedings in a case for good cause, such as to permit the parties to finalize a settlement. The order suspending proceedings will prescribe the duration of the suspension or the conditions on which it will expire. The order may also prescribe actions to be taken by the parties during the period of suspension or following its expiration.

(c) *Dismissal, generally.* A case may be dismissed by the Board on motion of either party. A case may also be dismissed for reasons cited by the Board in a show cause order to which a response has been permitted. Every dismissal shall be with prejudice to reinstatement of the case except as specified in paragraph (d) of this section.

(d) *Dismissal without prejudice.* When circumstances beyond the control of the Board prevent the continuation of proceedings in a case, the Board may, in lieu of issuing an order suspending proceedings, dismiss the case without prejudice to reinstatement within 180 calendar days after the date of the dismissal. When a case has been dismissed without prejudice and neither party has timely requested that the case be reinstated, the case shall be deemed to be dismissed with prejudice on the last day such a request could have been made.

(e) *Issuance of order.* The panel chair alone may issue an order suspending proceedings. An order of dismissal shall be issued by the panel of judges to which the case has been assigned if the motion is contested or if the Board is acting consequent to its own show cause order. An order of dismissal may be issued by the panel chair alone if the motion to dismiss is not contested.

6101.13 General provisions governing discovery [Rule 13].

(a) *Discovery methods.* The parties are encouraged to exchange documents and other information voluntarily. In addition, the parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Requests for production of documents, electronic records, or other tangible or intangible things; and

(4) Requests for admission.

(b) *Scope of discovery.* Except as otherwise limited by order of the Board, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, whether it relates to the claim or defense of a party, including the existence, description, nature, custody, condition, and location of any books, documents, electronic records, or other tangible or intangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible if the information sought appears

reasonably calculated to lead to the discovery of admissible evidence.

(c) *Discovery limits.* The Board may limit the frequency or extent of use of the discovery methods set forth in 6101.13 (Rule 13) if it determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(3) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

(d) *Conduct of discovery.* Parties may engage in discovery only to the extent the Board enters an order which either incorporates an agreed plan and schedule acceptable to the Board or otherwise permits such discovery as the moving party can demonstrate is required for the expeditious, fair, and reasonable resolution of the case.

(e) *Discovery conference.* Upon request of a party or on its own initiative, the Board may at any time hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery, if any; and determine such other matters as are necessary for the proper management of discovery. The Board may include in the conference such other matters as it deems appropriate in accordance with 6101.11 (Rule 11).

(f) *Discovery objections.* (1) In connection with any discovery procedure, the Board, on motion or on its own initiative, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including, but not limited to, one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(iii) That the discovery be conducted with no one present except persons designated by the Board; and

(iv) That confidential information not be disclosed or that it be disclosed only in a designated way.

(2) Unless otherwise ordered by the Board, any objection to a discovery request must be filed within 15 calendar days after receipt. A party shall fully respond to any discovery request to which it does not file a timely objection. The parties are required to make a good faith effort to resolve objections to discovery requests informally.

(3) A party receiving an objection to a discovery request, or a party which believes that another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but such a motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(g) *Failure to make or cooperate in discovery.* If a party fails to appear for a deposition, after being served with a proper notice; to serve answers or objections to interrogatories submitted under 6101.14 (Rule 14), after proper service of interrogatories; or to serve a written response to a request for inspection, production, and copying of any documents, electronic records, and things under 6101.14 (Rule 14), the party seeking discovery may move the Board to impose appropriate sanctions under 6101.33 (Rule 33).

(h) *Subpoenas.* A party may request the issuance of a subpoena in aid of discovery under the provisions of 6101.16 (Rule 16).

6101.14 Interrogatories to parties; requests for admission; requests for production [Rule 14].

Upon order from the Board permitting such discovery, a party may serve on another party written interrogatories, requests for admission, and requests for production.

(a) *Written interrogatories.* Written interrogatories shall be answered separately in writing, signed under oath or accompanied by a declaration under penalty of perjury, and answered within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) (Rule 13(f)(2)).

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served, or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(c) *Written requests for admission.* A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents or electronic records, is to be answered in writing and signed within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) (Rule 13(f)(2)). Otherwise, the matter therein may be deemed to be admitted. Any matter admitted is conclusively established for the purpose of the pending action, unless the Board on motion permits withdrawal or amendment of the admission. Any admission made by a party under this paragraph (c) is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against the party in any other proceeding.

(d) *Written requests for production.* A written request for the production, inspection, and copying of any documents, electronic records, or things shall be answered within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) (Rule 13(f)(2)).

(e) *Change in time for response.* Upon request of a party, or on its own initiative, the Board may prescribe a period of time other than that specified in 6101.14 (Rule 14).

(f) *Responses.* A party that has responded to written interrogatories, requests for admission, or requests for production of documents, electronic records, or things, upon becoming aware of deficiencies or inaccuracies in its original responses, or upon acquiring additional information or additional documents, electronic records, or things relevant thereto, shall, as quickly as practicable, and as often as necessary, supplement its responses to the requesting party with correct and sufficient additional information and such additional documents, electronic records, and things as are necessary to give a complete and accurate response to the request.

6101.15 Depositions [Rule 15].

(a) *When depositions may be taken.* Upon request of a party, the Board may order the taking of testimony of any person by deposition upon oral examination or written questions before an officer authorized to administer oaths at the place of examination. Attendance of witnesses may be compelled by subpoena as provided in 6101.16 (Rule 16), and the Board may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order may designate the manner of recording, preserving, and filing the deposition and may include other provisions to ensure that the recorded testimony will be accurate and trustworthy. In addition, if the Board orders deposition testimony to be recorded by other than stenographic means, the Board will also determine who shall bear the burden of the cost of such recording, and shall permit the non-moving party to arrange to have a stenographic transcription made at its own expense.

(b) *Depositions: time; place; manner of taking.* The time, place, and manner of taking depositions, including the taking of depositions by telephone, shall be as agreed upon by the parties or, failing such agreement, as ordered by the Board. A deposition taken by telephone is taken at the place where the deponent is to answer questions.

(c) *Use of depositions.* At a hearing on the merits or upon a motion or interlocutory proceeding, any part or all of a deposition, so far as admissible and as though the witness were then present and testifying, may be used against a party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by a party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a corporation, partnership, association, or government agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose in its own behalf if the Board finds that:

(i) The witness is dead;

(ii) The attendance of the witness at the place of hearing cannot be reasonably obtained, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) The witness is unable to attend or testify because of illness, infirmity, age, or imprisonment;

(iv) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon request and notice, exceptional circumstances exist which make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced.

(d) *Depositions pending appeal from a decision of the Board.* If an appeal has been taken from a decision of the Board, or before the taking of an appeal if the time therefor has not expired, the Board may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings before the Board. In such case, the party that desires to perpetuate testimony may make a motion before the Board for leave to take the depositions as if the action were pending before the Board. The motion shall show:

(1) The names and addresses of the persons to be examined and the substance of the testimony which the moving party expects to elicit from each; and

(2) The reasons for perpetuating the testimony of the persons named. If the Board finds that the perpetuation of testimony is proper to avoid a failure or a delay of justice, it may order the depositions to be taken and may make orders of the character provided for in 6101.13 (Rule 13) and in 6101.15 (Rule 15). Thereupon, the depositions may be taken and used as prescribed in the rules of this chapter for depositions taken in actions pending before the Board. Upon request and for good cause shown, a judge may issue or obtain a subpoena, in accordance with 6101.16 (Rule 16), for the purpose of perpetuating testimony by deposition during the pendency of an appeal from a Board decision.

6101.16 Subpoenas [Rule 16].

(a) *Voluntary cooperation in lieu of subpoena.* Each party is expected to:

(1) Cooperate by making available witnesses and evidence under its control, when requested by another party, without issuance of a subpoena; and

(2) Secure the cooperation of third-party witnesses and production of evidence by third parties, when practicable, without issuance of a subpoena.

(b) *General.* Upon the written request of any party filed with the Office of the Clerk of the Board, or upon the initiative of a judge, a subpoena may be issued that commands the person to whom it is directed to:

(1) Attend and give testimony at a deposition in a city or county where that person resides or is employed or transacts business in person, or at another location convenient to that person that is specifically determined by the Board;

(2) Attend and give testimony at a hearing; and

(3) Produce the books, papers, documents, electronic records, and other tangible and intangible things designated in the subpoena.

(c) *Request for subpoena.* A request for a subpoena shall contain the name of the assigned judge, the name of the case, and the docket number of the case. It shall state the reasonable scope and general relevance to the case of the testimony and of any evidence sought. A request for a subpoena shall be filed at least 15 calendar days before the testimony of a witness or evidence is to be provided. The Board may, in its discretion, honor requests for subpoenas not made within this time limitation.

(d) *Form; issuance.* (1) Every subpoena shall be in the form specified in the Appendix to the rules of this chapter and this form shall not be altered. Unless a party has the approval of a judge to submit a subpoena in blank (in whole or in part), a party shall submit to the judge a completed subpoena (save the ''Return on Service'' portion). In issuing a subpoena to a requesting party, the judge shall sign the subpoena. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) If the person subpoenaed is located in a foreign country, a letter rogatory or a subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(e) *Service.* (1) The party requesting a subpoena shall arrange for service. Service shall be made as soon as practicable after the subpoena has been issued.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personal

delivery of a copy to that person and tender of the fees for one day's attendance and the mileage allowed by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(f) *Proof of service.* The person serving the subpoena shall make proof of service thereof to the Board promptly and in any event before the date on which the person served must respond to the subpoena. Proof of service shall be made by completion and execution and submission to the Board of the ''Return on Service'' portion of a duplicate copy of the subpoena issued by a judge. If service is made by a person other than a United States marshal or his deputy, that person shall make an affidavit as proof by executing the ''Return on Service'' in the presence of a notary.

(g) *Motion to quash or to modify.* Upon written motion by the person subpoenaed or by a party, made within 14 calendar days after service, but in any event not later than the time specified in the subpoena for compliance, the Board may quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed evidence. Where circumstances require, the Board may act upon such a motion at any time after a copy has been served upon opposing parties.

(h) *Contumacy or refusal to obey a subpoena.* In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the Board shall apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board to give testimony, produce evidence, or both.

6101.17 Exhibits [Rule 17].

(a) *Marking of exhibits.* (1) Documents and other tangible things offered in evidence by a party will be marked for identification by the Board during the hearing or, if ordered by the Board, will be added to the appeal file as exhibits before the commencement of the hearing in order, for example, to eliminate the introduction of additional exhibits at the hearing.

(2) If a party elects to proceed on the record without a hearing pursuant to 6101.19 (Rule 19), documentary evidence submitted by that party will be numbered consecutively as appeal file exhibits.

(b) *Copies as exhibits.* Except upon objection sustained by the Board for good cause shown, copies of documents may be offered and received into evidence as exhibits, provided they are of equal legibility and quality as the originals, and such copies shall have the same force and effect as if they were the originals. If the Board directs, a party offering a copy of a document as an exhibit shall have the original available at the hearing for examination by the Board and any other party. When the original of a document has been received into evidence as an exhibit, an accurate copy may be substituted in evidence for the original by leave of the Board at any time. The Board may require a party to provide either copies of electronic records or printed versions of electronic records to be included in the record.

(c) *Withdrawal of exhibits and other items.* With the permission of the Board, a party that submits an exhibit or any other item may withdraw the exhibit or item from the record during the course of a proceeding.

(d) *Disposition of physical exhibits.* Any physical (as opposed to documentary) exhibit may be disposed of by the Board at any time more than 90 calendar days after the expiration of the period for appeal from the decision of the Board.

6101.18 Election of hearing or record submission [Rule 18].

Each party shall inform the Board, in writing, whether it elects a hearing or submission of its case on the record pursuant to 6101.19 (Rule 19). Such an election may be filed at any time unless a time for filing is prescribed by the Board. In most cases, the Board will require the parties to make an election soon after discovery closes. A party electing to submit its case on the record pursuant to 6101.19 (Rule 19) may also elect to appear at a hearing solely to cross-examine any witness presented by the opposing party, provided that the Board is informed of that party's intention within 10 working days of its receipt of notice of the election of hearing by the other party. If a hearing is elected, the election should state where and when the electing party desires the hearing to be held and should explain the reasons for its choices. A hearing will be held if either party elects one. If a party's decision whether to elect a hearing is dependent upon the intentions of the other party, it shall consult with the other party before filing its election. If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. The record submissions from a party that has elected to submit its case on the record shall be due as provided in 6101.19 (Rule 19).

6101.19 Submission on the record without a hearing [Rule 19].

(a) *Submission on the record.* A party may elect to submit its case on the record without a hearing. A party submitting its case on the record may include in its written record submission or submissions:

(1) Any relevant documents or other tangible things it wishes the Board to admit into evidence;

(2) Affidavits, depositions, and other discovery materials that set forth relevant evidence; and

(3) A brief or memorandum of law. The Board may require the submission of additional evidence or briefs and may order oral argument in a case submitted on the record.

(b) *Time for submission.* (1) If both parties have elected to submit the case on the record, the Board will issue an order prescribing the time for initial and, if appropriate, reply record submissions.

(2) If one party has elected a hearing and the other party has elected to submit its case on the record, the party submitting on the record shall make its initial submission no later than the commencement of the hearing or at an earlier date if the Board so orders, and a further submission in the form of a brief at the time for submission of posthearing briefs.

(c) *Objections to evidence.* Unless otherwise directed by the Board, objections to evidence (other than the appeal file and supplements thereto) in a record submission may be made within 10 working days after the filing of the submission, and replies to such objections, if any, may be made within 10 working days after the filing of the objection. The Board may rule on such objections either before it issues its decision or at the time it issues its decision.

6101.20 Hearings: scheduling; notice; unexcused absences [Rule 20].

(a) *Scheduling of hearings.* Hearings will be held at the time and place ordered by the Board and will be scheduled at the discretion of the Board. In scheduling hearings, the Board will consider the requirements of the rules of this chapter, the need for orderly management of the Board's caseload, and the stated desires of the parties as expressed in their elections filed

pursuant to 6101.18 (Rule 18) or otherwise. The time or place for hearing may be changed by the Board at any time.

(b) *Notice of hearing.* Notice of hearing will be by written order of the Board. Notice of changes in the hearing schedule will also be by written order when practicable but may be oral in exigent circumstances. Except as the Board may otherwise order, each party that plans to attend the hearing shall, within 10 working days of receipt of a written notice of hearing or any notice of a change in hearing schedule stating that an acknowledgment is required, notify the Board in writing that it will attend the hearing. If a party fails to acknowledge a notice of hearing as required, the Board will deem the party to have consented to the time and place of hearing.

(c) *Unexcused absence from hearing.* In the event of the unexcused absence of a party from a hearing, the hearing will proceed, and the absent party will be deemed to have elected to submit its case on the record pursuant to 6101.19 (Rule 19).

6101.21 Hearing procedures [Rule 21].

(a) *Nature and conduct of hearings.* (1) Except when necessary to maintain the confidentiality of protected material or testimony, or material submitted *in camera*, all hearings on the merits of cases shall be open to the public and conducted insofar as is convenient in regular hearing rooms. All other acts or proceedings may be done or conducted by the Board either in its offices or at other places.

(2) When cases involving common questions of law or fact are pending, the Board may order a joint hearing of any or all of the matters, claims, or issues in the cases.

(3) The Board may order a separate hearing of any matters, claims, or issues pending in any case. The Board may enter appropriate orders or decisions with respect to any matters, claims, or issues that are heard separately.

(4) Upon the agreement of the parties or upon its own initiative, the Board may notify the parties before a hearing begins that it will limit the hearing to those issues of law and fact relating to the right of a party to recover, reserving the determination of the amount of recovery, if any, for other proceedings.

(5) Before the hearing begins, the Board may prescribe a time within which the presentation of evidence must be concluded, and may establish time limits on the direct and cross-examination of witnesses.

(6) Upon the request of either party or if the Board deems it advisable, the Board will order witnesses to be excluded from the hearing room so they cannot hear the testimony of other witnesses. The Board will not exclude a party who is an individual, the designated representative of a party which is an entity, a person whose presence is essential to the presentation of a party's case, or someone authorized by statute to be present.

(b) *Continuances; change of location.* Whenever practicable, a hearing will be conducted in one continuous session or a series of consecutive sessions at a single location. However, the Board may at any time continue the hearing to a future date and may arrange to conduct the hearing in more than one location. The Board may also continue a hearing to permit a party to conduct additional discovery on conditions established by the Board. In exercising its discretion to continue a hearing or to change its location, the Board will give due consideration to the same elements (set forth in 6101.20(a) (Rule 20(a))) that it considers in scheduling hearings.

(c) *Availability of witnesses, documents, and other tangible things.* It is the responsibility of a party desiring to call any witness, or to use any document or other tangible thing as an exhibit in the course of a hearing, to ensure that whomever it wishes to call and whatever it wishes to use is available at the hearing. If a witness cannot be made available at the site of the hearing, the party who wishes to call the witness may file a motion that the witness be allowed to testify remotely, whether by telephone, video conference, or some other method.

(d) *Enlargement of the record.* The Board may at any time during the conduct of a hearing require evidence or argument in addition to that put forth by the parties.

(e) *Examination of witnesses.* Witnesses before the Board will testify under oath or affirmation. A party or the Board may obtain an answer from any witness to any question that is not the subject of an objection that the Board sustains.

(f) *Refusal to be sworn.* If a person called as a witness refuses to be sworn or to affirm before testifying, the Board may direct that witness to be sworn or to affirm and, in the event of continued refusal, the Board may permit the taking of testimony without oath or affirmation. If the Board permits a witness to testify without oath or affirmation, the Board will explain that statements made during the hearing are subject to provisions of federal law imposing penalties, including criminal penalties, for knowingly making false representations. Alternatively, the Board may refuse to permit the examination of that witness, in which event it may state for the record the inferences it draws from the witness's refusal to testify under oath or affirmation. Alternatively, the Board may issue a subpoena to compel that witness to testify under oath or affirmation and, in the event of the witness's continued refusal to be sworn or to affirm, may seek enforcement of that subpoena pursuant to 6101.16(h) (Rule 16(h)).

(g) *Refusal to answer.* If a witness refuses to answer a question put to him in the course of his testimony, the Board may direct that witness to answer and, in the event of continued refusal, the Board may state for the record the inferences it draws from the refusal to answer. Alternatively, the Board may issue a subpoena to compel that witness to testify and, in the event of the witness's continued refusal to testify, may seek enforcement of that subpoena pursuant to 6101.16(h) (Rule 16(h)).

(h) *Issues not raised by pleadings.* If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may nevertheless be admitted by the Board if it is within the proper scope of the case. If such evidence is admitted, the Board may grant the objecting party a continuance to enable it to meet such evidence. If such evidence is admitted, the pleadings may be amended to conform to the evidence, as provided by 6101.6(f) (Rule 6(f)).

(i) *Delay by parties.* If the Board determines that the hearing is being unreasonably delayed by the failure of a party to produce evidence, or by the undue prolongation of the presentation of evidence, it may, during the hearing, prescribe a time or times within which the presentation of evidence must be concluded, establish time limits on the direct or cross-examination of witnesses, and enforce such order or ruling by appropriate sanctions.

6101.22 Transcripts of proceedings; corrections [Rule 22].

(a) *Transcripts.* Except as the Board may otherwise order, all hearings, other than those under the small claims procedure prescribed by 6101.52 (Rule 52), will be stenographically or electronically recorded and transcribed. Any other hearing or conference will be recorded or transcribed only by order of the Board. Each party is responsible for obtaining its own copy of the transcript if one is prepared.

(b) *Corrections.* Corrections to an official transcript will be made only when they involve errors affecting its substance. The Board may order such corrections on motion or on its own

initiative, and only after notice to the parties giving them opportunity to object. Such corrections will ordinarily be made either by hand with pen and ink or by the appending of an errata sheet, but when no other method of correction is practicable the Board may require the reporter to provide substitute or additional pages.

6101.23 Briefs and memoranda of law [Rule 23].

(a) *Form and content of briefs and memoranda of law.* Briefs and memoranda of law shall be on standard size 8-1/2 by 11-inch paper. They shall be double-spaced with text in the body and in the footnotes no smaller than 12 point. Otherwise, no particular form or organization is prescribed. Posthearing briefs should, at a minimum, succinctly set forth:

(1) The facts of the case with citations to those places in the record where supporting evidence can be found; and

(2) Argument with citations to supporting legal authorities.

(b) *Submission of posthearing briefs.* Except as the Board may otherwise order, posthearing briefs shall be filed 30 calendar days after the Board's receipt of the transcript; reply briefs, if filed, shall be filed 15 calendar days after the parties' receipt of the initial posthearing briefs. The Board will notify the parties of the date of its receipt of the transcript. In the event one party has elected a hearing and the other party has elected to submit its case on the record pursuant to 6101.19 (Rule 19), the filing of record submissions in the form of briefs shall be governed by 6101.23 (Rule 23).

6101.24 Closing the record [Rule 24].

(a) *Closing of the record.* Except as the Board may otherwise order, no proof shall be received in evidence after a hearing is completed or, in cases submitted on the record without a hearing, after notice by the Board to the parties that the record is closed and that the case is ready for decision.

(b) *Notice that the case is ready for decision.* The Board will give written notice to the parties when the record is closed and the case is ready for decision.

6101.25 Decisions; settlements [Rule 25].

(a) *Decisions.* (1) Except as provided in 6101.52 (Rule 52) (small claims procedure), decisions of the Board will be made in writing upon the record as prescribed in 6101.9 (Rule 9). The Board may also take notice of any fact or law of which a court could take judicial notice. Each of the parties will be furnished a copy of the decision certified by the Office of the Clerk of the Board, and the date of the receipt thereof by each party will be established in the record.

(2) In its decision, the Board may reserve determination of the amount of recovery for other proceedings, regardless of whether there is evidence in the record concerning the amount of recovery, provided the Board notified the parties before the hearing began that its decision would not address the amount of any recovery. In any instance in which the Board has reserved its determination of the amount of recovery for other proceedings, as provided in 6101.21(a)(4) (Rule 21(a)(4)), its decision on the question of the right to recover shall be final so far as proceedings at the Board are concerned, subject to the provisions of 6101.26 through 6101.28 (Rules 26 through 28).

(b) *Settlements.* When an appeal or application is settled, the parties may file with the Board a stipulation setting forth the amount of the award. The Board will adopt the parties' stipulation by decision, provided the stipulation states the parties will not seek reconsideration of, or relief from, the Board's decision, and they will not appeal the decision. The Board's decision under this paragraph (b) is an adjudication of the case on the merits.

6101.26 Reconsideration; amendment of decisions; new hearings [Rule 26].

(a) *Grounds.* Reconsideration may be granted, a decision or order may be altered or amended, or a new hearing may be granted, for any of the reasons stated in 6101.27(a) (Rule 27(a)) and the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. Reconsideration or a new hearing may be granted on all or any of the issues. Arguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration, for altering or amending a decision, or for granting a new hearing. Upon granting a motion for a new hearing, the Board will take additional testimony and, if a decision has been issued, either amend its findings of fact and conclusions or law or issue a new decision.

(b) *Procedure.* Any motion under 6101.26 (Rule 26) shall comply with the provisions of 6101.8 (Rule 8) and shall set forth:

(1) The reason or reasons why the Board should consider the motion; and

(2) The relief sought and the grounds therefor. If the Board concludes that the reasons asserted for its consideration of the motion are insufficient, it may deny the motion without considering the relief sought and the grounds asserted therefor. If the Board grants the motion, it will issue an appropriate order which may include directions to the parties for further proceedings.

(c) *Time for filing.* In an appeal or petition, a motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed within 30 calendar days after the date the moving party receives the decision or order. In an application, such a motion shall be filed within 7 working days after the date the moving party receives the decision or order. Not later than 30 calendar days after issuance of a decision or order, the Board may, on its own initiative, order reconsideration or a new hearing or alter or amend a decision or order for any reason that would justify such action on motion of a party.

(d) *Effect of motion.* A motion pending under 6101.26 (Rule 26) does not affect the finality of a decision or suspend its operation.

6101.27 Relief from decision or order [Rule 27].

(a) *Grounds.* The Board may relieve a party from the operation of a final decision or order for any of the following reasons:

(1) Newly discovered evidence which could not have been earlier discovered, even through due diligence;

(2) Justifiable or excusable mistake, inadvertence, surprise, or neglect;

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application;

(5) The decision is void, whether for lack of jurisdiction or otherwise; or

(6) Any other ground justifying relief from the operation of the decision or order.

(b) *Procedure.* Any motion under 6101.27 (Rule 27) shall comply with the provisions of 6101.8 and 6101.26(b) (Rules 8 and 26(b)), and will be considered and ruled upon by the Board as provided in 6101.26 (Rule 26).

(c) *Time for filing.* Any motion under 6101.27 (Rule 27) shall be filed as soon as practicable after the discovery of the reasons therefor, but in any event no later than 120 calendar days after the date of the moving party's receipt of the decision or order from which relief is sought. In considering the timeliness of a motion filed under 6101.27 (Rule 27), the Board may consider when the

grounds therefor should reasonably have been known to the moving party.

(d) *Effect of motion.* A motion pending under 6101.27 (Rule 27) does not affect the finality of a decision or suspend its operation.

6101.28 Full Board consideration [Rule 28].

(a) *Requests by parties.* (1) A request for full Board consideration is not favored. Ordinarily, full Board consideration will be ordered only when it is necessary to secure or maintain uniformity of Board decisions, or the matter to be referred is one of exceptional importance.

(2) A request for full Board consideration may be made by either party on any date which is both after the panel to which the case is assigned has issued its decision on a motion for reconsideration or relief from decision and within 10 working days after the date on which that party receives that decision. Any party making a request for full Board consideration shall state concisely in the motion the precise grounds on which the request is based.

(3) Promptly after such a request is made, a ballot will be taken among the judges; if a majority of them favors the request, the request will be granted. The result of the vote will promptly be reported by the Board through an order. The concurring or dissenting view of any judge who wishes to express such a view may issue at the time of such order or at any time thereafter.

(b) *Initiation by Board.* A majority of the judges may initiate full Board consideration of a matter at any time while the case is before the Board, no later than the last date on which any party may file a motion for reconsideration or relief from decision or order, or if such a motion is filed by a party, within ten days after a panel has resolved it. The parties will be informed promptly, through an order, of the matter to be considered by the full Board. The concurring or dissenting view of any judge who wishes to express such a view may issue at the time of such order or at any time thereafter.

(c) *Decisions.* If full Board consideration is granted at the request of a party or initiated by the Board, a vote shall be taken promptly on the pending matter. After this vote is taken, the Board shall promptly, by order, issue its determination, which shall include the concurring or dissenting view of any judge who wishes to express such a view.

(d) *Effect of motion.* A pending request for full Board consideration, whether initiated by a party or by the Board, does not affect the finality of a decision or suspend its operation.

6101.29 Clerical mistakes; harmless error [Rule 29].

(a) *Clerical mistakes.* Clerical mistakes in decisions, orders, or other parts of the record, and errors arising therein through oversight or inadvertence, may be corrected by the Board at any time on its own initiative or upon motion of a party on such terms, if any, as the Board may prescribe. During the pendency of an appeal to another tribunal, such mistakes may be corrected only with leave of the appellate tribunal.

(b) *Harmless error.* No error in the admission or exclusion of evidence, and no error or defect in any ruling, order, or decision of the Board, and no other error in anything done or not done by the Board will be a ground for granting a new hearing or for vacating, reconsidering, modifying, or otherwise disturbing a decision or order of the Board unless refusal to act upon such error will prejudice a party or work a substantial injustice. At every stage of the proceedings the Board will disregard any error or defect that does not affect the substantial rights of the parties.

6101.30 Award of fees and other expenses [Rule 30].

(a) *Applications for fees and other expenses.* An appropriate party in a proceeding before the Board may apply for an award of fees and other expenses, including if applicable an award of attorney fees, under the Equal Access to Justice Act, 5 U.S.C. 504, or any other provision that may entitle that party to such an award, subsequent to the Board's decision in the proceeding. Until it issues a decision, the Board will not consider a request for fees and other expenses.

(b) *Time for filing.* A party seeking an award may submit an application no later than 30 calendar days after a final disposition in the underlying appeal. The Board's decision becomes final (for purposes of 6101.30 (Rule 30) when it is not appealed to the United States Court of Appeals for the Federal Circuit within the time permitted for appeal or, if the decision is appealed, when the time for petitioning the Supreme Court for certiorari has expired.

(c) *Application requirements.* An application for fees and other expenses shall:

(1) Identify the applicant and the appeal for which fees and other expenses are sought, and the amount being sought;

(2) Establish that all applicable prerequisites for an award have been satisfied, including a succinct statement of why the applicant is eligible for an award of fees and other expenses;

(3) Be accompanied by an exhibit fully documenting any fees or expenses being sought, including the cost of any study, analysis, engineering report, test, project, or similar matter. The date and a description of all services rendered or costs incurred shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the particular services performed by specific date, the rate at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant. Except in exceptional circumstances, all exhibits supporting applications for fees or expenses sought shall be publicly available. The Board may require the applicant to provide vouchers, receipts, or other substantiation for any fees and other expenses claimed and/or to submit to an audit by the Government of the claimed fees and other expenses;

(4) Be signed by the applicant or an authorized officer, employee, or attorney of the applicant;

(5) Contain or be accompanied by a written verification under oath or affirmation, or declaration under penalty of perjury, that the information provided in the application is true and correct;

(6) If the applicant asserts that it is a qualifying small business concern, contain evidence thereof; and

(7) If the application requests reimbursement of attorney fees that exceed the statutory rate, explain why an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies such fees.

(d) *Proceedings.* (1) Within 30 calendar days after receipt by the respondent of an application under 6101.30 (Rule 30), the respondent may file an answer. The answer shall explain in detail any objections to the award requested and set out the legal and factual bases supporting the respondent's position. If the respondent contends that any fees for consultants or expert witnesses for which reimbursement is sought in the application exceed the highest rate of compensation for expert witnesses paid by the agency, the respondent shall include in the answer evidence of such highest rate.

(2) Further proceedings shall be held only by order of the Board and only

when necessary for full and fair resolution of the issues arising from the application. Such proceedings shall be minimized to the extent possible and shall not include relitigation of the case on the merits. A request that the Board order further proceedings under 6101.30 (Rule 30) shall describe the disputed issues and explain why additional proceedings are necessary to resolve those issues.

(e) *Decision.* Any award ordered by the Board shall be paid pursuant to 6101.31 (Rule 31).

6101.31 Payment of Board awards [Rule 31].

(a) *Generally.* When permitted by law, payment of Board awards may be made in accordance with 31 U.S.C. 1304. Awards by the Board pursuant to the Equal Access to Justice Act shall be directly payable by the respondent agency over which the applicant has prevailed in the underlying appeal.

(b) *Conditions for payment.* Before a party may obtain payment of a Board award pursuant to 31 U.S.C. 1304, one of the following must occur:

(1) Both parties must, by execution of a Certificate of Finality, waive their rights to relief under 6101.26 and 6101.27 (Rules 26 and 27) and also their rights to appeal the decision of the Board; or

(2) The time for filing an appeal must expire.

(c) *Procedure.* Whenever the Board issues a decision or an order awarding an appellant any amount of money, it will attach to the copy of the decision sent to each party forms such as those contained in the Appendix to the rules of this chapter. Unless the appellant files a timely appeal from the decision, the appellant will complete the Certificate of Finality, sign it, and forward it to the person or persons who entered an appearance in the appeal on behalf of the government agency. Upon receipt of a completed and executed Certificate of Finality, unless the government agency files a timely appeal from the decision, the person or persons who entered an appearance in the appeal on behalf of the government agency will promptly transmit the appellant's Certificate of Finality, along with a certified copy of the Board's decision and any other necessary documentation, to the United States Department of the Treasury for payment.

6101.32 Appeal from a Board decision [Rule 32].

(a) *Record on review.* When a party has appealed a Board decision to the United States Court of Appeals for the Federal Circuit, the record on review shall consist of the decision sought to be reviewed, the record before the Board as described in 6101.9(a)(1) through (a)(13) (Rule 9(a)(1) through (a)(13)), and such other material contained in the Board's file as may be required by the Court of Appeals.

(b) *Notice.* At the same time a party seeking review of a Board decision files a notice of appeal, that party shall provide a copy of the notice to the Board.

(c) *Filing of certified list of record materials.* Promptly after service upon the Board of a copy of the notice of appeal of a Board decision, the Office of the Clerk of the Board shall file with the Clerk of the United States Court of Appeals for the Federal Circuit a certified list of all documents, transcripts of testimony, exhibits, and other materials constituting the record, or a list of such parts thereof as the parties may designate, adequately describing each. The Board will retain the record and transmit any part thereof to the Court upon the Court's order during the pendency of the appeal.

(d) *Request by attorney of record to review record.* When a case is on appeal, an attorney of record may request permission from the Board to sign out for a reasonable period of time the record on appeal to review and to copy if the attorney is unable to gain access to the record from another source.

6101.33 Ex parte contact; sanctions and other proceedings [Rule 33].

(a) *Standards.* All parties and their representatives, attorneys, and any expert/consultant retained by them or their attorneys, must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and persons. As to an attorney, the standards include the rules of professional conduct and ethics of the jurisdictions in which that attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, or its proceedings. The Board will also look to voluntary professional guidelines in evaluating an individual's conduct.

(b) *Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, without the knowledge and consent of the adverse party, regarding any matter at issue in that appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

(c) *Sanctions.* When a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions may include:

(1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the case in accordance with the contention of the party submitting the discovery request;

(2) Forbidding challenge of the accuracy of any evidence;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony;

(5) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;

(6) Dismissing the case or any part thereof;

(7) Enforcing the protective order and disciplining individuals subject to such order for violation thereof, including disqualifying a party's representative, attorney, or expert/consultant from further participation in the case; or

(8) Imposing such other sanctions as the Board deems appropriate.

(d) *Denial of access to protected material for prior violations of protective orders.* The Board may in its discretion deny access to protected material to any person found to have previously violated a protective order, regardless of who issued the order.

(e) *Disciplinary proceedings.* (1) In addition to the procedures in this section 6101.33 (Rule 33), the Board may discipline individual party representatives, attorneys, and experts/consultants for a violation of any Board order or direction or standard of conduct applicable to such individual where the violation seriously affects the integrity of the Board, its process, or its proceedings. Sanctions may be public or private, and may include admonishment, disqualification from a particular matter, referral to an appropriate licensing authority, or such other action as circumstances may warrant.

(2) The Board in its discretion may suspend an individual from appearing before the Board as a party representative, attorney, or expert/consultant if, after affording such

individual notice and an opportunity to be heard, a majority of the members of the full Board determines such a sanction is warranted.

6101.34 Seal of the Board [Rule 34].

The Seal of the Board shall be a circular boss, the outer margin of which shall bear the legend ''Civilian Board of Contract Appeals.'' The Seal shall be the means of authentication of all records, notices, orders, dismissals, opinions, subpoenas, and certificates issued by the Board.

6101.35—6101.50 [Reserved]

6101.51 Variation from standard proceedings [Rule 51].

The ultimate purpose of any Board proceeding is to resolve fairly and expeditiously any dispute properly before the Board. When, during the normal course of a Board proceeding, the parties agree that a change in established procedure will promote this purpose, the Board will make that change if it is deemed to be feasible and in the best interest of the parties, the Board, and the resolution of the issue(s) in controversy. Individuals and small business may find variations from standard proceedings to be especially useful. The following are examples of these changes:

(a) Establishing an expedited schedule of proceedings, such as by limiting the times provided in 6101.1 through 6101.34 (Rules 1 through 34) for various filings, to facilitate a prompt resolution of the case;

(b) Developing a record and rendering a decision on the issue of entitlement prior to reviewing the issue of quantum in a party's claim;

(c) Developing a record and rendering a decision on any legal or factual issue in advance of others when that issue is deemed critical to resolving the case or effecting a settlement of any items in dispute; and

(d) Developing a record regarding relevant facts through an on-the-record round-table discussion with sworn witnesses, counsel, and the panel chair rather than through formal direct and cross-examination of each of these same witnesses. This discussion shall be controlled by the panel chair. It may be conducted, for example, through the presentation of narrative statements of witnesses or on an issue by issue basis. The panel chair may also request that the parties' counsel or representatives present opening and/or closing statements in lieu of written briefs.

6101.52 Small claims procedure [Rule 52].

(a) *Election.* (1) The small claims procedure is available solely at the appellant's election. Such election shall be made no later than 30 calendar days after the appellant's receipt of the agency answer, unless the panel chair enlarges the time for good cause shown. The appellant may elect this procedure when:

(i) There is a monetary amount in dispute and that amount is $50,000 or less, or

(ii)(A) There is a monetary amount in dispute and that amount is $150,000 or less, and

(B) The appellant is a small business concern (as that term is defined in the Small Business Act and regulations promulgated under that Act).

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute and/or the appellant's status makes the election inappropriate. The Government shall raise any objection to the election no later than 10 working days after receipt of a notice of election.

(b) *Decision.* The panel chair may issue a decision, which may be in summary form, orally or in writing. A decision which is issued orally shall be reduced to writing; however, such a decision takes effect at the time it is rendered, prior to being reduced to writing. A decision shall be final and conclusive and shall not be set aside except in case of fraud. A decision shall have no value as precedent.

(c) *Procedure.* Promptly after receipt of the appellant's election of the small claims procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings, discovery, and other prehearing activities may be restricted or eliminated.

(d) *Time of decision.* Whenever possible, the panel chair shall resolve an appeal under this procedure within 120 calendar days from the Board's receipt of the election. The time for processing an appeal under this procedure may be extended if the appellant has not adhered to the established schedule. Either party's failure to abide by the Board's schedule may result in the Board drawing evidentiary inferences adverse to the party at fault.

6101.53 Accelerated procedure [Rule 53].

(a) *Election.* (1) The accelerated procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is $100,000 or less. Such election shall be made no later than 30 calendar days after the appellant's receipt of the agency answer, unless the panel chair enlarges the time for good cause shown.

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than $100,000, such that the election is inappropriate. The Government shall raise any objection to the election no later than 10 working days after receipt of a notice of election.

(b) *Decision.* Each decision shall be rendered by the panel chair with the concurrence of one of the other judges assigned to the panel; in the event the two judges disagree, the third judge assigned to the panel will participate in the decision.

(c) *Procedure.* Promptly after receipt of the appellant's election of the accelerated procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings may be simplified, and discovery and other prehearing activities may be restricted or eliminated.

(d) *Time of decision.* Whenever possible, the Board shall resolve an appeal under this procedure within 180 calendar days from the Board's receipt of the election. The time for processing an appeal under this procedure may be extended if the appellant has not adhered to the established schedule. Either party's failure to abide by the Board's schedule may result in the Board drawing evidentiary inferences adverse to the party at fault.

6101.54 Alternative dispute resolution [Rule 54].

(a) *Availability of alternative dispute resolution (ADR) procedures at the Board.* The Board will make its services available for ADR proceedings to help resolve issues in controversy and claims involving procurements, contracts (including interagency agreements), and grants. The use of ADR will not toll any relevant statutory time limitations.

(1) *Matters not on Board's Contract Disputes Act (CDA) docket.* Upon request, the Board will make an ADR Neutral available for an ADR proceeding, even if a contracting officer's decision has not been issued or is not contemplated. To initiate an ADR proceeding for all matters other than docketed CDA appeals, the parties shall jointly request ADR in writing and direct such a request to the Board Chairman. For agencies whose issues in controversy do not fall within the Board's jurisdiction, the Board may provide ADR services on a reimbursable basis.

(2) *Docketed CDA appeals.* Parties are encouraged to consider the advantages of using ADR techniques at any stage of an appeal. Joint requests for ADR services for docketed appeals should be

addressed to the Board Chairman, with a copy to the presiding judge. ADR may be used concurrently with standard litigation proceedings such as the filing of pleadings and discovery, or the presiding judge may suspend such proceedings for a reasonable period of time while the parties attempt to resolve the appeal using ADR.

(b) *Conduct of ADR*—(1) *Selection of ADR Neutral.* The parties may ask the Board Chairman to appoint a judge(s) to serve as the ADR Neutral(s). If desired, the parties may request the appointment of a particular judge(s). In a docketed appeal, the parties may also request that the presiding judge serve as the ADR Neutral for the ADR proceeding. If the parties elect a non-binding ADR procedure and the implementation of the procedure does not result in a settlement, where the procedure has involved *ex parte* contact, the ADR Neutral may retain the case for adjudication as the presiding judge, but only if the parties and the presiding judge all agree to such retention. If the procedure has not involved ex parte contact, the ADR Neutral, after considering the parties' views, may retain the case as the presiding judge at his/her discretion.

(2) *The ADR agreement.* Before an ADR proceeding can occur, the parties must execute a written ADR agreement. This agreement should set forth, among other things, the identity of the ADR Neutral to be used, the role and authority of the Neutral, the ADR techniques to be employed, the scope and extent of any discovery relating to ADR, the location and schedule for the ADR proceeding, and the extent to which dispute resolution communications in conjunction with the ADR proceeding are to be kept confidential (6101.54(b)(3) (Rule 54(b)(3))).

(3) *Confidentiality of ADR communications and materials.* Written material prepared specifically for use in an ADR proceeding, oral presentations made at an ADR proceeding, and all discussions in connection with such proceedings are considered ''dispute resolution communications'' as defined in 5 U.S.C. 571(5) and are subject to the confidentiality requirements of 5 U.S.C. 574. Unless otherwise specifically agreed by the parties, confidential dispute resolution communications shall be inadmissible as evidence in any pending or future Board proceeding involving the parties or the issue in controversy which is the subject of the ADR proceeding. However, evidence otherwise admissible before the Board is not rendered inadmissible because of its use in an ADR proceeding. The Board will not retain written materials used in an ADR proceeding after the proceeding is concluded or otherwise terminated. Parties may request a protective order in an ADR proceeding in the manner provided in 6101.9(c) (Rule 9(c)).

(c) *Types of ADR.* ADR is not defined by any single procedure or set of procedures. Board judges, when engaged as ADR Neutrals, most commonly use a combination of facilitative and evaluative mediation approaches, as explained in paragraphs (c)(1) through (c)(7) of this section. However, the Board will consider the use of any ADR technique or combination of techniques proposed by the parties in their ADR agreement which is deemed to be fair, reasonable, and in the best interest of the parties, the Board, and the resolution of the issue(s) in controversy. The following are descriptions of some available techniques:

(1) *Facilitative mediation.* Facilitative mediations usually begin with a joint session, where the parties each make informal presentations to one another and the ADR Neutral regarding the facts and circumstances giving rise to the issues in controversy as well as an explanation of their respective legal positions. The ADR Neutral, as a mediator, aids the parties in settling their dispute, frequently by meeting with each party separately in confidential sessions and engaging in ex parte discussions with each of the parties, for the purpose of facilitating the formulation and transmission of settlement offers.

(2) *Evaluative mediation.* In addition to engaging in facilitative mediation, if authorized under the terms of the parties' ADR agreement, the ADR Neutral may also discuss informally the strengths and weaknesses of the parties' respective positions in either joint sessions or confidential sessions.

(3) *Mini-trial.* The parties make abbreviated presentations to an ADR Neutral who sits with the parties' designated principal representatives as a mini-trial panel to hear and evaluate evidence relating to an issue in controversy. The ADR Neutral may thereafter meet with the principal representatives to attempt to mediate a settlement. The mini-trial process may also be a prelude to the Neutral's provision of a non-binding advisory opinion (6101.54(c)(4) (Rule 54(c)(4))) or to the Neutral's rendering of a binding decision (6101.54(c)(5) (Rule 54(c)(5))).

(4) *Non-binding advisory opinion.* The parties present to the ADR Neutral information upon which the Neutral bases a non-binding, advisory opinion regarding the merits of the dispute. The opinion may be delivered to the parties jointly, either orally or in writing. The manner in which the information is presented will vary, depending upon the circumstances of the dispute and the terms of the parties' ADR agreement. Presentations may range from an informal proffer of evidence together with limited argument from the parties, to a more formal presentation, with oral testimony, exchange of documentary evidence, and argument from counsel.

(5) *Summary binding decision.* This is a binding ADR procedure similar to binding arbitration under which, by prior agreement of the parties, the ADR Neutral renders a brief written decision which is binding, non-precedential, and non-appealable. As in a procedure under which the Neutral provides a non-binding advisory opinion, the manner in which information is presented for a summary binding decision may vary depending on the circumstances of the particular dispute and the wishes of the parties as set out in their ADR agreement.

(6) *Other procedures.* In addition to other ADR techniques, including modifications to those listed in paragraphs (c)(1) through (c)(5) of this section, the parties may use ADR neutrals outside the Board and techniques which do not require direct Board involvement.

(7) *Selective use of standard procedures.* Parties considering ADR proceedings are encouraged to adapt for their purposes any provisions in 6101.1 through 6101.34 (Rules 1 through 34) of the Board's rules which they believe will be useful.

Appendix to Part 6101—Form Nos. 1–5

Form 1, GSA Form 2465, Notice of Appeal.

NOTICE OF APPEAL	DATE	OMB APPROVAL NO. 3090-0221

TO: Civilian Board of Contract Appeals

I/We hereby appeal the final decision of _____ issued _____,
(Name of Contracting Officer) (Date)

in connection with a dispute under Contract No. _____. This contract was awarded _____
(Date)

for _____
(Type of commodity, service, or construction)

by _____, _____
(Name of agency and organizational unit) (City and State)

1. DESCRIBE THE NATURE OF THE DISPUTE INVOLVED IN THE FINAL DECISION AND ANY OTHER CIRCUMSTANCES GIVING RISE TO THIS APPEAL:

2. DESCRIBE THE RELIEF WHICH YOU SEEK INCLUDING AN ESTIMATE OF THE AMOUNT OF MONEY IN CONTROVERSY, IF ANY, AND IF KNOWN:

APPELLANT			ATTORNEY FOR APPELLANT		
NAME			NAME		
TITLE			FIRM		
STREET			STREET		
CITY			CITY		
STATE	ZIP CODE	TELEPHONE NUMBER ( )	STATE	ZIP CODE	TELEPHONE NUMBER ( )
APPELLANT'S SIGNATURE			ATTORNEY'S SIGNATURE		

GENERAL SERVICES ADMINISTRATION
AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION NOT USABLE

GSA 2465 (REV. 6/2007)

Form 2, Notice of Appearance.

Form 2

UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

_____	:	
_____	:	CBCA _____
_____	:	
Contract/Solicitation No.	:	
_____	:	

NOTICE OF APPEARANCE

To: _____
Board Judge
Civilian Board of Contract Appeals

Please enter my appearance as counsel for / representative of _____

_____ in the above captioned case.

_____	_____
(Name)	**(Date)**
_____	_____
(Title)	**(Phone)**
_____	_____
(Address)	**(Facsimile)**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appearance was mailed postage paid/delivered this _____ day of _____, 20___, to _____.

_____
Signature

Note: This format shall be used only as a guide for individual preparation.

Form 3, GSA Form 9534, Subpoena.

_____

Civilian Board of Contract Appeals

SUBPOENA	OMB No. 3090-0221 Expires: 1/31/2007

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Civilian Board of Contract Appeals (G), GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (3090-0221), Washington, DC 20503.

_____ CBCA _____

_____

_____

Contract/Solicitation No.

_____

TO: _____

_____

_____

YOU ARE HEREBY COMMANDED to appear at _____ _____
(Room Number) (Building)

_____
(Street Number) (City) (State)

at _____ o'clock am/pm *(circle one)* on the _____ day of _____ , _____ ,
(Year)

to testify at a (deposition/hearing) in this case; and to bring with you* _____

_____

_____

_____

and to stay there until given permission to leave. This subpoena is issued at the request of *(circle one)* (Appellant/Petitioner/Applicant/Respondent).

Your appearance as ordered by this subpoena will entitle you to receive the fees and mileage provided by 28 U.S.C. § 1821 or other applicable law.

** Strike the words "and to bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.*

GENERAL SERVICES ADMINISTRATION **GSA 9534** (REV. 6/2007)
AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION NOT USABLE

Upon written request to this Board by you or by a party to this case, which request should be made within 10 days after service but in any event no later than the time specified in the subpoena for attendance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books, papers, documents, or tangible things.

_____ *(Board Judge)*	_____ *(Date)*
_____ *(Representative for Appellant/Petitioner/Applicant)*	_____ *(Representative for Respondent)*
_____ *(Date Signed)*	_____ *(Date Signed)*
_____ *(Name of Firm)*	_____ *(Agency)*
_____ *(Street Address)*	_____ *(Street Address)*
_____ *(City, State, Zip Code)*	_____ *(City, State, Zip Code)*
_____ *(Telephone Number)*	_____ *(Telephone Number)*

RETURN ON SERVICE

Summoned the above named witness by delivering a copy to him/her *(circle one)* and tendering to him/her *(circle one)* the fees for one day's attendance and mileage allowed by law, on the _____ day of _____, _____ *(Year)*, at _____ *(Address)*.

_____ *(Deliverer)* _____ *(Date Signed)*

Subscribed and sworn to before me, a _____ this _____ day of _____, _____ *(Year)*.

_____ *(Notary Public)*

NOTE: Affidavit not required if service is made by U.S. Marshal or Deputy. Service may also be made by any other person who is not a party and is not less than 18 years of age. Service shall be made by personally delivering a copy to the person named and tendering the fees for one day's attendance and the mileage allowed by law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

Form 4, Government Certificate of Finality.

Form 4

UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

_____	:	
_____	:	CBCA _____
_____	:	
Contract/Solicitation No.	:	
_____	:	

GOVERNMENT CERTIFICATE OF FINALITY

A. Date claim(s) filed with the contracting officer:

B. Amount to be paid: $ _____.

C. Agency address (regional office if other than central office):

D. Agency Certification

_____ hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit.

Government Agency

_____ **By _____**

Date **Signature and Title**

Note: This format shall be used only as a guide for individual preparation.

Form 5, Appellant/Applicant Certificate of Finality.

Form 5

UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

_____	:	
_____	:	**CBCA** _____
_____	:	
Contract/Solicitation No.	:	
_____	:	

APPELLANT/APPLICANT CERTIFICATE OF FINALITY

A. Address to which check should be sent (if check is to be sent to counsel, enclose a power of attorney):

B. Appellant/Applicant Certification

_____ **hereby certifies that:**

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit; and

(3) it agrees to accept the amount awarded, plus any interest awarded, in accordance with the Board's decision in this case, in full and final satisfaction of its case.

Appellant/Applicant

_____ **By** _____
Date **Signature and Title**

Note: This format shall be used only as a guide for individual preparation.

■ 2. Revise part 6102 to read as follows:

PART 6102—CROP INSURANCE CASES

Sec.
6102.201 Scope of rules [Rule 201].
6102.202 Rules for crop insurance cases [Rule 202].

Authority: 7 U.S.C. 1501 *et seq.*; 41 U.S.C. 438(c)(2).

6102.201 Scope of rules [Rule 201].

These procedures govern the Board's resolution of disputes between insurance companies and the Department of Agriculture's Risk Management Agency (RMA) involving actions of the Federal Crop Insurance Corporation (FCIC). Prior to the creation of this Board, the Department of Agriculture Board of Contract Appeals resolved this variety of dispute pursuant to statute, 7 U.S.C. 1501 *et seq.* (the Federal Crop Insurance Act), and regulation, 7 CFR 24.4(b) and 400.169. The Board has this authority under an agreement with the Secretary of Agriculture, as permitted under section 42(c)(2) of the Office of Federal Procurement Policy Act, 41 U.S.C. 438(c)(2).

6102.202 Rules for crop insurance cases [Rule 202].

The rules of procedure for these cases are the same as the rules of procedure for Contract Disputes Act appeals, with these exceptions:

(a) *Rule 1.* (1) In 6101.1(b)(1) (Rule 1(b)(1)), the term ''appeal'' means a dispute between an insurance company that is a party to a Standard Reinsurance Agreement (or other reinsurance agreement) and the RMA, and the term ''appellant'' means the insurance company filing an appeal.

(2) In 6101.1(b)(5)(i) (Rule 1(b)(5)(i)), a notice of appeal is filed upon its receipt by the Office of the Clerk of the Board, not when it is mailed.

(3) Section 6101.1(b)(7) (Rule 1(b)(7)) does not apply to FCIC cases.

(b) *Rule 2.* (1) Section 6101.2(a)(1)(i) (Rule 2(a)(1)(i)) is replaced with the following for FCIC cases: A notice of appeal shall be in writing and shall be signed by the appellant or by the appellant's attorney or authorized representative. If the appeal is from a determination by the Deputy Administrator of Insurance Services regarding an action alleged not to be in accordance with the provisions of a Standard Reinsurance Agreement (or other reinsurance agreement), or if the appeal is from a determination by the Deputy Administrator of Compliance concerning a determination regarding a compliance matter, the notice of appeal should describe the determination in enough detail to enable the Board to differentiate that decision from any other; the appellant can satisfy this requirement by attaching to the notice of appeal a copy of the Deputy Administrator's determination. If an appeal is taken from the failure of the Deputy Administrator to make a timely determination (see 6101.2(b)(1)(ii) (Rule 2(b)(1)(ii))), the notice of appeal should describe in detail the matter that the Deputy Administrator has failed to determine; the appellant can satisfy this requirement by attaching to the notice of appeal a copy of the written request for a determination it sent to the Deputy Administrator.

(2) In 6101.2(a)(1)(ii) and (iii) (Rule 2(a)(1)(ii) and (iii)), the references to ''contracting officer'' are references to ''Deputy Administrator.''

(3) Section 6101.2(a)(2) (Rule 2(a)(2)) does not apply to FCIC cases.

(4) In 6101.2(b)(1)(i) (Rule 2(b)(1)(i)), an appeal from a determination of a Deputy Administrator shall be filed no later than 90 calendar days after the date the appellant receives that determination. The Board is authorized to resolve only those appeals that are timely filed.

(5) In 6101.2(b)(1)(ii) (Rule 2(b)(1)(ii)), an appeal may be filed with the Board if the Deputy Administrator fails or refuses to issue a determination within 90 days after the appellant submits a request for a determination.

(c) *Rule 4.* (1) In 6101.4 (Rule 4), the references to ''contracting officer'' are references to ''Deputy Administrator.''

(2) In 6101.4(a), paragraphs (1) through (7) (Rule 4(a), paragraphs (1) through (7)), describing materials included in the appeal file, are replaced by the following:

(i) The determination of the Deputy Administrator that is the subject of the dispute;

(ii) The reinsurance agreement (with amendments or modifications) at issue in the dispute;

(iii) Pertinent correspondence between the parties that is relevant to the dispute, including prior administrative determinations and related submissions;

(iv) Documents and other tangible materials on which the Deputy Administrator relied in making the underlying determination; and

(v) Any additional material pertinent to the authority of the Board or the resolution of the dispute.

(3) The following subsection is added to 6101.4 (Rule 4): Media on which appeal file is to be submitted. All appeal file submissions, including the index, shall be submitted in two forms: paper and in a text or .pdf format submitted on a compact disk. Each compact disk shall be labeled with the name and docket number of the case. The judge may delay the submission of the compact disk copy of the appeal file until the close of the evidentiary record.

(d) *Rule 5.* In 6101.5(a)(2) (Rule 5(a)(2)), the references to ''contracting officer'' are references to ''Deputy Administrator.''

(e) *Rule 6.* In 6101.6(d) (Rule 6(d)) does not apply to FCIC cases.

(f) *Rule 12.* In 6101.12(a) (Rule 12(a)), the references to ''contracting officer'' are references to ''Deputy Administrator.''

(g) *Rule 15.* In 6101.15(d) (Rule 15(d)), the final sentence does not apply to FCIC cases.

(h) *Rule 16.* In 6101.16(b) through (h) (Rule 16(b) through (h)) do not apply to FCIC cases. Instead, upon the written request of any party filed with the Office of the Clerk of the Board, or upon the initiative of a judge, a judge is authorized by delegation from the Secretary of Agriculture to request the appropriate United States Attorney to apply to the appropriate United States District Court for the issuance of subpoenas pursuant to 5 U.S.C. § 304.

(i) *Rule 21.* (1) In 6101.21(f) (Rule 21(f)), the final sentence does not apply to FCIC cases.

(2) In 6101.21(g) (Rule 21(g)), the final sentence does not apply to FCIC cases.

(j) *Rule 25.* In 6101.25(a) (Rule 25(a)), the initial phrase, ''Except as provided in 6101.52 (Rule 52) (small claims procedure),'' does not apply to FCIC cases.

(k) *Rule 32.* In 6101.32(a) through (c) (Rule 32(a) through (c)) are replaced with the following for FCIC cases:

(1) *Finality of Board decision.* A decision of the Board is a final administrative decision.

(2) *Appeal permitted.* An appellant may file suit in the appropriate United States District Court to challenge the Board's decision. An appellant which files such a suit shall provide the Board with a copy of the complaint.

(l) *Rule 52.* 6101.52 (Rule 52) does not apply to FCIC cases.

(m) *Rule 53.* 6101.53 (Rule 53) does not apply to FCIC cases.

■ 3. Revise part 6103 to read as follows:

PART 6103—TRANSPORTATION RATE CASES

Sec.
6103.301 Scope [Rule 301].
6103.302 Filing claims [Rule 302].
6103.303 Responses to claims [Rule 303].
6103.304 Reply to the audit division and agency responses [Rule 304].
6103.305 Proceedings [Rule 305].

6103.306 Decisions [Rule 306].
6103.307 Reconsideration of Board decision [Rule 307].
6103.308 Payment of successful claims [Rule 308].

Authority: 31 U.S.C. 3726(i)(1); 41 U.S.C. 601–613; Sec. 201(o), Pub. L. 104–316, 110 Stat. 3826.

6103.301 Scope [Rule 301].

(a) *Authority.* 31 U.S.C. 3726(i)(1) provides that a carrier or freight forwarder may request the Administrator of General Services to review an action taken by the Audit Division of the General Services Administration's Office of Transportation and Property Management (the Audit Division). The Administrator has redelegated those functions to the Civilian Board of Contract Appeals.

(b) *Type of claim; review of claim.* These procedures are applicable to the review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(i)(1). The Board will issue the final agency decision on a claim based on the information submitted by the claimant, the Audit Division, and the department or agency (the agency) for which the services were provided. The burden is on the claimant to establish the timeliness of its claim, the liability of the agency, and the claimant's right to payment.

6103.302 Filing claims [Rule 302].

(a) *Form.* A claim shall be in writing and must be signed by the claimant or by the claimant's attorney or authorized representative. No particular form is required. The request should describe the basis for the claim and state the amount sought. The request should also include—

(1) The name, address, telephone number, and facsimile machine number, if available, of the claimant;

(2) The Government bill of lading or Government transportation request number;

(3) The claimant's bill number;

(4) The Government voucher number and date of payment;

(5) The Audit Division claim number;

(6) The agency for which the services were provided; and

(7) Any other identifying information.

(b) *When and where claims are filed.* A claim is filed when it is received by the Office of the Clerk of the Board during the Board's working hours. The Board's mailing address is: 1800 F Street, NW, Washington, DC 20405. The Board is located at: 1800 M Street, NW, 6th Floor, Washington, DC 20036. The Clerk's telephone number is: (202) 606–8800. The Clerk's facsimile machine number is: (202) 606–0019. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(c) *Notice of docketing.* A claim will be docketed by the Office of the Clerk of the Board, and a written notice of docketing will be sent promptly to the claimant, the Director of the Audit Division, and the agency for which the services were provided. The notice of docketing will identify the judge to whom the claim has been assigned.

(d) *Service of copy.* The claimant shall send to the Audit Division and the agency identified in paragraph (a)(6) of this section copies of all material provided to the Board. All submissions to the Board by a claimant shall indicate that a copy has been provided to the Audit Division and the agency.

6103.303 Responses to claims [Rule 303].

(a) *Content of responses.* Within 30 calendar days after docketing by the Board (or within 60 calendar days after docketing if the agency office for which the services were provided is located outside the 50 states and the District of Columbia), the Audit Division and the agency for which the services were provided shall each submit to the Board:

(1) A simple, concise, and direct statement of its response to the claim;

(2) Citations to applicable statutes, regulations, and cases; and

(3) Any additional information deemed necessary to the Board's review of the claim.

(b) *Service of copy.* All responses submitted to the Board shall indicate that a copy has been sent to the claimant and to the Audit Division or the agency, as appropriate. To expedite proceedings, if either the Audit Division or the agency will not file a response (*e.g.*, it believes its reasons for denying the claim were sufficiently explained in the material filed by the claimant), it should notify the Board, the claimant, and the Audit Division or the agency, as appropriate, that it does not intend to file a response.

6103.304 Reply to the audit division and agency responses [Rule 304].

A claimant may file with the Board and serve on the Audit Division and the agency a reply to the Audit Division and agency responses within 30 calendar days after receiving the responses (or within 60 calendar days after receiving the responses, if the claimant is located outside the 50 states and the District of Columbia). To expedite proceedings, if the claimant does not wish to respond, the claimant should so notify the Board, the Audit Division, and the agency.

6103.305 Proceedings [Rule 305].

(a) *Requests for additional time.* The claimant, the Audit Division, or the agency may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in *ex parte* communications involving the underlying facts or merits of the claim. The judge may hold a conference with the claimant, the Audit Division, and the agency at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) *Submissions.* The judge may require the submission of additional information at any time. The claimant, the Audit Division, or the agency may request an opportunity to make additional submissions; however, no such submission may be made unless authorized by the judge.

6103.306 Decisions [Rule 306].

The judge will issue a written decision based upon the record, which includes submissions by the claimant, the Audit Division, and the agency, and information provided during conferences. The claimant, the Audit Division, and the agency will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: *www.cbca.gsa.gov*.

6103.307 Reconsideration of Board decision [Rule 307].

A request for reconsideration may be made by the claimant, the Audit Division, or the agency. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the claimant or agency office making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

6103.308 Payment of successful claims [Rule 308].

The agency for which the services were provided shall pay amounts the Board determines are due the claimant.

■ 4. Revise part 6104 to read as follows:

PART 6104—TRAVEL AND RELOCATION EXPENSES CASES

Sec.
6104.401 Scope [Rule 401].
6104.402 Filing claims [Rule 402].
6104.403 Response to claim [Rule 403].

6104.404 Reply to agency response [Rule 404].
6104.405 Proceedings [Rule 405].
6104.406 Decisions [Rule 406].
6104.407 Reconsideration of Board decision [Rule 407].
6104.408 Payment of successful claims [Rule 408].

Authority: Secs. 202(n), 204, Pub. L. 104–316, 110 Stat. 3826; Sec. 211, Pub. L. 104–53, 109 Stat. 535; 31 U.S.C. 3702; 41 U.S.C. 601–613.

6104.401 Scope [Rule 401].

(a) *Authority.* These procedures govern the Board's resolution of claims by Federal civilian employees for certain travel or relocation expenses. 31 U.S.C. 3702 vests the authority to settle these claims in the Administrator of General Services, who has redelegated that function to the Civilian Board of Contract Appeals. The requirements contained in 31 U.S.C. 3702, including limitations on the time within which claims may be filed, apply to the Board's review of these claims.

(b) *Types of claims.* These procedures are applicable to the review of two types of claims made against the United States by federal civilian employees:

(1) Claims for reimbursement of expenses incurred while on official temporary duty travel; and

(2) Claims for reimbursement of expenses incurred in connection with relocation to a new duty station.

(c) *Review of claims.* Any claim for entitlement to travel or relocation expenses must first be filed with the claimant's own department or agency (the agency). The agency shall initially adjudicate the claim. A claimant disagreeing with the agency's determination may request review of the claim by the Board. The burden is on the claimant to establish the timeliness of the claim, the liability of the agency, and the claimant's right to payment. The Board will issue the final decision on a claim based on the information submitted by the claimant and the agency.

6104.402 Filing claims [Rule 402].

(a) *Filing claims.* A claim may be sent to the Board in either of the following ways:

(1) *Claim filed by claimant.* A claim shall be in writing and must be signed by the claimant or by the claimant's attorney or authorized representative. No particular form is required. The request should describe the basis for the claim and state the amount sought. The request should also include—

(i) The name, address, telephone number, and facsimile machine number, if available, of the claimant;

(ii) The name, address, telephone number, and facsimile machine number, if available, of the agency employee who denied the claim;

(iii) A copy of the denial of the claim; and

(iv) Any other information which the claimant believes the Board should consider.

(2) *Claim forwarded by agency on behalf of claimant.* If an agency has denied a claim for travel or relocation expenses, it may, at the claimant's request, forward the claim to the Board. The agency shall include the information required by paragraph (a)(1) of this section and by 6104.403 (Rule 403).

(3) *Where claims are filed.* Claims should be filed with the Office of the Clerk of the Board. The Board's mailing address is: 1800 F Street, NW, Washington, DC 20405. The Board is located at: 1800 M Street, NW, 6th Floor, Washington, DC 20036. The Clerk's telephone number is: (202) 606–8800. The Clerk's facsimile machine number is: (202) 606–0019. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(b) *Notice of docketing.* A request for review will be docketed by the Office of the Clerk of the Board. A written notice of docketing will be sent promptly to the claimant and the agency contact. The notice of docketing will identify the judge to whom the claim has been assigned.

(c) *Service of copy.* The claimant shall send to the agency employee identified in paragraph (a)(1)(ii) of this section, or the individual otherwise identified by the agency to handle the claim, copies of all material provided to the Board. If an agency forwards a claim to the Board, it shall, at the same time, send to the claimant a copy of all material sent to the Board. All submissions to the Board shall indicate that a copy has been provided to the claimant or the agency.

6104.403 Response to claim [Rule 403].

(a) *Content of response.* When a claim has been filed with the Board by a claimant, within 30 calendar days after docketing by the Board (or within 60 calendar days after docketing, if the agency office involved is located outside the 50 states and the District of Columbia), the agency shall submit to the Board:

(1) A simple, concise, and direct statement of its response to the claim;

(2) Citations to applicable statutes, regulations, and cases; and

(3) Any additional information the agency considers necessary to the Board's review of the claim.

(b) *Service of copy.* A copy of these submissions shall also be sent to the claimant. To expedite proceedings, if the agency believes its reasons for denying the claim were sufficiently explained in the material filed by the claimant, it should notify the Board and the claimant that it does not intend to file a response.

6104.404 Reply to agency response [Rule 404].

A claimant may file a reply to the agency response within 30 calendar days after receiving the response (or within 60 calendar days after receiving the response, if the claimant is located outside the 50 states and the District of Columbia). If the claim has been forwarded by the agency, the claimant shall have 30 calendar days from the time the claim is docketed by the Board (or 60 calendar days after docketing, if the claimant is located outside the 50 states and the District of Columbia) to reply. To expedite proceedings, if the claimant does not wish to reply, the claimant should so notify the Board and the agency.

6104.405 Proceedings [Rule 405].

(a) *Requests for additional time.* The claimant or the agency may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in *ex parte* communications involving the underlying facts or merits of the claim. The judge may hold a conference with the claimant and the agency contact, at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) *Additional submissions.* The judge may require the submission of additional information at any time.

6104.406 Decisions [Rule 406].

The judge will issue a written decision based upon the record, which includes submissions by the claimant and the agency, and information provided during conferences. The claimant and the agency will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: *www.cbca.gsa.gov*.

6104.407 Reconsideration of Board decision [Rule 407].

A request for reconsideration may be made by the claimant or the agency. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within

60 calendar days after the date the decision was issued, if the claimant or the agency office making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

6104.408 Payment of successful claims [Rule 408].

The agency shall pay amounts the Board determines are due the claimant.

■ 5. Revise part 6105 to read as follows:

PART 6105—DECISIONS AUTHORIZED UNDER 31 U.S.C. 3529

Sec.
6105.501 Scope [Rule 501].
6105.502 Request for decision [Rule 502].
6105.503 Additional submissions [Rule 503].
6105.504 Proceedings [Rule 504].
6105.505 Decisions [Rule 505].
6105.506 Reconsideration of Board decision [Rule 506].

Authority: 31 U.S.C. 3529; 31 U.S.C. 3702; 41 U.S.C. 601–613; Secs. 202(n), 204, Pub. L. 104–316, 110 Stat. 3826; Sec. 211, Pub. L. 104–53, 109 Stat. 535.

6105.501 Scope [Rule 501].

These procedures govern the Board's issuance of decisions, upon the request of an agency disbursing or certifying official, or agency head, on questions involving payment of travel or relocation expenses that were formerly issued by the Comptroller General under 31 U.S.C. 3529. Section 204 of the General Accounting Office Act of 1996, Pub. L. 104–316, transfers the authority to issue these decisions to the Director of the Office of Management and Budget, and authorizes the Director to delegate the authority to perform that function to another agency or agencies. The Director has delegated the authority to issue these decisions to the Administrator of General Services, who has redelegated that function to the Civilian Board of Contract Appeals.

6105.502 Request for decision [Rule 502].

(a) *Request for decision.* (1) A disbursing or certifying official of an agency, or the head of an agency, may request from the Board a decision (referred to as a ''Section 3529 decision'') on a question involving a payment the disbursing official or head of agency will make, or a voucher presented to a certifying official for certification, which concerns the following type of claim made against the United States by a federal civilian employee:

(i) A claim for reimbursement of expenses incurred while on official temporary duty travel; and

(ii) A claim for reimbursement of expenses incurred in connection with relocation to a new duty station.

(2) A request for a Section 3529 decision shall be in writing; no particular form is required. The request must refer to a specific payment or voucher; it may not seek general legal advice. The request should—

(i) Explain why the official is seeking a Section 3529 decision, rather than taking action on his or her own regarding the matter;

(ii) State the question presented and include citations to applicable statutes, regulations, and cases;

(iii) Include—

(A) The name, address, telephone number, and facsimile machine number (if available) of the official making the request;

(B) The name, address, telephone number, and facsimile number (if available) of the employee affected by the specific payment or voucher; and

(C) Any other information which the official believes the Board should consider; and

(iv) Be delivered to the Office of the Clerk of the Board. The Board's mailing address is: 1800 F Street, NW, Washington, DC 20405. The Board is located at: 1800 M Street, NW, 6th Floor, Washington, DC 20036. The Clerk's telephone number is: (202) 606–8800. The Clerk's facsimile machine number is: (202) 606–0019. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(b) *Notice of docketing.* A request for a Section 3529 decision will be docketed by the Office of the Clerk of the Board. A written notice of docketing will be sent promptly to the official and the affected employee. The notice of docketing will identify the judge to whom the request has been assigned.

(c) *Service of copy.* The official submitting a request for a Section 3529 decision shall send to the affected employee copies of all material provided to the Board. All submissions to the Board shall indicate that a copy has been provided to the affected employee.

6105.503 Additional submissions [Rule 503].

If the affected employee wishes to submit any additional information to the Board, he or she must submit such information within 30 calendar days after receiving the copy of the request for decision and supporting material (or within 60 calendar days after receiving the copy, if the affected employee is located outside the 50 states and the District of Columbia). To expedite proceedings, if the employee does not wish to make an additional submission, the employee should so notify the Board and the agency.

6105.504 Proceedings [Rule 504].

(a) *Requests for additional time.* The agency or the affected employee may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in ex parte communications involving the underlying facts or merits of the request. The judge may hold a conference with the agency and the affected employee, at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) *Additional submissions.* The judge may require the submission of additional information at any time.

6105.505 Decisions [Rule 505].

The judge will issue a written decision based upon the record, which includes submissions by the agency and the affected employee, and information provided during conferences. The agency and the affected employee will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: *http://www.cbca.gsa.gov.*

6105.506 Reconsideration of Board decision [Rule 506].

A request for reconsideration may be made by the agency or the affected employee. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the agency or the affected employee making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

[FR Doc. 07–3064 Filed 7–3–07; 8:45 am]

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Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33–8813; File No. S7–11–07]

RIN 3235–AH13

Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Rule 144 under the Securities Act of 1933 creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. We are proposing a six-month holding period requirement under Rule 144 for ''restricted securities'' of companies that are subject to the reporting requirements of the Securities Exchange Act of 1934. The proposed six-month holding period for restricted securities of reporting companies would be extended, for up to an additional six months, by the amount of time during which the security holder has engaged in hedging transactions. Restricted securities of companies that are not subject to the Exchange Act reporting requirements would continue to be subject to a one-year holding period prior to any public resale. We also propose to substantially reduce the restrictions on the resale of securities by non-affiliates. In addition, we propose to simplify the Preliminary Note to Rule 144, eliminate the manner of sale restrictions with respect to debt securities, increase the Form 144 filing thresholds, and codify several staff interpretive positions that relate to Rule 144. We also solicit comment on how best to coordinate Form 144 and Form 4 filing requirements. Finally, we propose amendments to Securities Act Rule 145, which establishes resale limitations on certain persons who acquire securities in business combination transactions, to eliminate the presumptive underwriter position in Rule 145(c), except for transactions involving a shell company, and to revise the resale requirements in Rule 145(d). We believe that the proposed changes will increase the liquidity of privately sold securities and decrease the cost of capital for all companies without compromising investor protection.

DATES: Comments should be received on or before September 4, 2007.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number S7–11–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–11–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Katherine Hsu, Special Counsel, and Ray Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rule 144,[1] Rule 145,[2] Rule 190,[3] Rule 701[4] and Form 144[5] under the Securities Act of 1933.[6]

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I. Background and Overview

The Securities Act requires registration of all offers and sales of securities in interstate commerce or by use of the U.S. mail, unless an exemption from the registration requirement is available.[7] Section 4(1) of the Securities Act provides such an exemption for transactions by any person other than an issuer, underwriter or dealer.[8]

[1] 17 CFR 230.144.
[2] 17 CFR 230.145.
[3] 17 CFR 230.190.
[4] 17 CFR 230.701.
[5] 17 CFR 239.144.
[6] 15 U.S.C. 77a *et seq.*
[7] See 15 U.S.C. 77e.
[8] 15 U.S.C. 77d(1).

The definition of the term ''underwriter'' is key to the operation of the Section 4(1) exemption. Section 2(a)(11) of the Securities Act defines an underwriter as ''any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking.'' [9] The Securities Act does not, however, provide specific criteria for determining when a person purchases securities ''with a view to * * * the distribution'' of those securities. In 1972, the Commission adopted Rule 144 to provide a safe harbor from this definition of ''underwriter'' to assist security holders in determining whether the Section 4(1) exemption is available for their resale of securities.[10] If a selling security holder satisfies all of Rule 144's applicable conditions in connection with a transaction, he or she is deemed not to be an ''underwriter,'' and the Section 4(1) exemption would be available for the resale of the securities.

Since its adoption, we have reviewed and revised Rule 144 several times. We last made major changes in 1997.[11] At that time, we shortened the required holding period for securities that are defined as ''restricted securities.'' [12] Before the 1997 amendments, affiliates and non-affiliates could resell restricted securities, subject to limitation, after two years, and non-affiliates (who had not been affiliates during the prior three months) could resell restricted securities without limitation after three years.[13] The 1997 amendments changed these two-year and three-year periods to one-year and two-year periods, respectively.

At the time we adopted those changes, we proposed and solicited comment on several possible additional changes to Rule 144, Rule 145 and Form 144, including reducing the holding period further.[14] We received 38 comment letters on those proposed changes. As discussed more fully below, most commenters were divided between supporting further shortening of the holding period and waiting to see the results of the 1997 amendments. We have not taken further action to adopt the 1997 proposals.

Rule 144 regulates the resale of two categories of securities—restricted securities and control securities. Restricted securities are securities acquired pursuant to one of the transactions listed in Rule 144(a)(3).[15] Although it is not a term defined in Rule 144, ''control securities'' is used commonly to refer to securities held by affiliates of the issuer, regardless of how the affiliates acquired the securities.[16] Therefore, if an affiliate acquires securities in a transaction that is listed in Rule 144(a)(3), those securities would be both restricted securities and control securities.

Rule 144 states that a selling security holder shall be deemed not to be engaged in a distribution of securities and therefore not an underwriter with respect to such securities, thus making available the Section 4(1) exemption from registration, if the resale meets particular criteria. If the security holder is an affiliate of the issuer, or a non-affiliate that has held the restricted securities for less than two years,[17] these criteria include the following:

- There must be available adequate current public information about the issuer; [18]
- If the securities being sold are restricted securities, the seller must have held the security for a specified holding period; [19]
- The resale must be within specified sales volume limitations; [20]
- The resale must comply with the manner of sale conditions; [21] and
- The selling security holder may be required to file a Form 144.[22]

Under the current rule, a non-affiliate may publicly resell restricted securities without being subject to the above limitations if he or she has held the securities for two years and if he or she is not, and for the prior three months has not been, an ''affiliate'' of the issuer.[23]

We now are proposing amendments that would:

- Simplify the Preliminary Note to Rule 144 and text of Rule 144, using plain English principles; [24]
- Amend the Rule 144 holding period requirement for restricted securities of companies that are required to file reports under the Securities Exchange Act of 1934 [25] to provide for a six-month holding period if the security holder has not engaged in certain hedging transactions; [26]
- Require that security holders toll, or suspend, the holding period during the time they enter into certain hedging transactions, although under no circumstance would the holding period extend beyond one year; [27]
- Substantially reduce the requirements for non-affiliates so that they can resell securities freely after the holding period (except that non-affiliates of reporting companies would be subject to the current public information requirement until one year after the acquisition of the securities); [28]
- Eliminate the ''manner of sale'' limitations with respect to debt securities; [29]
- Increase the thresholds that would trigger a Form 144 filing requirement; [30]
- Codify the staff's positions, as they relate to Rule 144, concerning the following issues:
  - ○ Inclusion of securities acquired under Section 4(6) of the Securities Act in the definition of ''restricted securities,'' [31]
  - ○ The effect that creation of a holding company structure has on a security holder's holding period,[32]
  - ○ Holding periods for conversions and exchanges of securities,[33]
  - ○ Holding periods for the cashless exercise of options and warrants,[34]

[9] 15 U.S.C. 77b(a)(11).

[10] Release No. 33–5223 (Jan. 14, 1972) [37 FR 591].

[11] See Release No. 33–7390 (Feb. 28, 1997) [62 FR 9242].

[12] See 17 CFR 230.144(a)(3).

[13] The term ''affiliate'' is defined in 17 CFR 230.144(a)(1) as ''a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, [the] issuer.''

[14] Release No. 33–7391 (Feb. 28, 1997) [62 FR 9246] (''the 1997 proposing release''). In that release, we proposed to (1) revise the Preliminary Note to Rule 144 to restate the intent and effect of the rule, (2) add a bright-line test to the Rule 144 definition of ''affiliate,'' (3) eliminate the Rule 144 manner of sale requirements, (4) increase the Form 144 filing thresholds, (5) include in the definition of ''restricted securities'' securities issued pursuant to the Securities Act Section 4(6) exemption, (6) clarify the holding period determination for securities acquired in certain exchanges with the issuer and in holding company formations, (7) streamline and simplify several Rule 144 provisions, and (8) eliminate the presumptive underwriter provisions of Rule 145. We also solicited comment on (1) further revisions to the Rule 144 holding periods, (2) elimination of the trading volume tests to determine the amount of securities that can be resold under Rule 144, and (3) several possible regulatory approaches with respect to certain hedging activities.

[15] 17 CFR 230.144(a)(3).

[16] See the 1997 proposing release.

[17] See 17 CFR 230.144(k).

[18] 17 CFR 230.144(c).

[19] 17 CFR 230.144(d).

[20] 17 CFR 230.144(e).

[21] 17 CFR 230.144(f) and (g).

[22] 17 CFR 230.144(h).

[23] 17 CFR 230.144(k).

[24] See the proposed Preliminary Note, proposed paragraph (b), proposed paragraph (c) and related note, and proposed paragraphs (d)(3)(i), (e)(1), (e)(2)(vii) and (f).

[25] 15 U.S.C. 78a *et seq.*

[26] See proposed Rule 144(d).

[27] See proposed Rule 144(d)(3)(xi).

[28] See proposed Rules 144(b)(1) and (d).

[29] See proposed Rule 144(f).

[30] See proposed Rule 144(h).

[31] See proposed Rule 144(a)(3)(viii).

[32] See proposed Rule 144(d)(3)(ix).

[33] See proposed Rule 144(d)(3)(ii).

[34] See proposed Rule 144(d)(3)(xi).

○ Aggregation of a pledgee's resales with resales by other pledgees of the same security,[35]

○ The extent to which securities issued by ''reporting and non-reporting shell companies'' are eligible for resale under Rule 144,[36] and

○ Representations required from security holders relying on Rule 10b5–1(c);[37] and

• Eliminate the presumptive underwriter provision in Securities Act Rule 145, except for transactions involving a shell company, and harmonize the resale requirements in Rule 145 with the resale provisions for the securities of shell companies in Rule 144.[38]

We also solicit comment on delaying the Form 144 filing deadline to coincide with the deadline for filing a Form 4[39] under Section 16[40] of the Exchange Act and permitting persons who are subject to Section 16 to meet their Form 144 filing requirement by filing a Form 4.[41]

The following table briefly compares some of the most significant proposed amendments to the current regulatory scheme:

	Current regulations	Proposed amendments
Resales of Restricted Securities by Non-Affiliates Under Rule 144.	—Limited resales after holding restricted securities for one year.	—Unlimited resales after holding restricted securities of Exchange Act reporting companies for six months if they have not been affiliates during the prior three months, except that such resales would be subject to the current public information requirement between the end of the six-month holding period and one year after the acquisition date of the securities.
	—Unlimited resales after holding restricted securities for two years if they have not been affiliates during the prior three months.	—Unlimited resales after holding restricted securities of non-reporting companies for one year if they have not been affiliates during the prior three months.
	—No tolling of holding period as a result of hedging transactions.	—Specific provision tolling the holding period when engaged in certain hedging transactions. Maximum one-year holding period.
Resales by Affiliates Under Rule 144.	—Limited resales after holding restricted securities for one year.	—Limited resales after holding restricted securities of Exchange Act reporting companies for six months.
		—Limited resales after holding restricted securities of non-reporting companies for one year.
	—No tolling of holding period as a result of hedging transactions.	—Specific provision tolling the holding period when engaged in certain hedging transactions. Maximum one-year holding period.
Manner of Sale Restrictions	—Apply to resale of any type of security under Rule 144.	—Would not apply to resale of debt securities by affiliates or to any resale by non-affiliates.
Form 144	—Filing threshold at 500 shares or $10,000	—With respect to affiliates, filing threshold at 1,000 shares or $50,000.
		—No Form 144 filing required for non-affiliates.
Rule 145	—Presumptive underwriter provision applies to all Rule 145(a) transactions.	—Presumptive underwriter provision applies only to Rule 145(a) transactions involving shell companies, with revised resale requirements in Rule 145(d).

II. Discussion of Proposals

A. Simplification of the Preliminary Note and Text of Rule 144

As in the 1997 proposing release, we again are proposing amendments to simplify and clarify the Preliminary Note to Rule 144 and to incorporate plain English principles.[42] The current Preliminary Note is complex and may be confusing to many security holders. These proposed amendments to the Preliminary Note are not intended to alter the substantive operation of the rule. The revised Preliminary Note would briefly explain the benefits of complying with the rule. It also would clarify that any person who sells restricted securities, and any affiliate or any person who sells restricted securities or other securities on behalf of an affiliate, shall not be deemed to be engaged in a distribution of such securities and therefore not an underwriter with respect to such securities if the sale in question is made in accordance with all the applicable provisions of the rule. The Preliminary Note would further clarify that, although Rule 144 provides a safe harbor for establishing the availability of the exemption provided by Section 4(1), it is not the exclusive means for reselling securities without registration. Therefore, it does not eliminate or otherwise affect the availability of any other exemption for resales.[43]

In the original adopting release for Rule 144, we stated:

In view of the objectives and policies underlying the Act, the rule shall not be available to any individual or entity with respect to any transaction which, although in technical compliance with the provisions of the rule, is part of a plan by such individual or entity to distribute or redistribute securities to the public. In such case, registration is required.[44]

Consistent with this statement, we propose to add a statement to the Preliminary Note that the Rule 144 safe harbor is not available with respect to any transaction or series of transactions

[35] See proposed note to Rule 144(e)(2)(ii).

[36] See proposed Rule 144(i).

[37] 17 CFR 240.10b5–1(c). See proposed amendments to Form 144.

[38] See proposed Rule 145(d).

[39] 17 CFR 249.104.

[40] 15 U.S.C. 78p.

[41] Section 16 applies to every person who is the beneficial owner of more than 10% of any class of equity securities registered under Section 12 of the Exchange Act, and each officer and director (collectively, ''reporting persons'' or ''insiders'') of the issuer of such security. Section 16(a) of the Exchange Act requires that reporting persons report changes in their beneficial ownership of all equity securities of the issuer on Form 4 before the end of the second business day following the day on which the subject transaction (which caused the change in beneficial ownership) was executed.

[42] In 1997, all commenters to such amendments favored the simplification of the Preliminary Note. We note, however, that the current proposal would result in a significantly shorter note than the Preliminary Note proposed in 1997.

[43] Because we make this clarification in the Preliminary Note, we propose to delete current Rule 144(j), which currently provides that Rule 144 is a non-exclusive safe harbor.

[44] Release No. 33–5223.

that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.[45]

In addition, we are proposing changes throughout the rule to attempt to make the rule less complex and easier to read.

Request for Comment

- Should we adopt the simplified Preliminary Note? Should we keep more detail in the Preliminary Note than proposed? Does the Preliminary Note need further revision? If so, how should we revise it?
- Does the proposed language of the Preliminary Note delete or omit any information that should be addressed? Does the proposed language change the meaning of any information in the existing Preliminary Note?
- Should we not make any changes to the Preliminary Note? Does the existing Preliminary Note provide useful background information on Rule 144, the Section 2(a)(11) definition of an underwriter, or the Section 4(1) exemption? Is the Preliminary Note necessary or helpful? Should we eliminate it entirely?
- We also have streamlined and proposed plain English changes to various portions of the rule other than the Preliminary Note. Would any of the proposed language inadvertently change the substantive requirements of the rule? Do any of the changes create ambiguity with respect to settled issues?

B. Amendments to Holding Period Requirement in Rule 144(d) for Restricted Securities and Reduction of Requirements Applicable to Non-Affiliates

1. Background

As stated above, in 1997, we reduced the Rule 144 holding periods for restricted securities for both affiliates and non-affiliates.[46] Before the 1997 amendments, under Rule 144(d), security holders could sell limited amounts of restricted securities after holding their securities for two years if they satisfied all other conditions imposed by Rule 144.[47] Under 144(k), non-affiliates could sell restricted securities without limitation and be subject to no other conditions after holding their securities for three years. The 1997 amendments to Rule 144 reduced the two-year Rule 144(d) holding period to one year and amended Rule 144(k) so that non-affiliates could freely sell an unlimited amount of securities after two years, instead of three.

In the 1997 proposing release, we solicited comment on whether these holding periods should be reduced even further, with a focus on six months for the Rule 144(d) holding period. We received numerous comments on this issue. Twelve commenters recommended that we further reduce the holding period to six months.[48] Two other commenters thought that we should maintain the holding periods adopted in 1997.[49] Eight commenters recommended that we gain more experience with the new holding periods created in 1997 before proposing further amendments to those holding periods.[50]

2. Amendments to Holding Period in Rule 144(d)

a. Six-Month Holding Period for Exchange Act Reporting Companies

We now propose amendments to provide for a reduced holding period under Rule 144(d) for restricted securities of Exchange Act reporting companies held by affiliates and non-affiliates. Under the proposed revisions to Rule 144(d), affiliates and non-affiliates would both be permitted to resell restricted securities of Exchange Act reporting companies[51] publicly after holding the securities for six months, subject to other conditions of Rule 144, when applicable, if they have not engaged in hedging transactions with respect to the securities.[52] We believe that shortening the holding period in this way would increase the liquidity of privately sold securities and decrease the cost of capital for reporting companies without compromising investor protection.[53] By reducing the holding period for restricted securities, the proposed amendments could enable companies to raise capital more often through the issuance of securities in unregistered transactions, such as offshore offerings under Regulation S[54] or other transactions not involving a public offering, rather than through financing structures such as extremely dilutive convertible securities.

The fundamental purpose of Rule 144 is to provide objective criteria for determining whether an investor is an underwriter or has acquired securities for distribution. At the same time, we do not want the holding period to be longer than necessary or impose any unnecessary costs or restrictions on capital formation. Assumption of the economic risk of investment is a critical factor in determining whether a security holder purchased the securities for distribution.[55] After observing the operation of Rule 144 since the 1997 amendments, with regard to reporting companies, we believe that holding securities for six months is a reasonable indication that an investor has assumed the economic risk of investment in those securities.[56]

Because we are concerned that the market does not have sufficient information and safeguards with respect to non-reporting companies, we propose that the holding period for restricted securities in non-reporting companies

[45] See proposed Preliminary Note to Rule 144. Similar language can also be found in other rules such as in the Preliminary Note to Securities Act Rule 144A [17 CFR 230.144A].

[46] Release No. 33–7390 (Feb. 28, 1997) [62 FR 9242]. See 17 CFR 230.144(d) and (k).

[47] These other conditions included the availability of current public information, the volume of sale limitations, the manner of sale limitations, and the filing of a notice. See 17 CFR 230.144(c), (e), (f) and (h).

[48] See letters from American Society of Corporate Secretaries (ASCS); Association for Investment Management & Research (AIMR); Association of the City Bar of New York (NY City Bar); Baltimore Gas & Electric (BG&E); Investment Company Institute (ICI); Charles Lilienthal (Lilienthal); Loeb & Loeb; New York Bar Association (NY Bar); Schwartz Investments; Sullivan & Cromwell; Testa, Hurwitz & Thibeault (Testa Hurwitz); and Willkie, Farr & Gallagher (Willkie Farr).

[49] See letters from Argent and The Corporate Counsel (Corporate Counsel).

[50] See letters from ABA; joint letter from Goldman Sachs, JP Morgan, Morgan Stanley and Salomon Brothers (Four Brokers); Lehman Brothers; Merrill Lynch; Morgan Stanley; Regional Investment Bankers Association (Regional Bankers); Securities Industry Association (SIA); and Smith Barney.

[51] As proposed, the six-month holding period would apply to securities of the issuer that is, and has been for at least 90 days before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. As proposed, a non-reporting issuer would be an issuer that is not, or has not been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. This delineation between reporting and non-reporting companies and the 90-day waiting period for reporting companies are similar to the provisions in Rule 144(c).

[52] See proposed Rule 144(d)(1)(i). These proposed amendments would not change the Rule 144(d) requirement that, if the acquiror takes by purchase, the holding period will not commence until the full purchase price is paid.

[53] See Section VI. of this release.

[54] 17 CFR 230.901 through 230.905 and Preliminary Notes.

[55] See Release No. 33–5223 (Jan. 14, 1972) [37 FR 591].

[56] See also letter to John W. White, Director, SEC Division of Corporation Finance, from Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, ABA Section of Business Law (Mar. 22, 2007) (''the 2007 ABA Letter''), available at *http://www.abanet.org/buslaw/committees/CL410000pub/comments/20070322000000.pdf.* The 2007 ABA Letter recommended that the Commission reconsider the 1997 proposals and shorten the Rule 144(d) holding period to six months and the Rule 144(k) period to one year. The letter pointed out that, in light of the increased volatility of today's marketplace, holding periods of six months and one year represent greater economic risk than they did when the current holding periods were adopted, and they are more than long enough to ensure that a purchaser has assumed the economic risk of investment.

would remain at one year for affiliates and non-affiliates.[57] However, as discussed below, we propose to eliminate the resale restrictions imposed on non-affiliates of non-reporting companies after the one-year holding period. Non-affiliates of non-reporting companies would be subject to no other Rule 144 condition after meeting the one-year holding period under the proposals.[58]

b. Tolling Provision

In 1990, we eliminated a Rule 144 provision that tolled the holding period of a security holder maintaining a short position in, or any put or other option to dispose of, securities equivalent to the restricted securities owned by the security holder.[59] We eliminated this provision in conjunction with an amendment to broaden a security holder's ability to tack the holding periods of prior owners to the security holder's own holding period.[60]

Despite the prior elimination of the tolling provision, we are concerned about the effect of hedging activities designed to shift the economic risk of investment away from the security holder with respect to restricted securities to be resold under Rule 144.[61] It becomes more difficult to conclude that the security holder who engages in hedging transactions, and thereby transfers the economic risk of the investment to a third party, soon after acquiring the security, has held the security for investment purposes and not with a view to distribution.

For example, prior to the expiration of the required holding period, a security holder may enter into an equity swap agreement with a third party, under which the security holder exchanges the dividends received on the restricted securities for the dividends on, for example, a securities index. In addition, that shareholder may agree to exchange, at a set date, any price change in the security since the date of the agreement for any price change in the securities index. The effect of such a transaction would be the economic equivalent of selling the restricted securities before the holding period has expired and purchasing the securities index.

The concern regarding hedging transactions is particularly acute if we provide for a six-month holding period requirement, as proposed. At the time of the 1990 amendments, Rule 144 provided for a two-year holding period before a security holder could sell limited amounts of restricted securities, and a three-year period before a non-affiliate security holder could sell an unlimited amount of the securities. The proposed six-month holding period requirement could make the entry into such hedging arrangements significantly easier and less costly because they would cover a much shorter period.

The 1997 proposing release proposed several alternatives for addressing these concerns.[62] Seven commenters recommended that we adopt measures to eliminate or restrict hedging activities during the holding period.[63] Six commenters recommended maintaining the status quo.[64] Six commenters suggested that we adopt a safe harbor for certain hedging activities that would be deemed permissible under Rule 144.[65] Because the proposed shortening of the holding period requirement would make hedging arrangements significantly easier, we believe that it is appropriate to reintroduce a tolling provision to Rule 144. Therefore, we propose to add a new paragraph to Rule 144 to toll the holding period for restricted securities of Exchange Act reporting companies while an affiliate or a non-affiliate is engaged in certain hedging transactions.[66]

We also propose to expand the scope of the earlier tolling provision, which covered only short sales and options. Since 1990, many new risk-hedging products such as equity swaps and single stock futures have been introduced into the market that also have the effect of limiting or eliminating risk. We are proposing to exclude from the holding period any period in which the security holder had a short position, or had entered into a ''put equivalent position,'' as defined by Exchange Act Rule 16a–1(h),[67] with respect to the same class of securities (or in the case of nonconvertible debt, with respect to any nonconvertible debt securities of the same issuer).

Given that the proposed tolling provision would work in conjunction with the Rule 144 provisions that permit tacking of holding periods,[68] a selling security holder would be required to determine whether a previous owner of the securities had engaged in hedging activities with respect to the securities, if the holding period includes a period in which a previous owner held the securities. Accordingly, we propose to provide that the holding period should not include any period in which the previous owner held a short position or put equivalent position with respect to the securities. There would be no tolling of the previous owner's holding period, if the security holder for whose account the securities are to be sold reasonably believes that no such short or put equivalent position was held by the previous owner.[69] In other words, the proposed provision would permit a security holder to tack the period during which the security holder reasonably believes that the previous owner did not engage in hedging activities to his or her holding period. We are proposing a ''reasonable belief'' standard, because it may be difficult for a selling security holder to determine definitively whether a previous owner had engaged in hedging activities with respect to the securities.

Also, we believe that the proposed tolling provision should not result in a

[57] See proposed Rule 144(d)(1)(ii). The 2007 ABA letter also recommended that in the case of non-reporting companies, the Commission should consider permitting resales without restriction under Rule 144 after a one-year holding period.

[58] The proposals would delete paragraph (k) of Rule 144 and permit non-affiliates to resell restricted securities of non-reporting companies freely after one year.

[59] See Release No. 33–6862 (Apr. 23, 1990) [55 FR 17933].

[60] We reasoned that, ''a single period running from the date of the purchase from the issuer or an affiliate of the issuer is sufficient to prevent the distribution by the issuer of securities to the public.'' Release No. 33–6862.

[61] For a discussion on hedging arrangements in prior releases, see Section IV.B of the 1997 proposing release and Section II.A of Release No. 33–7187 (Jul. 10, 1995) [60 FR 35645].

[62] See the 1997 proposing release. In that release, we proposed five different alternatives. These were the following: (1) Make the Rule 144 safe harbor unavailable to persons who hedge during the restricted period; (2) independent of Rule 144, promulgate a rule that would define a sale for purposes of Section 5 to include specified hedging transactions; (3) adopt a shorter holding period during which hedging could not occur without losing the safe harbor; (4) reintroduce a tolling provision in Rule 144 similar to the provision that was included prior to 1990; or (5) maintain the status quo with no specific prohibition against hedging. We believe that the proposed tolling provision in this release offers a balanced approach to addressing hedging activities in Rule 144.

[63] See letters from ABA; AIMR; Argent; ASCS; Constantine Katsoris; Corporate Counsel; and Schwartz Investments.

[64] See letters from Bear Stearns; BG&E; Intel; Paine Webber; Wilkie Farr; and XXI Securities.

[65] See letters from Four Brokers; NY Bar; SIA; Merrill Lynch; Citibank; and Lehman Brothers.

[66] See proposed Rule 144(d)(3)(xi).

[67] 17 CFR 240.16a–1(h). Rule 16a–1(h) defines a ''put equivalent position'' as a derivative security position that increases in value as the value of the underlying equity decreases, including, but not limited to, a long put option and a short call option position.

[68] ''Tacking'' the holding period is the ability of the security holder to count the period that the securities are held by a previous owner as part of his or her own holding period for the purposes of Rule 144(d). Further discussion about tacking is located in Section II.E.2 of this release.

[69] See proposed Rule 144(d)(3)(xi)(C). If the security holder relying on Rule 144 is unable to determine that the previous owner did not engage in hedging activities with respect to the securities, then the security holder should omit the period in which the security holder is not able to determine whether the previous owner had a short position or a put equivalent position when calculating the holding period under Rule 144(d).

longer holding period than under the current rule. Because the fact that the current rule does not toll the one-year holding period while the security holder has engaged in hedging activities has not raised concerns, we believe, on balance, that one year between the acquisition date of the securities from the issuer or affiliate of the issuer and the resale date sufficiently protects against the indirect distribution of the securities by the issuer to the public. The proposed rule would therefore impose a ceiling on the proposed tolling provision so that, regardless of the security holder's hedging transactions, the holding period, as computed under all other paragraphs in Rule 144(d), would in no event extend beyond one year.[70] Under the proposed rules, security holders who wish to rely on Rule 144 to resell restricted securities of non-reporting companies already would be required to hold their securities for at least one year, and therefore would not be subject to the tolling provision.

In concert with the proposed tolling provision, we also propose other related changes to Rule 144. First, we propose to require that information be provided in Form 144 regarding any short or put equivalent position held with respect to the securities prior to the resale of the securities. A similar requirement was part of Form 144 before the tolling provision was eliminated in 1990.[71]

The second related change concerns the manner of sale requirements in Rule 144(f), which we propose to retain for equity securities of affiliates. One option to meet the manner of sale requirements is to sell the securities through ''brokers' transactions'' within the meaning of Section 4(4) of the Securities Act.[72] Rule 144(g) specifies transactions by a broker that are deemed to be included as ''brokers' transactions.'' One criteria for these ''brokers' transactions'' is that the broker, after reasonable inquiry, is not aware of circumstances indicating that the person for whose account the securities are sold is an underwriter with regard to the securities or that the transaction is a part of a distribution of the securities of an issuer. Existing Note (ii) of Rule 144(g)(3)[73] contains a list of some questions that brokers should ask in order to satisfy this inquiry. We are proposing to amend Note (ii) to Rule 144(g)(3) to explain that in order to satisfy the reasonable inquiry requirement, a broker should also inquire into, if the securities have been held for less than one year, the existence and character of any short position or put equivalent position with regard to the securities held by the person for whose account the securities are to be sold, whether such person has made inquiries into the existence and character of any short position or put equivalent position held by the previous owner of the securities, and the results of such person's inquiries.[74] We believe that an inquiry into such positions would not impose an undue burden on brokers as part of their existing inquiry. We believe that this proposed amendment would be a valuable component in determining and monitoring whether security holders have met their holding period requirement under Rule 144.

3. Significant Reduction of Requirements Applicable to Non-Affiliates

Non-affiliates currently are required to hold their restricted securities for one year under Rule 144(d). During this one-year period, non-affiliates are not permitted to resell any securities under the rule. When selling restricted securities that have been held for between one and two years, non-affiliates, like affiliates, are subject to all other applicable conditions of Rule 144, including the requirement that current information be publicly available about the issuer of the securities, limitations on the amount of securities that can be sold in any three-month period, manner of sale limitations and Form 144 filing requirements.[75] We believe that, for the most part, holding the securities for the length of the holding period should be a sufficient indication that these non-affiliates have assumed the economic risk of investment in those securities.[76] As such, we believe that it is appropriate to reduce the complexity of resale restrictions that may inhibit sales by, and impose costs on, non-affiliates.[77]

Because Rule 144 is relied upon by many individuals to resell their restricted securities, we believe that it would be particularly helpful to streamline and reduce the complexity of the rule as much as possible while retaining its integrity. We therefore propose to reduce the restrictions for a person who is not an affiliate of the issuer at the time of the sale of the securities and has not been an affiliate during the three months prior to the sale of the securities. These non-affiliates with restricted securities of reporting companies would be permitted to resell their securities after their holding period, subject only to the requirement in Rule 144(c) that current information regarding the issuer of the securities be publicly available.[78] We preliminarily believe that retaining the current public information requirement would continue to be important in this instance so that the market has adequate information regarding the issuer of the securities and also would not impose an undue burden on a non-affiliate selling security holder. Non-affiliates of both reporting and non-reporting companies would be able to freely resell their restricted securities publicly one year after the acquisition date of the securities (as computed under Rule 144(d)) and without having to comply with any of the other conditions of the rule.[79]

The proposed requirements for the resale of restricted securities held by affiliates and non-affiliates under Rule 144 can be summarized as follows:

[70] See proposed note to Rule 144(d)(3)(xi).

[71] See Release No. 33–5223.

[72] 15 U.S.C. 77d(4).

[73] 17 CFR 230.144(g)(3).

[74] See proposed Paragraph 2 of Note 2 to Rule 144(g)(3).

[75] See 17 CFR 230.144(b) and (d). A person who has held restricted securities for more than two years and has not been an affiliate for at least the most recent three months may resell those securities without complying with Rule 144's other requirements. See 17 CFR 230.144(k).

[76] We have concerns, however, about the indirect distribution of securities through resales by non-affiliates when those non-affiliates hold securities in shell companies. As discussed below, we propose to codify the staff's interpretive position that security holders cannot rely on Rule 144 in the resale of securities of reporting and non-reporting shell companies.

[77] While the SEC Advisory Committee on Smaller Public Companies did not specifically address Rule 144 in its final report, the Committee acknowledged the need to reduce the complexity of our rules for the benefit of smaller companies. See Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission (Apr. 23, 2006), available at *http://www.sec.gov/info/smallbus/acspc.shtml*. See also Report on the Advisory Committee on the Capital Formation and Regulatory Process (Jul. 24, 1996) (suggesting that the SEC minimize the resale restrictions on restricted securities), available at *http://www.sec.gov/news/studies/capform.htm*.

[78] See proposed Rule 144(b)(1)(i). As set forth in paragraphs (c) and (d) of the proposed rules, a reporting company is an issuer that is, and has been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. A non-reporting company is an issuer that is not, or has not been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

[79] See proposed Rule 144(b)(1).

	Affiliate or person selling on behalf of an affiliate	Non-affiliate (and has not been an affiliate during the prior three months)
Restricted Securities of Reporting Companies.	*During six-month holding period**—no resales under Rule 144 permitted. *After six-month holding period**—may resell in accordance with all Rule 144 requirements including: • Current public information, • Volume limitations, • Manner of sale for equity securities, and • Filing of Form 144.	*During six-month holding period**—no resales under Rule 144 permitted. *After six-month holding period* but before one year*—may resell in accordance with the current public information requirement. *After one year*—unlimited public resale under Rule 144; need not comply with other Rule 144 requirements.
Restricted Securities of Non-Reporting Companies.	*During one-year holding period*—no resales under Rule 144 permitted. Tolling provision does not apply. *After one-year holding period*—may resell in accordance with all Rule 144 requirements except holding period, including: • Current public information, • Volume limitations, • Manner of sale for equity securities, and • Filing of Form 144.	*During one-year holding period*—no resales under Rule 144 permitted. Tolling provision does not apply. *After one-year holding period*—unlimited public resale under Rule 144; need not comply with other Rule 144 requirements.

* Such holding period may be longer than six months (but not longer than one year), depending on hedging activities.

Request for Comment

• Should the holding period requirement for restricted securities of reporting companies be shortened to six months? Is six months sufficient time to indicate that the affiliate has not acquired the securities for distribution? Are there any concerns that six months would lead to an increase in abuse with regard to the resale of restricted securities? Should a six-month holding period requirement apply to restricted securities of reporting companies held by non-affiliates as well as affiliates? If you suggest that either affiliates or non-affiliates should be required to comply with a holding period that is shorter than six months, what objective criteria demonstrate that such holding period is sufficient to indicate that the security holder has not acquired the securities for distribution?

• Should the one-year holding period requirement continue to apply to restricted securities of non-reporting companies held by non-affiliates as well as affiliates? Should the holding period for restricted securities of non-reporting companies also be shortened to six months? Should affiliates and non-affiliates of non-reporting companies be subject to the same holding period, or should they be required to comply with a longer or shorter holding period?

• For the purposes of the holding period, is it appropriate that a reporting company is an issuer that is, and has been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act? Is there a more appropriate formulation?

• Should we amend Regulation S to conform the one-year distribution compliance period in Rule 903(b)(3)(iii) [80] to the proposed six-month holding period? When Regulation S was amended in 1998,[81] the distribution compliance period applicable to U.S. companies (Category 3 issuers) was conformed to the one-year holding period under Rule 144. The purpose of the distribution compliance period in Regulation S is to ensure that during the offering period and the subsequent aftermarket trading that takes place offshore, the persons relying on the Rule 903 safe harbor (issuers, distributors and their affiliates) are not engaged in an unregistered, non-exempt distribution into the United States capital markets. We are now proposing to shorten the Rule 144 holding period for the resale of restricted securities of Exchange Act reporting companies to six months. Should we amend Regulation S to conform the one-year distribution compliance period for reporting U.S. companies under Rule 903(b)(3)(iii) to the proposed six-month holding period under Rule 144? In light of problematic practices with respect to offerings of U.S. companies under Regulation S, should the distribution compliance period for reporting U.S. companies remain one year consistent with the longest distribution compliance period that would be applicable to securities offered under Regulation S and with the default one-year holding period under Rule 144?

• Is it appropriate to retain the current public information requirement for non-affiliates with restricted securities in reporting companies during the period between the end of the six-month holding period (which may be longer depending on hedging activities) and one year after the securities were acquired? Should non-affiliates be subject to the current public information condition for a longer period of time? If so, how long?

• Should non-affiliates with restricted securities of non-reporting companies remain subject after the holding period to all conditions of Rule 144 for an additional year, as under the current rule? Are there any specific conditions to which non-affiliates with restricted securities of reporting companies should still be subject after the holding period, other than the current public information requirement? Are there any specific conditions to which non-affiliates with restricted securities of non-reporting companies should still be subject after the holding period? For example, should non-affiliates continue to be subject to volume limitations during a specified period of time after the holding period? What should that specified time be (*e.g.*, six months, one year)? Should non-affiliates be subject to some sort of notice requirement when they have made a sale above the specified threshold amount? What are the benefits if non-affiliates are still subject to such requirements or concerns if they are not?

• Is the proposed language requiring that the security holder toll the holding period if the holder had ''a short position, or had entered into a 'put equivalent position' as defined by Exchange Act Rule 16a–1(h)'' appropriate? Does the proposed tolling provision sufficiently cover the hedging transactions that would result in the circumvention of the purposes of Rule 144? Does it cover too few or too many hedging transactions? If too many, what specific forms of hedging transactions should be excluded and why? If too few,

[80] 17 CFR 230.903(b)(3)(iii).

[81] *Offshore Offers and Sales,* Release No. 33–7505 (Feb. 17, 1998).

what other forms of hedging transactions should be covered?

• Given that the proposed tolling provision is not applicable if the security holder has held the securities for one year, would a security holder be able to determine whether and how long previous owners entered into hedging transactions in order to properly calculate the holding period? Would the proposed tolling provision make it too difficult to determine whether a security holder has complied with the holding period requirement? By what other methods could we ensure that persons do not attempt to skirt the purposes of Rule 144 by engaging in hedging transactions?

• Should security holders be held to a ''reasonable belief'' standard with regard to the previous owner's hedging activities, or is a ''bona fide belief'' or some other standard more appropriate? Should we specify what statements or documentation could security holders rely upon in order to formulate a reasonable belief that the previous owner has not engaged in hedging activities in the securities? If so, what documentation should they be permitted to rely upon?

• Is it unnecessarily restrictive to require tolling if the security holder has engaged in hedging transactions with respect to any of his or her securities of the same class (or, in the case of nonconvertible debt, with respect to any nonconvertible debt securities of the same issuer)? Are there any circumstances in which the proposed tolling provision would not be appropriate? If so, describe the circumstances and explain why the proposed tolling provision would not be appropriate.

• Should we address hedging in a different manner? For example, should we preclude security holders who hedge securities during the holding period from relying on Rule 144? Should we treat such hedging transactions as ''sales'' of the securities?

• Should the tolling provision apply only during the first year after the date of the acquisition of the securities from the issuer or affiliate? Is one year the appropriate time period, or should the period be longer than one year?

• Is there any reason why we should not amend Note (ii) to Rule 144(g)(3) to add that if the securities have been held for less than one year, the broker's reasonable inquiry should also include an inquiry into the existence and character of any short position or put equivalent position with regard to the securities held by the person for whose account the securities are to be sold and whether that person has made inquiries into the existence and character of any short position held by a previous owner with regard to the securities? Is the proposed amendment sufficiently clear? Does the proposed amendment place an undue burden on the broker or the holder of the securities? What level of inquiry should the brokers be required to conduct into the security holder's hedging transactions or the previous owner's hedging transactions? What statements or documentation, if any, regarding hedging transactions should security holders be required to provide to brokers?

• What level of due diligence did brokers conduct to determine compliance with the holding period requirement before we eliminated the Rule 144 tolling provision in 1990? Were there any problems with tracking hedging positions when the tolling provision was in place, especially in relation to the limited provisions that permitted tacking that existed prior to 1990?

• Is there any reason we should not amend Form 144 to require disclosure of hedging transactions? Is the proposed disclosure appropriate and should it be changed in any way?

C. Elimination of Manner of Sale Limitations for Debt Securities

Rule 144(f) currently requires that securities be sold in ''brokers'' transactions,''[82] or in transactions directly with a ''market maker,'' as that term is defined in Section 3(a)(38) of the Exchange Act.[83] Additionally, the rule prohibits a seller from: (1) soliciting or arranging for the solicitation of orders to buy the securities in anticipation of, or in connection with, the Rule 144 transaction; or (2) making any payment in connection with the offer or sale of the securities to any person other than the broker who executes the order to sell the securities. These manner of sale limitations do not apply to securities sold for the account of a non-affiliate of an issuer after the two-year period in Rule 144(k) has elapsed.[84]

The limitations on manner of sale were intended to assure that special selling efforts and compensation arrangements usually associated with a distribution are not present in a Rule 144 sale.[85] In the 1997 proposing release, we proposed to eliminate the manner of sale requirement entirely. Commenters were split as to that proposal. Eleven commenters supported the proposal,[86] while seven commenters opposed it.[87] Commenters who opposed the proposal noted that brokers act as gatekeepers to ensure selling shareholders are complying with the requirements of Rule 144. Two commenters supported the proposal because transfer agents would not transfer shares without a release from the issuer.[88]

We agree that, as financial intermediaries, brokers serve an important function as gatekeepers for promoting compliance with Rule 144,[89] and we are concerned that eliminating the manner of sale limitations for equity securities may lead to abusive transactions. However, we believe that the fixed income securities market does not raise the same concerns, and that the manner of sale provision may place an unnecessary burden on the resale of such securities.[90] Such securities generally are traded in dealer transactions in which the dealer seeks buyers for securities to fill sell orders instead of through the means prescribed in Rule 144(f). Thus, we are proposing that the manner of sale limitations would not apply to resales of debt securities.[91] This would allow holders of debt securities greater flexibility in the resale of their securities, including, as discussed in the 1997 proposing release, the option to privately negotiate the resale of the securities.[92]

In addition, we believe that non-participating preferred stock, which has debt-like characteristics, and asset-backed securities, where the predominant purchasers are institutional investors, including financial institutions, pension funds, insurance companies, mutual funds and money managers,[93] should be treated similarly to debt securities. Thus, we have included these securities in the ''debt securities'' category for the

[82] Current Rule 144(g) defines the term for purposes of Rule 144.

[83] 15 U.S.C. 78c(a)(38).

[84] The manner of sale requirements also do not apply to securities sold for the account of the estate of a deceased person or for the account of a beneficiary of such estate, provided the estate or beneficiary is not an affiliate of the issuer.

[85] Release No. 33–5186 (Sept. 10, 1971) [36 FR 18586].

[86] See letters from ABA; AT&T; ASCS; Intel; BG&E; Lehman Brothers; Morgan Stanley; NY Bar; NY City Bar; Sullivan & Cromwell; and Testa Hurwitz.

[87] See letters from Corporate Counsel; Matthew Crain; Constantine Katsoris; Merrill Lynch; Regional Bankers; SIA; and Smith Barney.

[88] See letters from ASCS and BG&E.

[89] Brokers also must comply with the criteria set forth in Rule 144(g) in order to claim the ''brokers'' transactions'' exemption under Section 4(4) of the Securities Act.

[90] See also the 2007 ABA Letter.

[91] See proposed Rule 144(f). As discussed above, we also propose to eliminate the manner of sale limitations for resales by non-affiliates.

[92] Section III.C. of the 1997 proposing release.

[93] See Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506].

purpose of the proposed revisions to the manner of sale limitations in Rule 144.[94]

Request for Comment

- Would eliminating the manner of sale requirement be appropriate for debt securities, as proposed? Is there a need for brokers to serve as an intermediary for such a secondary market? Would transfer agents be able to adequately confirm compliance with Rule 144?
- Should we eliminate the manner of sale requirement for equity securities as well? If so, why? What problems or abuses may arise if the proposal were extended to equity securities? Would removal of the manner of sale requirements for equity securities diminish security transaction transparency by encouraging more privately negotiated transactions? If so, would the markets be adversely affected, particularly for stocks of smaller companies and more thinly traded securities?
- Are there other purposes served by the manner of sale requirements that justify retaining those requirements? How would the removal of the manner of sale requirements affect participants, such as transfer agents, brokers and market makers, in Rule 144 transactions? Would transfer agents assume a greater role in determining compliance with the resale provisions? How would removing the manner of sale limitations affect brokers' obligations with respect to their ability to qualify for the ''brokers' transactions'' exemption under Section 4(4) of the Securities Act?
- Is it appropriate to include asset-backed securities and non-participating preferred stock as debt securities for the purposes of this rule? Are there any other types of securities to which the limitations on manner of sale should not apply? If so, why?
- Are there any other conditions in Rule 144 to which debt securities should not be subject? For example, should we raise the volume limitations in Rule 144(e) for debt securities, or eliminate the volume limitations for debt securities altogether? [95]

D. Increase of the Form 144 Filing Thresholds

Rule 144(h) requires a selling security holder to file Form 144 if the security holder's intended sale exceeds either 500 shares or $10,000 within a three-month period.[96] These filing thresholds have been in place since 1972.[97] In the 1997 proposing release, we proposed to increase the filing thresholds to 1,000 shares or $40,000. Thirteen commenters supported raising the filing threshold and no commenters opposed it.[98] Six commenters suggested that we eliminate Form 144.[99] One commenter suggested raising the threshold to $100,000.[100] Another commenter suggested raising it to $250,000.[101]

As discussed above, under the proposed rules, only affiliates of the issuer would be required to file a notice of proposed sale on Form 144 when relying on Rule 144. We now are proposing to increase the Form 144 filing thresholds to trades of 1,000 shares or $50,000 within a three-month period for affiliates.[102] The purpose of raising the dollar threshold to $50,000 is to adjust for inflation since 1972.[103] We believe that the 1,000 share threshold is an appropriate alternate threshold that would capture trades which merit notice but for which the dollar amount of the trades may not be as significant. In addition to this proposed amendment to Rule 144(h), we solicit comment below on how best to coordinate the filing deadline for Form 144 with the filing deadline for Form 4 and permit affiliates subject to Section 16 filing requirements to, at their option, satisfy their Form 144 filing requirements by timely filing a Form 4 to report the sale of their securities.

Request for Comment

- Should the dollar threshold be higher or lower than proposed (*e.g.*, $25,000, $75,000, or $100,000)? Should the threshold based on the number of shares be higher or lower than proposed (*e.g.*, 500, 1,500, 2,000 or 2,500 shares)?
- Should the threshold be based solely on the number of shares sold, or solely on the dollar amount of the transaction? Should it be based on a formula using both variables? Should we allow for adjustments to the dollar amount threshold every five years that would reflect changes due to inflation?
- Should thresholds be based on a different number such as a percentage of the company's public float, or a different self-adjusting index?
- If you believe the thresholds should be different, please explain why your suggested threshold would be appropriate, including information and data to support your beliefs.

E. Codification of Several Staff Positions

The following are proposed codifications of staff positions issued by the Division of Corporation Finance. These codifications should simplify the rule by making these staff positions more transparent and readily available to the public. The first three proposals were included in the 1997 proposing release. The last four proposals are new proposed codifications of existing staff positions.

1. Securities Acquired Under Section 4(6) of the Securities Act Are Considered ''Restricted Securities''

The 1997 proposing release proposed to codify the Division of Corporation Finance's interpretive position that securities acquired from the issuer pursuant to an exemption from registration under Section 4(6) of the Securities Act [104] are considered ''restricted securities'' under Rule 144(a)(3).[105] We did not receive any comments on this proposal.

Section 4(6) provides for an exemption from registration for an offering that does not exceed $5,000,000 that is made only to accredited investors, that does not involve any advertising or public solicitation by the issuer or anyone acting on the issuer's behalf and for which a Form D has been filed.[106] Because the resale status of securities acquired in Section 4(6) exempt transactions should be the same as securities received in other non-public offerings that are included in the definition of restricted securities, we

[94] See proposed Rule 144(f). This proposal is for Rule 144(f) purposes only and does not affect the classification of these securities as debt or equity for other purposes. This treatment is consistent with the treatment of such securities under Regulation S. See Release No. 33–7505.

[95] See discussion in 2007 ABA Letter.

[96] 17 CFR 230.144(h).

[97] The 500 share and $10,000 thresholds have remained constant since Rule 144's inception in 1972. However, in 1978, we shortened the relevant time period during which sales volume is to be calculated from six months to three months to conform to a change shortening the time period in which sale volume should be calculated for the purposes of the Rule 144 volume limitation condition from six months to three months. Release No. 33–5995 (Nov. 8, 1978) [43 FR 54229].

[98] See letters from ABA; ASCS; AT&T; BG&E; Corporate Counsel; Merrill Lynch; Morgan Stanley; NY Bar; NY City Bar; Regional Bankers; SIA; Smith Barney; and Sullivan & Cromwell.

[99] See letters from ABA; Benesch, Friedlander, Coplan & Aranoff (Benesch Friedlander); NY Bar; NY City Bar; and Sullivan & Cromwell.

[100] See letter from ABA.

[101] See letter from NY Bar.

[102] See proposed Rule 144(h).

[103] The adjustment would be approximately $42,000 if based on the Personal Consumption Expenditures Chain-Type Price Index, as published by the Department of Commerce. In addition, if based on the Consumer Price Index, the adjustment would be approximately $50,000. To achieve a round number, we are proposing to raise the filing threshold to $50,000.

[104] 15 U.S.C. 77d(6). Section 4(6) was included in the Securities Act pursuant to the Small Business Investment Incentive Act of 1980 [Pub. L. No. 96–477 (Oct. 21, 1980)].

[105] 17 CFR 230.144(a)(3). See the Division of Corporation Finance's Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 104 (Rule 144(a)(3)), Question No. 104.03.

[106] See 15 U.S.C. 77d(6).

believe that securities acquired under Section 4(6) should be defined as restricted securities for purposes of Rule 144. Therefore, we are proposing an amendment to Rule 144 to codify the staff's position that securities acquired under Section 4(6) of the Securities Act are ''restricted securities'' under Rule 144(a)(3).[107]

2. Tacking of Holding Periods When a Company Reorganizes Into a Holding Company Structure

The 1997 proposing release also proposed codifying the Division of Corporation Finance's interpretive position that holders may tack the Rule 144 holding period in connection with transactions made solely to form a holding company.[108] In ''tacking,'' holders may count the period that the securities are held before the transaction made to form a holding company as part of period they hold the securities used to meet the Rule 144(d) requirement. We did not receive any comments on this proposal.

We are proposing again to codify that interpretive position.[109] This provision would permit tacking of the holding period if the following three conditions are satisfied:

- The newly formed holding company's securities are issued solely in exchange for the securities of the predecessor company as part of a reorganization of the predecessor company into a holding company structure;
- Security holders receive securities of the same class evidencing the same proportional interest in the holding company as they held in the predecessor company, and the rights and interests of the holders of such securities are substantially the same as those they possessed as holders of the predecessor company's securities; and
- Immediately following the transaction, the holding company has no significant assets other than securities of the predecessor and its existing subsidiaries and has substantially the same assets and liabilities on a consolidated basis as the predecessor had before the transaction.

In such transactions, tacking would be appropriate because the securities being exchanged are substantially equivalent, and there is no significant change in the economic risk of the investment in the restricted securities. We believe that the codification of this interpretation and as well as the codification of the following two interpretations below would assist security holders in determining whether they have met the Rule 144(d) holding period requirement.

3. Tacking of Holding Periods for Conversions and Exchanges of Securities

The 1997 proposing release proposed codifying the Division of Corporation Finance's position that if the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the securities surrendered for conversion or exchange, even if the securities surrendered were not convertible or exchangeable by their terms.[110] As noted in the 1997 release, Rule 144 does not state whether the surrendered securities must have been convertible by their terms in order for tacking to be permitted, which led to some confusion on how to calculate the Rule 144 holding period. We did not receive any comments on this proposal.

We are proposing again these amendments to Rule 144(d)(3)(ii).[111] In addition, we are proposing a note to this provision that clarifies the Division's position that if:

- The original securities do not permit cashless conversion or exchange by their terms;
- The parties amend the original securities to allow for cashless conversion or exchange; and
- The security holder provides consideration, other than solely securities of the issuer, for that amendment,

then shares will be deemed to have been acquired on the date that the original securities were so amended.[112]

4. Cashless Exercise of Options and Warrants

Several commenters responding to the 1997 release suggested that we codify the Division of Corporation Finance's position that, upon a cashless exercise of options or warrants, the newly acquired underlying securities are deemed to have been acquired when the corresponding options or warrants were acquired, even if the options or warrants originally did not provide for cashless exercise by their terms.[113] We are proposing to revise Rule 144 to codify that position in response to those comments.[114]

In addition, we are proposing to add two notes to this new paragraph. The first note would codify the Division's position that if:

- The original options or warrants do not permit cashless exercise by their terms; and
- The holder provides consideration, other than solely securities of the issuer, to amend the options or warrants to allow for cashless exercise,

then the options or warrants would be deemed to have been acquired on the date that the original options or warrants were so amended.[115] This treatment is analogous to our treatment of conversions and exchanges.

The second note would codify the Division's position that the grant of certain options or warrants that are not purchased for cash or property does not create any investment risk in the holder in a manner that would justify identification of the holding period of the securities received upon exercise of the options or warrants with that of the options or warrants.[116] This is the case for employee stock options. The note would clarify that in such instances, the holder would not be allowed to tack the holding period of the option or warrant and would be deemed to have acquired the underlying securities on the date the option or warrant was exercised, if the conditions of Rule 144(d)(1) and Rule 144(d)(2) are met at the time of exercise.

5. Aggregation of Pledged Securities

In response to suggestions from commenters, we are proposing to add a note to Rule 144(e)(2)(ii)[117] that would address calculation of the volume of securities that a pledgee of securities may sell.[118] It would codify the Division of Corporation Finance's position that, so long as the pledgees are not the same ''person'' under Rule 144(a)(2), a pledgee of securities may sell the pledged securities without having to aggregate the sale with sales by other pledgees of the same securities from the same pledgor, as long as there is no concerted action by those pledgees.[119]

[107] See proposed Rule 144(a)(3)(viii).

[108] *Morgan Olmstead* (Jan. 8, 1988).

[109] See proposed Rule 144(d)(3)(ix).

[110] See *Planning Research Corp.* (Dec. 8, 1980).

[111] See proposed Rule 144(d)(3)(ii).

[112] See *Morgan Stanley & Co., Inc.* (June 30, 1993).

[113] See the Division of Corporation Finance's Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 212 (Rule 144(d)(3)), Interpretation No. 212.01.

[114] See proposed Rule 144(d)(3)(x).

[115] See *Morgan Stanley & Co., Inc.* (June 30, 1993).

[116] See *Morgan Stanley & Co., Inc.* (June 30, 1993) and *Malden Trust Corporation* (Feb. 21, 1989).

[117] 17 CFR 230.144(e)(2)(ii).

[118] If the proposed amendments eliminating certain requirements for non-affiliates are adopted, then the volume limitations in Rule 144(e) would apply only to affiliates.

[119] See the Division of Corporation Finance's Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 216 (Rule

Continued

As an example, assume that a security holder (the pledgor) pledges the securities he owns in Company A to two banks, Bank X and Bank Y (the pledgees). If the pledgor defaults:

- Upon default, Bank X does not have to aggregate its sales of Company A securities with Bank Y's sales of Company A securities unless Bank X and Bank Y are acting in concert, but
- Bank X individually still must aggregate its sales with the pledgor's sales, and
- Bank Y individually still must aggregate its sales with the pledgor's sales.

Provided that the loans and pledges are bona fide transactions and there is no concerted action among pledgees and no other aggregation provisions under Rule 144(e) apply, we do not believe that extra burdens on pledgees to track and coordinate resales by other pledgees are warranted.

6. Treatment of Securities Issued by ''Reporting and Non-reporting Shell Companies''

A blank check company is a company that:

- Is in the development stage;
- Has no specific business plan or purpose, or has indicated that its business plan is to merge with or acquire an unidentified third party; and
- Issues penny stock.[120]

Such companies historically have provided opportunity for abuse of the federal securities laws, particularly by serving as vehicles to avoid the registration requirements of the securities laws.[121] Rule 419 under the Securities Act [122] was adopted in 1992 to control the extent to which such companies are able to access funds from a public offering.

In 2005, we amended Securities Act Rule 405 to define a ''shell company'' to mean a registrant, other than an asset-backed issuer, that has:

(1) no or nominal operations; and

(2) either:

- no or nominal assets;
- assets consisting solely of cash and cash equivalents; or
- assets consisting of any amount of cash and cash equivalents and nominal other assets.[123]

On January 21, 2000, the Division of Corporation Finance concluded in a letter to NASD Regulation, Inc. that Rule 144 is not available for the resale of securities issued by companies that are, or previously were, blank check companies.[124] In an effort to curtail misuse of Rule 144 by security holders through transactions in the securities of blank check companies, we are proposing to codify this position with some modifications.[125] First, we propose to modify the staff interpretation to address securities of all companies, other than asset-backed issuers, that meet the definition of ''shell company.'' [126] These companies would include any company, including a blank check company, that meets the definition. The category of companies to whom the staff interpretation is proposed to apply would be broader than the definition of ''shell company'' in Rule 405, however, as it would apply to any ''issuer'' meeting that standard, whereas the Rule 405 definition refers only to ''registrants.'' We believe that this provision better describes the companies that are the subject of the abuse that the staff interpretation is designed to address. For the purposes of the discussion in this release only, we call these companies, ''reporting and non-reporting shell companies.'' Under the proposed rule, a person who wishes to resell securities issued by a company that is, or was, a reporting or a non-reporting shell company, other than a business combination related shell company,[127] would not be able to rely on Rule 144 to sell the securities.

Second, because the reasons for prohibiting reliance on Rule 144 do not appear to be present after a reporting company has ceased to be a shell company and there is adequate disclosure in the market that would serve to protect against further abuse,[128] we propose to permit the availability of Rule 144 for resales under provisions that are similar to our provisions that permit the use of a Securities Act Form S–8 [129] registration statement by reporting companies that were formally shell companies.[130] We propose to permit reliance on Rule 144 for resales by a security holder when:

- the issuer of the securities that was formally a reporting or non-reporting shell company has ceased to be a shell company;
- the issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act;
- the issuer of the securities has filed all reports and material required to be filed during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials); and
- at least 90 days have elapsed from the time the issuer files current ''Form 10 information'' with the Commission reflecting its status as an entity that is not a shell company.

Form 10 information is equivalent to information that a company would be required to file if it were registering a class of securities on Form 10, Form 10–SB, or Form 20–F under the Exchange Act,[131] and such information is ordinarily filed on Form 8–K.[132]

Under the proposed amendments, an affiliate security holder selling control securities would have to wait at least 90 days before being permitted to resell the securities, and a security holder selling restricted securities would be required to wait the duration of the holding period before being permitted to resell the securities.[133] The 90-day delay or

144(e)(3)), Interpretation No. 216.01. See also *Standard Chartered Bank* (June 22, 1987).

[120] 17 CFR 230.419. The term ''penny stock'' is defined in 17 CFR 240.3a51–1.

[121] See Release No. 33–6932 (Apr. 28, 1992) [57 FR 18037].

[122] 17 CFR 230.419.

[123] See 17 CFR 230.405 and Release No. 33–8587 (Jul. 15, 2005) [70 FR 42234].

[124] *Ken Worm, NASD Regulation, Inc.* (Jan. 21, 2000). In that letter, the Division stated that ''transactions in blank check company securities by their promoters or affiliates * * * are not the kind of ordinary trading transactions between individual investors of securities already issued that Section 4(1) [of the Securities Act] was designed to exempt.'' The Division stated its view that ''both before and after the business combination or transaction with an operating entity or other person, the promoters or affiliates of blank check companies, as well as their transferees, are 'underwriters' of the securities issued. * * * Rule 144 would not be available for resale transactions in this situation, regardless of technical compliance with that rule, because these resale transactions appear to be designed to distribute or redistribute securities to the public without compliance with the registration requirements of the Securities Act.''

[125] See proposed Rule 144(i).

[126] See proposed paragraph (i)(1) of Rule 144.

[127] ''Business combination related shell company'' is defined in Securities Act Rule 405.

[128] We are not proposing a comparable provision for security holders of non-reporting companies that have ceased to be shell companies because they have business operations or more than nominal non-cash assets. We have not proposed a comparable provision for these companies, because we preliminarily believe that the information that a non-reporting company would provide to the market does not adequately protect against potential abuse in those situations.

[129] 17 CFR 239.16b.

[130] See Release No. 33–8587. These provisions are consistent with the Form S–8 provisions for shell companies, except that Form S–8 requires a former shell company to wait 60 days, rather than 90 days, before it is able to use the form to register securities.

[131] 17 CFR 249.210; 17 CFR 249.210b; and 17 CFR 249.220f.

[132] 17 CFR 249.308. Items 2.01(f) and 5.01(a)(8) of Form 8–K require a company in a transaction where the company ceases being a shell company to file a current report on Form 8–K containing the information (or identifying the previous filing in which the information is included) that would be required in a registration statement on Form 10 or Form 10–SB to register a class of securities under Section 12 of the Exchange Act.

[133] For the purposes of computing the holding period under the proposed rule, the securities shall be deemed to have been acquired either at the time the securities were acquired from the issuer or affiliate of the issuer, or at the time the ''Form 10 information'' is filed with the Commission,

the duration of the holding period would provide the market with time to absorb the Form 10 information filed with the Commission regarding the company, and the 90-day delay here is consistent with the 90-day waiting period in Rule 144(c) and proposed Rule 144(d).

7. Representations Required From Security Holders Relying on Exchange Act Rule 10b5–1(c)

Rule 10b5–1 [134] under the Exchange Act defines when a purchase or sale constitutes trading ''on the basis of'' material nonpublic information in insider trading cases brought under Exchange Act Section 10(b) [135] and Rule 10b–5.[136] Specifically, a purchase or sale of a security of an issuer is ''on the basis of'' material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale. However, Rule 10b5–1(c) provides an affirmative defense that a person's purchase or sale was not ''on the basis of'' material nonpublic information. For this defense to be available, the person must demonstrate that:

- before becoming aware of the material nonpublic information, he or she had entered into a binding contract to purchase or sell the securities, provided instructions to another person to execute the trade for the instructing person's account, or adopted a written plan for trading the securities;
- the contract, instructions or written trading plan satisfy the conditions of Rule 10b5–1(c); and
- the purchase or sale that occurred was pursuant to the contract instruction or plan.

Currently, Form 144 requires a selling security holder to represent, as of the date that the form is signed, that he or she ''does not know any material adverse information in regard to the current and prospective operations of the issuer of the securities to be sold which has not been publicly disclosed.'' The Division of Corporation Finance has indicated that a selling security holder who satisfies Rule 10b5–1(c) may modify the Form 144 representation to indicate that he or she had no knowledge of material adverse information about the issuer as of the date on which the holder adopted the written trading plan or gave the trading instructions, specifying that date and indicating that the representation speaks as of that date.[137]

In order to reconcile the Form 144 representation with Rule 10b5–1, we are proposing to codify this interpretive position. Under the proposed amendments, Form 144 filers would be able to make the required representation as of the date that they adopted written trading plans or gave trading instructions that satisfy Rule 10b5–1(c).

Request for Comments

- Should we codify all of the above staff positions? Is the codification of the staff position on securities acquired under Section 4(6) appropriate and consistent with the purposes of Rule 144? Would codification of the staff positions on the Rule 144 holding period help to resolve any confusion regarding how to calculate the holding period? Would codification of the position on the aggregation of pledgees securities assist security holders in determining their volume limitations? If you believe we should not codify any of these positions, which one or ones should we not codify? If so, why?
- Should we revise any of the staff's existing positions on these matters? If so, which position and why? Does the wording of any of the proposed language suggest a change, or create ambiguity, in the staff's position?
- Would codification of the staff position on the treatment of securities issued by blank check companies protect against abuse relating to the resale of such securities? Should we expand the staff position to preclude reporting and non-reporting shell companies from relying on Rule 144?
- Should we permit reliance on Rule 144 for the resale of securities of former shell companies if the company is a reporting company, the company is no longer a shell company, the company has filed Form 10 information reflecting its status as an entity that is not a shell company, and either 90 days have elapsed since the filing of the Form 10 information or the holding period has been met? Is 90 days an appropriate amount of time? Should the delay be longer (*e.g.*, 180 days or one year)? Are there any reasons not to adopt such an amendment? Should we expand the proposed revision to permit reliance on Rule 144 also for the resale of securities of non-reporting companies that were formerly non-reporting shell companies where there is publicly available information (provided under Rule 15c2–11) [138] reflecting that such companies have obtained business operations or more than nominal assets?

F. Amendments to Rule 145

Securities Act Rule 145 provides that exchanges of securities in connection with reclassifications of securities, mergers or consolidations or transfers of assets that are subject to shareholder vote constitute sales of those securities. Rule 145(c) deems persons who were parties to such a transaction, other than the issuer, or affiliates of such parties to be underwriters. Rule 145(d) sets forth the restrictions on the resale of securities received in such transactions by persons deemed underwriters. In the 1997 proposal, we proposed to eliminate the presumed underwriter and resale provisions in Rule 145(c) and (d). Many commenters supported the 1997 proposal.[139]

After reviewing comments on the proposal, we believe it is appropriate to eliminate the presumptive underwriter provision in Rule 145, as it is no longer necessary in most circumstances. However, based on our experience with business combinations involving shell companies that have resulted in abusive sales of securities, we believe that there continues to be a need to apply the presumptive underwriter provision to shell companies and their affiliates and promoters. Accordingly, we propose amendments to Rule 145(c) and (d) that would: [140]

- Eliminate the presumed underwriter status provision in Rule 145(c) except with regard to Rule 145(a) transactions that involve a shell company (other than a business related shell company); [141] and
- Harmonize the requirements in Rule 145(d) with the proposed

whichever is the latest date. See proposed Rule 144(d)(3)(xii).

[134] 17 CFR 240.10b5–1.

[135] 15 U.S.C. 78j(b).

[136] 17 CFR 240.10b–5. As stated in Rule 10b5–1(a), the ''manipulative and deceptive devices'' prohibited by Section 10(b) and Rule 10b–5 include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

[137] See the Division of Corporation Finance Manual of Publicly Available Telephone Interpretations, Fourth Supplement (May 30, 2001), at Rule 10b5–1; Form 144, Interpretation No. 2.

[138] 17 CFR 240.15c2–11.

[139] See letters from ABA; ASCS; AT&T; BG&E; Brobeck, Phleger & Harrison, LLP (Brobeck); Corporate Counsel; Intel; NY Bar; NY City Bar; SIA; Smith Barney; Sullivan & Cromwell; and Testa Hurwitz.

[140] We also propose to add the definition of ''affiliate'' to paragraph (e) and transfer the definition of ''party'' from paragraph (c) to paragraph (e).

[141] See proposed Rule 145(c). The terms, ''shell company'' and ''business combination related shell company,'' are defined in Securities Act Rule 405. See also Release No. 33–8587 (Jul. 15, 2005) [70 FR 42233].

provisions in Rule 144 that would apply to securities of shell companies.[142]

Under the proposed rule, parties to the transaction in Rule 145(a), other than the issuer, and their affiliates, where a party to the transaction is a shell company, other than a business combination related shell company, could resell securities acquired in connection with the transaction only in accordance with Rule 145(d).

Under proposed Rule 145(d), the persons and parties that are deemed presumed underwriters would be permitted to resell their securities to the same extent that affiliates of a shell company would be permitted to resell their securities under Rule 144, as proposed. The securities could be only sold after any company that was a shell company and a party to the transaction has ceased to be a shell company and at least 90 days have elapsed since the securities were acquired in the transaction, subject to Rule 144 conditions.[143] The 90-day delay is consistent with the 90-day delay that we are proposing in paragraph (i) of Rule 144 relating to the use of Rule 144 for the resale of securities of a former shell company. As in the proposed amendments to Rule 144, after six months have elapsed since the securities were acquired in the transaction, the persons and parties would be permitted to resell their securities, subject only to the current public information condition in Rule 144, provided that the sellers are not affiliates of the issuer at the time of sale and have not been affiliates during the three months before the sale. As in the proposed amendments to Rule 144, one year after the securities were acquired in the transaction the persons and parties would be permitted to freely resell their securities, provided that they are non-affiliates at the time of sale and have not been affiliates during the three months before the sale.

In addition, similar to the proposal for the Preliminary Note in Rule 144, we propose to add a note that Rule 145(c) and (d) are not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.[144] We also propose to clarify language in Rule 145(d) regarding the securities that were acquired in a transaction specified in paragraph Rule 145(a).[145]

Request for Comment

- Should we limit the Rule 145 presumptive underwriter provision only to transactions involving shell companies? Are there any other transactions for which the presumptive underwriter provision should continue to apply? Should we eliminate this provision with respect to transactions involving shell companies?
- Are the proposed amendments to Rule 145(d) appropriate? Should we retain the requirement that the issuer of the securities must meet the current public information requirements of Rule 144(c) for a prescribed period of time before the party is permitted to resell freely its securities in the issuer?
- Are the time periods that the parties and their affiliates must wait before being permitted to resell the securities in proposed Rule 145(d) appropriate? Is it appropriate to require those deemed underwriters to wait at least 90 days before being permitted to resell their securities? Should the requirement be shorter or longer (*e.g.*, 30, 60, 120, or 180 days, or one year)? If so, why?
- Should we add the note that Rule 145(c) and (d) are not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act?

G. Conforming and Other Amendments

1. Underlying Securities in Asset-Backed Securities Transactions

The proposals we make today necessitate consideration of proposed changes to other rules that refer to Rule 144. In particular, we are proposing changes to the asset-backed rules. We adopted Securities Act Rule 190 to clarify when registration of the sale of underlying securities in asset-backed securities transactions is required.[146] One of the basic premises underlying ABS offerings is that an investor is buying participation in the underlying assets. Therefore, if the assets being securitized are themselves securities under the Securities Act (commonly referred to as a ''resecuritization''), the offering of the underlying securities must itself be registered or exempt from registration under the Securities Act. Rule 190 provides the framework for determining if registration of the sale of these underlying assets is required at the time of the registered ABS offering.

One of the requirements of Rule 190 is that the depositor would be free to publicly resell the securities without registration under the Securities Act.[147] This provision currently notes as an example that if the underlying securities are Rule 144 restricted securities, they must meet the condition of 144(k) (*e.g.*, a two-year holding period by non-affiliates). Because of the manner of sale restrictions on asset-backed securities, this example means that in order to meet this condition under Rule 190, at least two years must have elapsed from the date the securities were acquired from the issuer of the underlying securities, or an affiliate, and the date they are pooled and resecuritized pursuant to Rule 190.

Our proposed revisions to Rule 144 with no concurrent revision to Rule 190 would allow privately placed debt or other ABS to be publicly resecuritized in as little as six months after their original issuance without registration of the underlying securities.[148] Given that that Rule 190 addresses the public distribution of privately placed securities via resecuritization transactions, we are proposing revisions to Rule 190 in order to keep the current two-year period for resecuritizations that do not require registration of the underlying securities.[149]

A particular issuance of asset-backed securities often involves one or more publicly offered classes (*e.g.*, classes rated investment grade) as well as one or more privately placed classes (*e.g.*, non-investment grade subordinated classes). In most instances, the subordinated classes act as structural credit enhancement for the publicly offered senior classes by receiving payments after, and therefore absorbing losses before, the senior classes. These unregistered asset-backed securities are typically rated below investment grade or are unrated and as such could not be offered on Form S–3. They typically are not fungible with registered securities from the same offering and are held by very few investors. Further, the trust or issuing entity usually ceases reporting under the Exchange Act with respect to

[142] See proposed Rule 145(d).

[143] The securities acquired by the parties and persons deemed presumed underwriters would be acquired pursuant to an effective registration statement. As in the proposed Rule 144 amendments, this 90-day delay would allow the market extra time to absorb the information in the registration statement before these persons and parties can publicly resell the securities.

[144] See proposed Note to Paragraphs (c) and (d) of Rule 145.

[145] We propose to revise the phrase in Rule 145(d) relating to ''registered securities'' to say instead ''securities acquired in a transaction specified in paragraph (a) that was registered under the Act,'' which we believe is a more accurate description.

[146] 17 CFR 230.190 and Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506].

[147] 17 CFR 230.190(a)(3).

[148] Although the ABS securities we are discussing may be privately placed, the issuing trust will have also registered the sale of other ABS and may have a reporting obligation under Section 15(d) for some time.

[149] This proposed change would not in any way impact the disclosure requirements for resecuritizaitons.

the publicly offered classes after its initial Form 10–K is filed. We understand the privately placed subordinated securities in these transactions are often the types of securities that are pooled and resecuritized into new asset-backed securities.[150]

Due to the particular circumstances of asset-backed securities and the established experience with a two-year period under both the ABS rules and the prior staff positions that were codified by those rules, we are not persuaded at this time that we should shorten the current two-year holding period for restricted securities that are to be sold into publicly-registered securitizations. As a result, we are proposing to amend Rule 190 to provide that if the underlying securities are Rule 144 restricted securities, Rule 144 must be available for the sale of the securities in the resecuritization, except that at least two years must have elapsed since the later of the date the securities were acquired from the issuer of the underlying securities or from an affiliate of the issuer of the underlying securities. Of course, the underlying securities could still be resecuritized if they do not meet this requirement; their sale would just need to be concurrently registered with the offering of the asset-backed securities on a form for which the offering of the class of underlying securities would be eligible. In addition, nothing in Rule 190 as we propose to amend it would lengthen the holding period of the underlying securities for resales other than in connection with publicly registered resecuritizations.

2. Securities Act Rule 701(g)(3)

Securities Act Rule 701(g)(3)[151] outlines the resale limitations for securities issued under Rule 701. The limitations for resales by non-affiliates includes references to paragraphs (e) and (h) of Rule 144, which under the proposed rules, would no longer apply to resales by non-affiliates. Accordingly, it is appropriate to propose a conforming amendment to remove references to Rule 144(e) and (h) from Rule 701.[152]

Request for Comment

- Is the revision to Rule 190 appropriate? Are we correct in understanding that privately placed securities that are resecuritized pursuant to Rule 190 typically were acquired from the issuer two or more years ago? Should we shorten the two-year period for resecuritizations, but to not as short as the six months we propose for certain other resales under Rule 144? What interim length would be appropriate (*e.g.*, one year)?
- Should we limit our revision to just underlying securities that are asset-backed securities and allow non-asset-backed securities such as corporate debt to be securitized without registration in the revised Rule 144 periods?
- Are there other instances where our rules reference Rule 144 or Rule 145 that would warrant change as a result of our proposed revisions to those rules?
- Is the proposed change to Rule 701 appropriate?

III. Coordination of Form 144 Filing Requirements with Form 4 Filing Requirements

Rule 144 requires a seller to transmit a Form 144 for filing concurrently with either the placing with a broker of an order to execute a sale of securities in reliance upon Rule 144 or the execution directly with a market maker of such a sale, if the sale has exceeded certain filing thresholds.[153] The proposed amendments above eliminate the Form 144 filing requirement for non-affiliates, and therefore, the Form 144 filing requirements would apply only to affiliates of the issuer.[154]

Many affiliates of an issuer under Rule 144 are also insiders of the issuer under Section 16 of the Exchange Act.[155] Pursuant to Exchange Act Rule 16a–3,[156] insiders are required to report changes in beneficial ownership, including purchases and sales of securities, on Form 4.[157] Some of the items required by Form 144 are duplicative of the requirements on Form 4. The Sarbanes-Oxley Act of 2002[158] changed the Form 4 filing deadline to two business days after the transaction is executed. As a result, affiliates selling securities under Rule 144 often are required to file a Form 4 just a few days after they file a Form 144 to report information regarding the same sale of securities.

In order to reduce duplicative requirements on individuals who are subject to both the Form 144 filing requirements and the Section 16 filing requirements, we solicit comment on how best to coordinate the Form 144 filing requirement with the filing requirements under Section 16 of the Exchange Act for an affiliate who wishes to rely on Rule 144 and is subject to the Section 16 filing requirements.[159] Specifically, we solicit comment on the following:

- Revising the filing deadline for Form 144 to coincide with the filing deadline for Form 4 (before the end of the second business day following the day on which the subject transaction was executed);[160]
- Permitting affiliates subject to Section 16 filing requirements to, at their option, satisfy their Form 144 filing requirements by timely filing a Form 4 to report the sale of their securities; and
- Revising Item 701 of Regulations S–B and S–K[161] to require additional disclosure about the resale status of securities issued in unregistered transactions at the time the company first issues the securities.

While Form 144 and Form 4 both provide information regarding the title of the class of securities sold, the number of shares subject to sale, the aggregate market value of those shares, and the date of sale, there are, however, some differences in the disclosure required by Form 144 and Form 4 with respect to sales of securities. For example, Form 4 does not request some information that is required to be provided in Form 144, including:

- The date that the securities were acquired;
- The nature of the acquisition transaction;
- The name of the person from whom the securities were acquired;
- The amount of securities acquired;
- The date of payment for the securities; and
- The nature of payment.

In addition, while Form 144 requires disclosure regarding securities sold in the three months prior to the sale, if a person has not been subject to the Section 16 reporting obligations for three months, that person's Section 16

[150] See Saskia Scholtes, *Left in the Dark on Debt Obligations,* FT.com (Mar. 27, 2007) (describing privately placed collateralized debt obligations (CDOs) vehicles used to repackage portfolios of other debt and noting that ''the biggest category of deals, at 44%, consisted of CDOs backed by asset-backed securities such as those backed by subprime mortgages'').

[151] 17 CFR 230.701(g)(3).

[152] See proposed Rule 701(g)(3).

[153] See Rule 144(h). As noted above, we are proposing to raise the thresholds that trigger the Form 144 filing requirement.

[154] See Section II.B above.

[155] Section 16 requirements apply to every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security (other than an exempted security) which is registered pursuant to Section 12, or who is a director or an officer of the issuer.

[156] 17 CFR 240.16a–3.

[157] 17 CFR 249.104 and 17 CFR 274.203.

[158] Pub. L. No. 107–204, 116 Stat. 745.

[159] See also letter from Corporate Counsel.

[160] See Exchange Act Rule 16a–3(g).

[161] 17 CFR 228.701 and 229.701. We recently proposed to integrate Regulation S–B disclosure requirements into Regulation S–K disclosure requirements. See SEC Press Release No. 2007–102 (May 23, 2007), available at *http://www.sec.gov/news/press.shtml.*

reports would not provide complete information regarding sales of securities in the last three months. Also, Form 4 does not contain the proposed representation that is given by security holders that they do not know material adverse information about the company as of the date that they adopted a plan under Exchange Act Rule 10b5–1 or gave trading instructions, as applicable.[162]

We preliminarily believe that if we permit a security holder to satisfy a Form 144 filing requirement by filing a Form 4, Form 4 should be amended to require the security holder that wishes to satisfy a Form 144 filing requirement to provide the following information regarding Rule 144 compliance in Form 4:

- The date that the securities were acquired (for purposes of the holding period calculation under Rule 144(d)); [163]
- The name of the person from whom the securities were acquired;
- The date of payment for the securities; and
- The nature of the payment.

Regarding the items in Form 144 relating to the nature of the acquisition transaction and the amount of securities acquired, we believe that such information or similar information could be available in a previously filed Form 4 reporting the purchase of the securities, unless the security holder was not subject to Section 16 requirements at the time the securities were acquired. We solicit comment on which Form 144 disclosure items we should preserve and transfer from Form 144 to Form 4, if we were to permit security holders to satisfy their Form 144 obligations with a Form 4.

We also solicit comment on whether Form 4 should be expanded to include these additional disclosure items. We have concerns, however, that simply combining the required disclosures on the two forms into Form 4 may be confusing to filing persons as well as other market participants. For example, because some of the information required on Form 144 is not relevant to all persons filing Form 4, a person filing a Form 4 who is not required to file a Form 144 should not be required to provide that information. Similarly, the two forms also can report different events. Form 4 reports both purchases and sales, while Form 144 reports only sales. In short, much of the information in each form may not be relevant to filers of the other form and may cause confusion among filers of the forms and investors.

Because Form 4 is an electronic filing on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (EDGAR), one alternative may be to implement programming changes to EDGAR to modify the user interface for Form 4 in such a way as to provide access to the portion of that form that would request Rule 144 information only if the filer affirmatively asserts that he or she wishes to satisfy his or her Rule 144 notice obligations on Form 4. Programming changes also could be made to enable a filer to enter all relevant information on one user interface which would automatically create two separate filings, one on Form 4 and the other on Form 144. To the extent possible, we seek to reduce filing requirements without losing important disclosure or causing confusion to filers and users of Form 4 and Form 144.

Such coordination also would require a revision to the statement in Rule 144(g) that the broker would deemed to be aware of any facts or statements contained in the notice required by Rule 144(h).[164] If a security holder has filed a Form 4 to satisfy his or her Form 144 filing requirement, we preliminarily believe that a broker should also be deemed to be aware of any facts contained in a Form 4 that are relevant to Rule 144, if this is the approach we adopt in the end. We request comment on this point and how to best address this issue.

Because some information on Form 144 would no longer be provided if we were to adopt these amendments, we believe that additional disclosure in registration statements or periodic reports filed by the issuer of the securities may help to inform the market about the number of restricted securities available for resale. We solicit comment on a possible amendment to Item 701 of Regulations S–K and S–B that would require disclosure regarding: (1) Whether the securities issued in unregistered transactions were restricted securities, as defined in Rule 144(a)(3); (2) if the securities were not restricted securities, the resale status of such securities under Rule 144; and (3) if the securities were restricted securities, the first date when such securities could be deemed to meet the holding period requirement in Rule 144(d).

Request for Comment

- Should we permit persons who are subject to Section 16 reporting obligations to provide the disclosure required by Form 144 on Form 4 instead? Is there any particular information currently disclosed on Form 144 that would otherwise not be disclosed on Form 4 which industry participants or security holders want or find material? If so, what is that information?
- Could relevant information be reported elsewhere? Should we revise Item 701 of Regulations S–K and S–B to require added disclosure in a company's registration statement or periodic reports about the resale status of securities issued in unregistered transactions at the time when the company first sells the securities? What other types of disclosure regarding restricted securities (other than the resale status of the securities) would be useful to the market? Would disclosure regarding the securities at the time they were first issued be beneficial, or would such disclosure be premature and speculative?
- If we permit persons subject to Section 16 reporting obligations to file a Form 4 in lieu of a Form 144, is it appropriate to delay the filing deadline of Form 144 to two business days after the transaction is completed? [165] Is there a benefit to having this information at an earlier time, rather than two business days after the transaction is completed? How do market participants use the information in Form 144 today?
- If we expand Form 4 by adding requirements from Form 144, would Form 144 information contained in Form 4 be more difficult to find? Should we provide a means to allow persons searching on EDGAR to determine whether a Form 4 is being used to disclose Form 144 information (*e.g.*, a checkbox on Form 4)?
- Should we mandate that Form 144 be filed electronically on EDGAR when the form relates to the securities of a reporting company?
- Should we expand Form 4 to add disclosure requirements from Form 144 for these purposes? If so, which disclosures from Form 144 should we retain? Should we modify Form 4 to incorporate them or should this

[162] See Section II.E.7 of this release.

[163] We believe that this item should be added to Form 4, because if the security holder was deemed to have acquired the securities on an earlier date under the tacking provisions in Rule 144(d), the date that the security holder acquired the securities for Rule 144 purposes could differ from the date that would have been previously reported on the Form 4 covering the acquisition transaction.

[164] Existing Note (i) of Rule 144(g)(3) also states that the broker, for his own protection, should obtain and retain in his files a copy of the notice required by paragraph (h).

[165] Such an amendment would also necessitate revising the rule to modify or delete the requirement in proposed Rule 144(h) that the security holder filing the notice shall have a bona fide intention to sell the securities referred to therein within a reasonable time after the filing of such notice.

information be provided as a supplement to Form 4? For example, should Form 144 information be in a new separate table? Would a combined Form 4/Form 144 be confusing to investors, other persons using the forms, or persons submitting the forms?

• Should we require only persons that seek to satisfy both their Rule 144 and Form 4 requirements with one form to fill out all of the questions on a combined Form 4/Form 144? If so, what mechanisms can we use to prevent confusion and assist filers in providing only the information that they are required to provide? For example, should we implement programming changes to EDGAR that would electronically filter out any filers not seeking to report information pursuant to Rule 144 on their Form 4 by withholding questions relevant to Rule 144 unless the filer indicates that he or she intends to provide such information on Form 4?

• Would combining the forms and delaying the Rule 144 filing date make it more difficult for brokers to perform the inquiries required in order to qualify the transaction as a ''brokers' transaction''? Do brokers and transfer agents need to see Form 144 information prior to executing the transaction? Is there a better way for these parties to obtain this information prior to executing the transaction other than a separate filing? Should brokers be deemed to be aware of facts contained in Form 4 to the extent that the form is filed for Rule 144 purposes?

• Should we implement programming changes to EDGAR that would enable security holders to create two separate filings, one Form 4 and one Form 144, at the same time by completing only one submission to EDGAR? Would this lessen the probability of confusion that would result if items on Form 144 were transferred to Form 4?

IV. General Request for Comments

We request and encourage any interested person to submit comments regarding:

• The proposed rule changes that are the subject of this release;

• Additional or different changes; or

• Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of registrants, investors and other users of information about the resale of restricted securities and securities owned by affiliates of the issuer.

V. Paperwork Reduction Act

A. Background

Our proposals contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). [166] We are submitting the proposed revisions to Form 144 to the Office of Management and Budget (OMB) for review in accordance with the PRA.[167] The title for the information collection is ''Notice of Proposed Sale of Securities Pursuant to Rule 144 under the Securities Act of 1933'' (OMB Control No. 3235–0101). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number.

B. Summary of Proposed Amendments

The proposed amendments would eliminate the need for non-affiliates of the issuer to file Form 144. In addition, the proposal would raise the filing threshold for Form 144 to 1,000 shares or $50,000 worth of securities during a three-month period. Currently, the Form 144 filing threshold is 500 shares and $10,000. Form 144 may be filed in paper or electronically using the EDGAR filing system. The proposed amendments also include two limited changes to Form 144.[168] The primary purpose of this collection of information is the disclosure of a proposed sale of securities by security holders deemed not to be engaged in the distribution of the securities. The filings are publicly available. Persons reselling securities in reliance on Rule 144 are the respondents to the information required by Form 144. The information collection requirements imposed by Form 144 are mandatory.

Currently, an estimated 60,500 notices on Form 144 are filed annually for a total burden of 121,000 hours.[169] If adopted, the amendments would eliminate the need for non-affiliates to ever file a Form 144. We currently estimate that approximately 45%, or 27,127, of the total 60,500 filings are filed by non-affiliates.[170] Under the proposals, these filings would no longer be required. In addition, we estimate that increasing the Form 144 filing thresholds from 500 shares or $10,000 to 1,000 shares or $50,000 would reduce the number of filings by affiliates by approximately 5%, or 3,025 filings.[171] We estimate that each notice on Form 144 imposes a burden for purposes of the Paperwork Reduction Act of two hours.[172] Therefore, we estimate that the proposals would reduce the burden on selling security holders by approximately 60,300 burden hours.[173]

C. Solicitation of Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–11–07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–11–07, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

[166] 44 U.S.C. 3501 *et seq.*

[167] See 44 U.S.C. 3507 and 5 CFR 1320.11.

[168] We propose to amend Form 144 to include information regarding security holders' hedging activities and to allow security holders to represent that they do not know of material adverse information about the company as of the date they adopt a plan under Exchange Act Rule 10b5–1.

[169] This reflects current OMB estimates.

[170] The Office of Economic Analysis obtained data from the Thomson Financial Wharton Research Database. The estimate is based on information contained in notices on Form 144 filed in 2005.

[171] This estimate is based on information contained in notices on Form 144 filed in 2005.

[172] This is the same as the current OMB estimate.

[173] (27,127 filings + 3,025 filings) * 2 hours/filing = 60,304 hours.

VI. Cost-Benefit Analysis

A. Background

Rule 144 under the Securities Act of 1933 creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. Specifically, a selling shareholder is deemed not an underwriter under Section 2(a)(11), and therefore may take advantage of the Section 4(1) exemption and need not register its sale of securities, if the sale complies with the provisions of the rule. Rule 145 requires Securities Act registration of certain types of business combination transactions. Rule 145 contains a safe harbor provision similar to Rule 144 for presumed underwriters who receive securities in such a business combination transaction. Form 144 is required to be filed by persons intending to sell securities in reliance on Rule 144 if the amount of securities to be sold in any three-month period exceeds 500 shares or other units or the aggregate sales price exceeds $10,000. The primary purpose of the form is to publicly disclose the proposed sale of securities by persons not deemed to be engaged in the distribution of the securities.

B. Description of Proposal

We are proposing amendments to Rule 144, Rule 145, and Form 144 that would accomplish the following:

- Simplify the Preliminary Note to Rule 144 and text of Rule 144, using plain English principles;
- Reduce the Rule 144(d) holding period for restricted securities of reporting companies to six months for both affiliates and non-affiliates;
- Significantly reduce requirements applicable to non-affiliates of reporting and non-reporting companies so that:
  - Non-affiliates of reporting companies would be subject only to the current public information requirement after meeting the six-month (or more depending on hedging activities) holding period and up until one year since the date they acquired their securities; and
  - Non-affiliates of non-reporting companies would be able to resell freely after the one-year holding period;
- Require that security holders toll the holding period during the time they enter into certain hedging transactions, but in no event would the holding period extend beyond one year;
- Eliminate the ''manner of sale'' limitations with respect to debt securities;
- Increase the thresholds that would trigger a Form 144 filing requirement;
- Codify the staff's positions, as they relate to Rule 144, concerning the following issues:
  - Inclusion of securities acquired in a transaction under Section 4(6) of the Securities Act in the definition of ''restricted securities,''
  - The effect that creation of a holding company structure has on a security holder's holding period,
  - Holding periods for conversions and exchanges of securities,
  - Holding periods for cashless exercise of options and warrants,
  - Aggregation of a pledgee's resales with resales by other pledgees of the same security for the purpose of determining the amount of securities sold,
  - The extent to which securities issued by reporting and non-reporting shell companies are eligible for resale under Rule 144, and
  - Representations required from security holders relying on Rule 10b5–1(c); and
- Eliminate the presumptive underwriter status in Securities Act Rule 145, except for transactions involving a shell company, and harmonize the resale requirements in that rule with the proposed resale requirements for securities of shell companies in Rule 144.

We also solicit comment on how best to coordinate the Form 144 filing deadline with the Form 4 filing deadline and permit persons who are subject to Section 16 to meet their Form 144 filing requirement by filing a Form 4.

C. Benefits

If adopted, the proposed amendments should reduce the cost of complying with Rules 144 and 145. We have examined the Forms 144 that have been filed with the Commission since 1997.[174] In 2006, the volume of transactions filed under Rule 144 exceeded $71 billion, and more than 50% of U.S. public companies, large and small alike, have reported every year at least one transaction on Form 144. Reducing the burden associated with these transactions can reduce the cost of capital to these companies.

One item on Form 144 requires security holders to provide information on the nature of the acquisition transaction. Some Form 144 filers acquire their securities from the company as a private investment, while others receive the securities as part of their employee awards, or as a form of payment for services to the company. Reducing the burden associated with selling these securities not only can reduce the cost of raising capital, but also may increase the value of these securities in non-cash transactions and reduce the cost of services and employment.

For the most part, transactions that were filed on Form 144 have been small. In 2006, about 90% of the transactions had a market value of less than $2 million and 99% of these transactions had a market value of less than $20 million. More than half of the investors report total annual transactions of a market value of less than $240,000 with any specific company. Thus, reducing the costs associated with filing Form 144 and raising the thresholds that trigger a Form 144 filing requirement are likely to affect many small investors.

We expect that the increase in the value of these securities would come from several sources under the proposed rule. The first is the increase in the liquidity of the securities. Investors, suppliers, or employees who are restricted from selling securities and who cannot hedge their positions are generally exposed to more risk than those who are not subject to such limitations, and generally require higher compensation (or a larger discount) for this risk.[175] We should also expect that the longer the non-trading period, the higher the premium that investors charge for their lack of liquidity.[176]

[174] These filings were obtained through Thomson Financial's Wharton Research Database which includes Forms 144 filed from 1996 through 2007.

[175] There is also evidence that the non-trading period is associated with the premium that investors charge for lack of liquidity. See, for example, Silber, W.L., *Discounts on restricted stock: The impact of illiquidity on stock prices*, Financial Analysts Journal, 47, 60–64 (1991). Several studies have attempted to separate the discount associated with the non-transferability of the shares from other factors that affect the discount. See, for example, Wruck, K.H., *Equity Ownership Concentration and Firm Value, Evidence from Private Equity Financings,* Journal of Financial Economics, 23, 3–28 (1989); Hertzel, M., and R.L. Smith, *Market Discounts and Shareholder Gains for Placing Equity Privately,* Journal of Finance, 459–485 (1993); Bajaj, M., Denis, D., Ferris, S.P., and A. Sarin, *Firm Value and Marketability Discounts,* Journal of Corporate Law, 27, 89–115 (2001); Finnerty, J.D., *The Impact of Transfer Restrictions on Stock Prices* (Fordham U. Working Paper, 2002). The average discounts attributed to lack of transferability across these studies is estimated between 7% and 20%. Other factors that could affect the discount are the amount of resources that private investors need to expend to assess the quality of the issuing firm or to monitor the firm, the ability of the investors to diversify the risk associated with the investment, whether the investors are cash constrained, the financial situation of the firm, etc.

[176] We are not aware of any empirical work that examines the effect of shortening the holding period in Rule 144 on the discount. Longstaff (1995) calculates an upper bound for percentage discounts for lack of marketability. According to his model, drops in a restriction from two years to one year and from one year to 180 days are associated each with a 30% drop in the discount. Longstaff, F.A., *How Much Can Marketability Affect Security Values?* Journal of Finance, 50, 1767–1774 (1995).

Thus, reducing the time limit for selling these securities in the market is likely to reduce the discount that investors will charge for these securities, or the amount of securities that the company will need to provide for services. The actual reduction in this cost of capital will depend on the extent to which the six-month limit has a binding impact on security holders' decisions to resell their securities, and the extent to which investors, employees, or service providers can protect themselves against such exposure.

Also, resale transactional costs for non-affiliate selling security holders should decrease as a result of the removal of all conditions other than the holding period and the current public information condition applicable to non-affiliates. Reducing restrictions on resales by non-affiliates would streamline the rule and reduce the complexity of the rule. This and other simplifications of the rule and Preliminary Note to Rule 144 should make it easier to understand and follow, reducing the time that investors must spend analyzing whether or not they can rely on the rule as a safe harbor from the requirement to register the resale of their securities. However, because we are proposing to shorten the holding period only with respect to securities of reporting companies, the proposals would add some additional complexity that would diminish the effect of simplifying the other aspects of the rule.

If the proposals are adopted, non-affiliates would no longer have to file a Form 144. Therefore, they would save the cost of preparing and filing this form, as well as the transactional costs related to Rule 144's manner of sale requirements and volume of sale limitations. The increase in the Form 144 filing thresholds should further reduce the number of transactions for which a Form 144 needs to be filed for affiliates of the issuer. This would eliminate the cost of filing the form for transactions that fall below the thresholds.

The elimination of the manner of sale limitations would reduce costs for debt security holders. It is difficult to estimate the amount of reduction. Among the Forms 144 filed in 2005, we found at least 200 filings covering a sale of debt securities, although we believe the actual number of debt securities resales relying on Rule 144 may be higher than this.[177] The elimination of the manner of sale limitation may also reduce brokers' fees, and therefore result in a reduction of revenue for brokers.

The codification of existing staff positions should create no added cost to companies or investors because, substantively, there is no expected change in practice. However, these codifications should provide substantial benefit to the investing community by clarifying and better publicizing the staff's positions. Greater clarity and transparency of our rules should reduce security holders' transactional costs by eliminating uncertainty and reducing the need for legal analysis.

The proposed amendments to Rule 145 remove what we preliminarily believe are unnecessary restraints on the resale of securities by parties or their affiliates to a merger, recapitalization, or other transaction listed in Rule 145(a). The proposed amendments to Rule 145 would reduce costs incurred by companies, parties to the transaction, and their affiliates to comply with the resale and other restrictions of the rule. Retaining the presumptive underwriter provision for transactions involving shell companies is intended to afford investors with additional protection against manipulative practices or abusive sales by parties to the transaction and their affiliates after the completion of the Rule 145 transaction.

The primary benefit of permitting an affiliate to satisfy a Form 144 filing requirement by timely filing a Form 4 reporting the sale of securities would be to reduce duplicative paperwork costs incurred by these individuals. We solicit comment on a number of alternatives to address this point, including which items on Form 144 could be transferred to Form 4 in order to ascertain which items on Form 144 are more important to the market and should therefore be preserved. While the market would receive the information later if the Form 144 filing deadline were to be revised to coincide with the Form 4 filing deadline, the information that would have been contained on Form 144 may be more easily accessible to users of the information, if transferred to Form 4, which is filed electronically.

D. Costs

The proposal to reintroduce a provision that tolls the holding period if the shareholder had entered into a transaction that hedges the economic risk of ownership of the securities may increase the cost of a private offering. The proposal provides that regardless of the presence of such hedging, the holding period would not extend beyond one year, which is the current holding period before security holders may begin to sell their restricted securities. After one year, affiliates would be able to trade subject to the conditions to which they are subject under the current rules. However, the tolling provision may add a layer of complexity to calculating whether the holding period requirement has been met between the six-month and one-year marks because subsequent purchasers must determine whether previous owners of the securities have entered into such hedging transactions. We seek to minimize the burden on security holders of making this determination by providing, under the proposed rules, that the holding period need not be suspended if the security holder reasonably believes that the previous owner has not engaged in hedging transactions. We also believe that the ceiling on the proposed tolling provision minimizes burdens. For example, a security holder who wishes to rely on proposed Rule 144 but is unable to determine the previous owner's hedging activities would be able to omit the period in which the previous owner held the securities in the calculation of the holding period or be subject to a maximum one-year holding period, as under the current rule, and a non-affiliate security holder would be permitted to resell the securities after one-year, regardless of any hedging activities in connection with the securities. Also, as provided under the proposed revision to Note (ii) of Rule 144(g)(3), brokers would also be required to inquire into security holders' hedging transaction which may increase some costs for them, although we preliminarily believe such costs would not be significant.

Under the proposed amendments, after one year, non-affiliates would be permitted to sell their restricted securities freely without being subject to any other condition. One concern is whether, in cases of the securities of a non-reporting company, relieving non-affiliates from compliance with Rule 144's existing conditions, including the current public information condition requiring that there be adequate available current information with respect to the issuer of the securities, would lead to abuse.

Reducing the requirements under Rule 144 might also cause a substitution effect, where companies might choose to rely more on private transactions than on public transactions to raise capital. There is also the risk that the market would not be informed about the nature of these transactions, given that these transactions would not need to be registered and given the changes to the

[177] We base the estimate on number of filings that indicated that the securities were debt securities in the section of the Form 144 that requests information on the nature of the acquisition transaction.

Form 144 filing requirements. The market may also be less informed, given that restricted securities of reporting companies could be resold by non-affiliates earlier without complying with the condition that current information on the issuer of the securities be publicly available, and restricted securities of non-reporting companies could be resold by non-affiliates without ever complying with the current public information condition. This, in return, could lead to a less efficient price formation. Direct negotiated deals with companies could also lead to informational advantage of some investors. Reducing the requirements could also lead to movement of certain investors from public transactions to private transactions. The effect of the proposed rule on these movements and their effect on investor wealth are thus subject to many factors.

While these are potential costs, we believe that they are justified by the potential benefits of the proposal and may not be significant in the aggregate. First, there is some evidence that, on average, the announcement of resales under Rule 144 by security holders has no adverse effect on stock prices, suggesting that the market does not attribute an information advantage to these security holders at the time of selling.[178] Second, the rule provides several barriers to selling restricted securities by affiliated investors to alleviate these concerns. Third, to the extent that privately negotiated deals give private investors lucrative terms at the expense of public investors, public investors may avoid such companies, and these companies may eventually be worse off. We solicit comment as to whether information regarding the resale status of an issuer's securities should be provided by other means such as pursuant to Item 701 of Regulation S–K or Regulation S–B.

As noted above, the proposed amendments to Rule 145 would reduce costs incurred by companies, parties to the transaction, and their affiliates to comply with the resale and other restrictions of the presumed underwriter provision. The magnitude of such reduction may vary.

E. Request for Comments

We seek comments and empirical data on all aspects of this Cost-Benefit Analysis. Specifically, we ask the following:

- What would be the effect on the liquidity discount for privately issued securities of reducing the holding period for securities of reporting companies to six months? Would this effect significantly increase a company's ability to raise capital in private securities transactions? Would the reduced holding period have an impact, in particular, on the ability of smaller businesses to raise capital?
- Would shortening the holding period to six months for reporting companies increase the frequency of abusive transactions where the security holder has not taken a sufficient economic risk of investment? What if the holding period for non-reporting companies is shortened to six months as well?
- What is the impact of eliminating the conditions to which non-affiliates are currently subject for a period of time prior to free public resale (i.e., the current public information requirement, the volume limitations, the manner of sale limitations, and the notice requirement)? Do any of the current conditions to which non-affiliates are subject provide a measurable benefit to the market? For example, would buyers of restricted securities of non-reporting companies be disadvantaged because sellers relying on Rule 144 are no longer subject to the condition requiring that current information of the issuer be publicly available?
- Who uses the information filed on Form 144? Would the proposed elimination of the requirement to file a Form 144 by non-affiliates and the proposed filing thresholds result in a loss of important information for these individuals?
- What would be the effect of reintroducing the tolling concept to Rule 144? How would it affect a company's ability to raise capital? Would the tolling provision impose undue costs on brokers and security holders due to the additional duties relating to tracking the security holders' or previous owners' hedging transactions? Would the tolling provision impose costs on transfer agents?
- What would be the impact of the proposed elimination of the limitations on the manner of sale for debt securities? How much would debt security holders save in fees that they would no longer incur under the proposed amendments? What impact would the elimination have on brokers? Would this proposal increase the burden on transfer agents?
- What are the benefits and costs of codifying the staff's existing interpretations under Rule 144?
- What is the effect of the elimination of the presumptive underwriter provision in Rule 145 for all transactions except those involving a shell company?

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

Securities Act Section 2(b)[179] requires us when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments are intended to reduce regulatory requirements for the resale of securities and simplify the process of reselling such securities. Currently, a shareholder owning restricted securities must wait until at least one year after the securities are last sold by the issuer or an affiliate before that shareholder can rely on Rule 144 safe harbor to resell those securities. The amendments would reduce this holding period to as little as six months for restricted securities of Exchange Act reporting companies if the security holder did not engage in hedging transactions with respect to the securities. The holding period would extend past six months to the extent the security holder engaged in hedging transactions, but in no event would the holding period extend beyond one year. Restricted securities of non-reporting companies would continue to be subject to a one-year holding period. A shorter holding period for restricted securities of reporting companies may increase the liquidity of securities sold in private transactions. This could result in increased efficiency in securities offerings because companies will be able to sell securities in private offerings at prices closer to prices that they may obtain in public markets, without the need to register those securities, and otherwise obtain better terms in private offerings. We also believe that this would promote capital formation, particularly for smaller companies, because the proposals would increase the liquidity of securities sold in private transactions. The amendments should increase a company's ability to raise capital in private securities transactions, which may improve the competitiveness of those companies, particularly smaller businesses that do not have ready access to public markets.

We do not believe that the proposed tolling provision that suspends the holding period while a security holder

[178] Osborne, Alfred E., *Rule 144 Volume Limitations and the Sale of Restricted Securities in the Over-The-Counter Market,* Journal of Finance, 37,505–523 (1982).

[179] 15 U.S.C. 77b(b).

is engaged in hedging transactions places an undue burden on competition. The proposed tolling provision also may decrease efficiency somewhat by discouraging security holders from engaging in hedging with respect to their securities, however this effect should not be significant, as the proposed tolling provision would apply only for up to six months.

The other proposed amendments to Rule 144 generally should increase efficiency and assist in capital formation. We believe that the proposed elimination of most of the Rule 144 conditions applicable to non-affiliates may further increase the liquidity of privately sold securities. We anticipate that the proposed elimination of the manner of sale limitations for debt securities would provide security holders with greater flexibility in the resale of their securities, thereby increasing efficiency. Raising the Form 144 filing thresholds, as proposed, should also improve efficiency by reducing security holders' paperwork burden.

Under the proposed amendment to Rule 145, individuals and small entities owning stock in companies that engage in transactions specified in Rule 145(a) would no longer be subject to the presumptive underwriter provision, except in the case of transactions involving a shell company. These proposed amendments should improve competitiveness of many small entities by permitting them to resell securities without the restrictions imposed by the current rule.

We request comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible.

Section 23(a)(2) of the Exchange Act [180] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We do not believe that the proposed coordination of the Form 144 filing requirements with Form 4 filing requirements, if implemented, would cause a burden on competition. We request comment on whether such amendments would have competitively harmful effects, and how we can minimize those effects.

[180] 15 U.S.C. 78w(a)(2).

VIII. Initial Regulatory Flexibility Analysis

We have prepared this Initial Regulatory Flexibility Analysis in accordance with Section 603 of the Regulatory Flexibility Act.[181] This analysis relates to the proposed amendments to Rules 144 and 145 and Form 144 under the Securities Act.

A. Reasons for, and Objectives of, Proposed Action

Rule 144 creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. If a selling security holder satisfies its conditions, that selling security holder may resell his or her securities publicly without registration and without being deemed an underwriter.

Rule 145 governs the offer and sale of certain securities received in connection with reclassifications, mergers, consolidations and asset transfers. It imposes restrictions similar to Rule 144 on a party to such transactions and to persons who are affiliates of that party at the time the transaction is submitted for vote or consent, with regard to securities acquired in that transaction. Rule 145 contains holding period requirements similar to those in Rule 144.

Form 144 is required to be filed by persons intending to sell securities in reliance on Rule 144 if the amount of securities to be sold in any three-month period exceeds 500 shares or other units or the aggregate sales price exceeds $10,000. The primary purpose of the form is to publicly disclose the proposed sale of securities by persons deemed not to be engaged in the distribution of the securities.

We are proposing amendments that would make Rule 144 easier to understand and apply. We propose to streamline both the Preliminary Note to Rule 144 and the rule. In addition to codifying several staff interpretive positions, the proposals would reduce the Rule 144 holding period and substantially reduce requirements for non-affiliates. The proposals would reintroduce a provision tolling the holding period but only up to one year after the acquisition of the securities from the issuer or an affiliate of the issuer, which is the holding period under the current rules.

The reduction of the Rule 144 holding periods for restricted securities of reporting companies for affiliates and non-affiliates should increase the liquidity of privately issued securities, enabling companies to raise private capital more efficiently. An increase in the Form 144 filing threshold would take into account the effects of inflation since the last amendment to that provision in 1972. Although the codification of several staff interpretive positions is not intended to substantively change the rules, they should simplify analyses under Rule 144 by compiling these interpretations in one readily accessible location. The objectives of the proposed amendments are to simplify Rule 144, to reduce its burdens on investors where consistent with investor protection, and to facilitate capital formation.

The release solicits comment on how best to coordinate the Form 144 filing deadline with the Form 4 filing deadline and permit a person who is subject to Section 16 of the Exchange Act to meet a Form 144 filing requirement with a Form 4 filing, to the extent possible. Such amendments could simplify filing requirements for Section 16 persons even further by allowing them to file only one form to meet the requirements of both Rule 144 and Form 4.

[181] 5 U.S.C. 603.

B. Legal Basis

The amendments are proposed pursuant to Sections 2(a)(11), 4(1), 4(4), 7, 10, 19(a) and 28 of the Securities Act, as amended.

C. Small Entities Subject to Rule

The proposed rules would affect both small entities that issue securities and small entities that hold such securities. An issuer, other than an investment company, is considered a ''small business'' for purposes of the Regulatory Flexibility Act if that issuer:

- Has assets of $5 million or less on the last day of its most recent fiscal year, and
- Is engaged or proposing to engage in a small business financing.[182]

An issuer is considered to be engaged in a small business financing if it is conducting or proposes to conduct an offering of securities that does not exceed the dollar limitation prescribed by Section 3(b) [183] of the Securities Act. This dollar amount is currently $5 million. When used with reference to an issuer or person, other than an investment company, Exchange Act Rule 0–10 [184] defines small entity to mean an issuer or person that, on the last day of its most recent fiscal year, had total assets of $5 million or less.

We are aware of approximately 1,100 Exchange Act reporting companies that currently satisfy the definition of ''small

[182] 17 CFR 230.157. See 5 U.S.C. 601(2).

[183] 15 U.S.C. 77c(b).

[184] 17 CFR 240.0–10.

business'' and may be affected by the proposed amendments as issuers.[185] The proposed amendments also may affect companies that are small businesses, but that are not subject to Exchange Act reporting requirements. As noted above, we currently estimate that approximately 60,500 notices on Form 144 are filed annually.[186] The Commission does not collect information about the size of private companies about which a Form 144 is filed, but some of these non-reporting issuers may be ''small.'' The proposed tolling provision and the proposals to eliminate the manner of sale limitations may also affect brokers that qualify as small entities. We estimate that 910 broker-dealers registered with the Commission are small entities for the purposes of the Regulatory Flexibility Act.[187] We ask for comments regarding an estimate of the number of small entities that may be affected if the proposed amendments are adopted.

D. Reporting, Recordkeeping and Other Compliance Requirements

We expect several of the proposed amendments to reduce the number of Form 144 filings made to the SEC by selling security holders. These proposed amendments are:

- Elimination of all Rule 144 requirements, other than the holding period and the current public information requirement for six months, for non-affiliates; and
- Increased share number and dollar amount thresholds for filing Form 144.

As a result of the elimination of all requirements for non-affiliate security holders, other than the holding period and the current public information requirement, non-affiliates no longer would have to file a Form 144, regardless of the amount of securities sold. We estimate that 45% of the Form 144 filings that we currently receive are from non-affiliates. Therefore, this particular amendment should result in a corresponding reduction in Form 144 filings.

The increase in the filing threshold for Form 144 should decrease the number of Form 144 filings filed by affiliates. Based on studies by the Commission's Office of Economic Analysis, we expect the number of Form 144 filings to decrease by approximately 5%, or 3,025 filings, if the thresholds are increased to 1,000 shares or $50,000 in sales price.

Clerical skills are necessary to complete Form 144.

Also, because the proposed amendments would significantly reduce the conditions in Rule 144 to which non-affiliates are subject, non-affiliates would also no longer be required to keep track of compliance with those conditions. Non-affiliates with securities of both reporting companies and non-reporting companies would no longer be required to comply with the manner of sale limitations and volume limitations. Non-affiliates of non-reporting companies would no longer be required to comply with the requirement that there be current information regarding the issuer that is publicly available.

The reintroduction of the tolling provision would require the security holder and brokers to determine whether the security holder or a previous owner had engaged in hedging transactions with respect to the securities, which may require them to maintain some additional documentation. However, the holding period need not be suspended if the security holder reasonably believes that the previous owner had not engaged in hedging transactions in the securities. Also, a determination regarding hedging activities would only need to be made where the issuer of the securities is a reporting company and the securities are sold before a year has passed since the date the securities were acquired from the issuer or affiliate.

The proposal to eliminate the manner of sale limitation for debt securities would also obviate the need for security holders to determine whether such condition has been met in the resale of their debt securities. The amendments to Rule 145 eliminate the need for parties to a Rule 145(a) transaction or their affiliates to determine whether they have met the resale provisions of Rule 145, except when the transaction involves a shell company.

E. Overlapping or Conflicting Federal Rules

No current federal rules duplicate, overlap or conflict with the rules and forms that we are proposing, except that persons subject to the reporting requirements under Section 16 of the Securities Exchange Act of 1934 may need to file reports on Form 4 as well as Form 144 under certain circumstances. However, the class of Form 144 filers is different than that for Form 4 filers because affiliates of companies not subject to the Exchange Act reporting requirements must file Form 144, but not Form 4. Further, persons who may be deemed affiliates under Rule 144 may not necessarily be the same persons who also are subject to Section 16. Also, Form 144 is required to be filed earlier than Form 4 and Form 144 contains some information that is not required to be included on Form 4. As noted above, the release also solicits comment on whether Form 4 and Form 144 filing requirements should be coordinated to delay the Form 144 filing deadline to match the Form 4 filing deadline and so that persons subject to Section 16 could be exempt from filing a Form 144 regarding a particular transaction if they have already filed a Form 4 with respect to that transaction.

F. Significant Alternatives

We considered different compliance standards for small entities that would be affected by the proposed amendments. In the 1997 proposing release, we solicited comment regarding the possibility of different standards for small entities. However, we believe that such differences would be inconsistent with the purposes of the rules. Commenters on this issue in the 1997 proposing release unanimously agreed that different standards would not be feasible and would only add to the complexity and difficulty of applying the rules.

We also considered the other types of alternatives set forth in the Regulatory Flexibility Act to minimize the economic impact of the amendments on small entities. These included the following:

- the clarification, consolidation, or simplification of compliance and reporting requirements for small entities;
- the use of performance rather than design standards; and
- an exemption from some or all of the proposed amendments for small entities.

Because the proposed amendments would benefit all companies and holders of restricted securities, differing compliance timetables or standards for small entities would not be appropriate. In addition, the proposed holding period would likely have a favorable

[185] The estimated number of reporting small entities is based on 2007 data including the Commission's EDGAR database and Thomson Financial's Worldscope database. This represents an update from the number of reporting small entities estimated in prior rulemakings. See, for example, *Executive Compensation and Related Disclosure*, Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158] (in which the Commission estimated a total of 2,500 small entities, other than investment companies).

[186] This reflects current OMB estimates.

[187] For purposes of the Regulatory Flexibility Act, a broker or dealer is small entity if it (i) had total capital of less than $500,000 on the date in its prior fiscal year as of which its audited financial statements were prepared or, if not required to file audited financial statements, on the last business day of its prior fiscal year, and (ii) is not affiliated with any person that is not a small entity and is not affiliated with any person that is not a small entity. 17 CFR 240.0–1.

impact on small entities by increasing a company's ability to raise capital in private securities transactions, which may improve the competitiveness of those companies, particularly smaller businesses that do not have ready access to public markets. The amendments which clarify and streamline Rule 144 should benefit all companies, including small entities. We continue to believe that further changes such as the use of performance standards or other exemptions with regard to small entities would overly complicate the rule, which would be contrary to our stated purpose. The proposed hedging provision seeks to ensure that any security holder relying on Rule 144 has taken sufficient economic risk of investment in the securities and the prohibition against security holders of reporting and non-reporting shell companies protect against abuses relating to the resale of privately issued securities.

The proposed changes to Rule 145 would eliminate presumptive underwriter provision and resale restrictions on parties to a transaction specified in Rule 145(a) and their affiliates, including small entities and their affiliates, except when the transaction involves a shell company. We believe that retaining the presumptive underwriter provision when the transaction involves a shell company is necessary, given the potential for abuse relating to such transactions.

G. Solicitation of Comments

We encourage you to submit written comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we seek comment on: (a) The number of small entities that would be affected by the proposed rule; (b) the expected impact on small entities of the proposals as discussed above; and (c) a reliable means to quantify the number of small entities that would be affected by the proposed rules and the rules' impact on small entities.

We ask commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact. We will consider comments when we prepare the Final Regulatory Flexibility Analysis if the proposed revisions are adopted. Persons wishing to submit written comments should file them with: Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. All comments received will be available for public inspection and copying at the SEC's Public Reference Room at the same address.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[188] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

X. Statutory Basis and Text of Proposed Amendments

We are proposing to adopt the amendments pursuant to Sections 2(a)(11), 4(1), 4(4), 7, 10, 19(a) and 28 of the Securities Act, as amended.

List of Subjects

17 CFR Part 230

Advertising, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. Revise the authority citation for Part 230 to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 78mm, 78t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.144 by:

a. Revising the preliminary note;

b. Revising paragraphs (a)(3)(vi) and (a)(3)(vii), and adding paragraph (a)(3)(viii);

c. Revising paragraphs (b), (c), (d)(1), (d)(3)(i), (d)(3)(ii), and (d)(3)(viii);

d. Adding paragraphs (d)(3)(ix) through paragraphs (d)(3)(xii);

e. Revising the heading and the introductory text to paragraphs (e) and (e)(1);

f. Removing paragraph (e)(2);

g. Redesignating existing paragraph (e)(3) as paragraph (e)(2);

h. Revising newly redesignated paragraph (e)(2);

i. Revising paragraphs (f), the notes to paragraph (g)(3), paragraph (h) and paragraph (i); and

j. Removing paragraphs (j) and (k).

The revisions and additions read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

Preliminary Note: Rule 144 creates a safe harbor from the definition of the term ''underwriter'' found in Section 2(a)(11) of the Securities Act. If a sale of securities complies with all of the applicable provisions of Rule 144:

1. Any person who sells restricted securities will be deemed not to be engaged in a distribution and therefore not an underwriter for that transaction;

2. An affiliate or any person who sells restricted or other securities on behalf of an affiliate of the issuer will be deemed not to be engaged in a distribution and therefore not an underwriter for that transaction; and

3. The purchaser will receive securities that are not restricted securities.

This means that someone entitled to claim the safe harbor would be able to sell his or her securities under Section 4(1) of the Act.

Rule 144 is not an exclusive safe harbor. This means that a person who does not meet all the requirements of Rule 144 still may claim any other available exemption for resales under the Act. The Rule 144 safe harbor is not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.

(a) * * *

(3) * * *

(vi) Securities acquired in a transaction made under § 230.801 to the same extent and proportion that the securities held by the security holder of the class with respect to which the rights offering was made were, as of the record date for the rights offering, ''restricted securities'' within the meaning of this paragraph (a)(3);

(vii) Securities acquired in a transaction made under § 230.802 to the same extent and proportion that the securities that were tendered or exchanged in the exchange offer or business combination were ''restricted securities'' within the meaning of this paragraph (a)(3); and

(viii) Securities acquired from the issuer in a transaction subject to an exemption under section 4(6) (15 U.S.C. 77d(6)) of the Act.

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

(b) *Conditions to be met.* Subject to paragraph (i) of this section, the following conditions must be met:

(1) *Non-Affiliates.* (i) If the issuer of the securities is, and has been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, any person who is not an affiliate of the issuer, and has not been an affiliate during the preceding three months, who sells restricted securities of an issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of paragraphs (c)(1) and (d) of this section are met. The requirements of paragraph (c)(1) of this section shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided a period of one year has elapsed since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer.

(ii) If the issuer of the securities is not, or has not been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, any person who is not an affiliate of the issuer, and has not been an affiliate during the preceding three months, who sells restricted securities of an issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if the condition of paragraph (d) of this section is met.

(2) *Affiliates.* Any affiliate who sells restricted securities or any other securities of an issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of this section are met.

(3) *Persons selling on behalf of affiliates.* Any person who sells restricted or any other securities for the account of an affiliate of the issuer of such securities shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of this section are met.

(c) *Current public information.* Adequate current public information with respect to the issuer of the securities must be available. Such information will be deemed to be available only if at least one of the following conditions is met:

(1) *Reporting Issuers.* The issuer is, and has been for at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and has filed all required reports under section 13 or 15(d) during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports), other than Form 8–K reports (§ 249.308 of this chapter); or

(2) *Non-reporting Issuers.* If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, there is publicly available the information concerning the issuer specified in paragraphs (a)(5)(i) to (xiv), inclusive, and paragraph (a)(5)(xvi) of § 240.15c2–11 of this chapter, or, if the issuer is an insurance company, the information specified in section 12(g)(2)(G)(i) of the Exchange Act (15 U.S.C. 78*l*(g)(2)(G)(i)).

Note to § 230.144(c). With respect to paragraph (c)(1), the person can rely upon:

1. A statement in whichever is the most recent report, quarterly or annual, required to be filed and filed by the issuer that such issuer has filed all reports required under section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the issuer was required to file such reports), other than Form 8–K reports (§ 249.308 of this chapter), and has been subject to such filing requirements for the past 90 days; or

2. A written statement from the issuer that it has complied with such reporting requirements.

3. Neither type of statement may be relied upon, however, if the person knows or has reason to believe that the issuer has not complied with such requirements.

(d) * * *

(1) *General rule.* (i) If the issuer of the securities is, and has been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, a minimum of six months must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.

(ii) If the issuer of the securities is not, or has not been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, a minimum of one year must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.

(iii) If the acquiror takes the securities by purchase, the holding period shall not begin until the full purchase price or other consideration is paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer.

* * * * *

(3) * * *

(i) *Stock dividends, splits and recapitalizations.* Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the recapitalization.

(ii) *Conversions and exchanges.* If the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the securities surrendered for conversion or exchange, even if the securities surrendered were not convertible or exchangeable by their terms.

Note to § 230.144(d)(3)(ii). If the surrendered securities originally did not provide for cashless conversion or exchange by their terms and the holder provided consideration, other than solely securities of the same issuer, in connection with the amendment of the surrendered securities to permit cashless conversion or exchange, then the newly acquired securities shall be deemed to have been acquired at the same time as such amendment to the surrendered securities, so long as the conversion or exchange itself meets the conditions of this section.

* * * * *

(viii) *Rule 145(a) transactions.* The holding period for securities acquired in a transaction specified in § 230.145(a) shall be deemed to commence on the date the securities were acquired by the purchaser in such transaction, except as otherwise provided in paragraphs (d)(3)(ii) and (ix) of this section.

(ix) *Holding company formations.* Securities acquired from the issuer in a transaction effected solely for the purpose of forming a holding company shall be deemed to have been acquired at the same time as the securities of the predecessor issuer exchanged in the holding company formation where:

(A) The newly formed holding company's securities were issued solely in exchange for the securities of the predecessor company as part of a reorganization of the predecessor company into a holding company structure;

(B) Holders received securities of the same class evidencing the same proportional interest in the holding company as they held in the predecessor, and the rights and interests of the holders of such securities are substantially the same as those they possessed as holders of the predecessor company's securities; and

(C) Immediately following the transaction, the holding company has no significant assets other than securities of the predecessor company and its existing subsidiaries and has substantially the same assets and liabilities on a consolidated basis as the predecessor had before the transaction.

(x) *Cashless exercise of options and warrants.* If the securities sold were acquired from the issuer solely upon cashless exercise of options or warrants issued by the issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the exercised options or warrants, even if the options or warrants exercised originally did not provide for cashless exercise by their terms.

Note 1 to § 230.144(d)(3)(x): If the options or warrants originally did not provide for cashless exercise by their terms and the holder provided consideration, other than solely securities of the same issuer, in connection with the amendment of the options or warrants to permit cashless exercise, then the newly acquired securities shall be deemed to have been acquired at the same time as such amendment to the options or warrants.

Note 2 to § 230.144(d)(3)(x): If the options or warrants are not purchased for cash or property and do not create any investment risk to the holder, as in the case of employee stock options, the newly acquired securities shall be deemed to have been acquired at the time the options or warrants are exercised, so long as the conditions of Rule 144(d)(1) and Rule 144(d)(2) are met at the time of exercise.

(xi) *Short sales and hedging transactions.* In computing the six-month holding period the following periods shall be excluded:

(A) If the securities sold are equity securities, as defined in § 230.405, there shall be excluded any period during which the person for whose account they are sold had a short position, or had entered into a ''put equivalent position'' (as defined in § 240.16a–1(h) of this chapter), with respect to any equity securities of the same class or any securities convertible into securities of such class; and

(B) If the securities sold are nonconvertible debt securities, there shall be excluded any period during which the person for whose account they are sold had a short position, or had entered into a ''put equivalent position'' (as defined in § 240.16a–1(h) of this chapter), with respect to any nonconvertible debt securities of the same issuer.

(C) If the holding period is based on a period that a previous owner has held the securities, there shall be excluded any period during which the previous owner had a short position or had entered into a ''put equivalent position'' (as defined in § 240.16a–1(h) of this chapter), with respect to any equity securities of the same class or any securities convertible into securities of such class, if the securities sold are equity securities, or with respect to any nonconvertible debt securities of the same issuer, if the securities sold are nonconvertible debt securities, unless the person for whose account the securities are sold reasonably believes that no such position was held by a previous owner.

Note to § 230.144(d)(3)(xi): This paragraph shall not apply if the holding period computed under paragraph (d) of this rule (excluding this paragraph) has been twelve months or more.

(xii) *Securities sold under paragraph (i)(2).* For the purposes of computing the holding period of securities sold under paragraph (i)(2) of this rule, securities of an issuer that has ceased to be an issuer described in paragraph (i)(1)(i) shall be deemed to have been acquired at the time the securities were acquired from the issuer, at the time they were acquired from an affiliate of the issuer, or at the time the ''Form 10 information'' regarding the issuer is filed with the Commission, whichever is the latest date.

(e) *Limitation on amount of securities sold by or for affiliates.* Except as hereinafter provided, the amount of securities which may be sold by or for affiliates in reliance upon this rule shall be determined as follows:

(1) If any securities are sold for the account of an affiliate of the issuer, regardless of whether those securities are restricted, the amount of securities sold, together with all sales of securities of the same class sold for the account of such person within the preceding three months, shall not exceed the greatest of:

* * * * *

(2) *Determination of amount.* For the purpose of determining the amount of securities specified in paragraph (e)(1) of this section, the following provisions shall apply:

(i) Where both convertible securities and securities of the class into which they are convertible are sold, the amount of convertible securities sold shall be deemed to be the amount of securities of the class into which they are convertible for the purpose of determining the aggregate amount of securities of both classes sold;

(ii) The amount of securities sold for the account of a pledgee of those securities, or for the account of a purchaser of the pledged securities, during any period of three months within six months after a default in the obligation secured by the pledge, and the amount of securities sold during the same three-month period for the account of the pledgor shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) of this section;

Note to § 230.144(e)(2)(ii): Sales by a pledgee of securities pledged by a borrower will not be aggregated under paragraph (e)(2)(ii) with sales of the securities of the same issuer by other pledgees of such borrower in the absence of concerted action by such pledgees.

(iii) The amount of securities sold for the account of a donee of those securities during any three-month period within six months after the donation, and the amount of securities sold during the same three-month period for the account of the donor, shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) of this section;

(iv) Where securities were acquired by a trust from the settlor of the trust, the amount of such securities sold for the account of the trust during any three-month period within six months after the acquisition of the securities by the trust, and the amount of securities sold during the same three-month period for the account of the settlor, shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) of this section;

(v) The amount of securities sold for the account of the estate of a deceased person, or for the account of a beneficiary of such estate, during any three-month period and the amount of securities sold during the same three-month period for the account of the deceased person prior to his death shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) of this section; *provided,* that no limitation on amount shall apply if the estate or beneficiary of the estate is not an affiliate of the issuer;

(vi) When two or more affiliates or other persons agree to act in concert for the purpose of selling securities of an issuer, all securities of the same class sold for the account of all such persons during any period of three months shall be aggregated for the purpose of determining the limitation on the amount of securities sold;

(vii) The following sales of securities need not be included in determining the

amount of securities sold in reliance upon this rule:

(A) Securities sold pursuant to an effective registration statement under the Act;

(B) Securities sold pursuant to an exemption provided by Regulation A (§ 230.251 through § 230.263) under the Act;

(C) Securities sold in a transaction exempt pursuant to section 4 of the Act (15 U.S.C. 77d) and not involving any public offering; and

(D) Securities sold offshore pursuant to Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) under the Act.

(f) *Manner of sale.* (1) The securities shall be sold in *brokers' transactions* within the meaning of section 4(4) of the Act or in transactions directly with a *market maker,* as that term is defined in section 3(a)(38) of the Exchange Act, and the person selling the securities shall not:

(i) Solicit or arrange for the solicitation of orders to buy the securities in anticipation of or in connection with such transaction, or

(ii) Make any payment in connection with the offer or sale of the securities to any person other than the broker who executes the order to sell the securities.

(2) Paragraph (f)(1) shall not apply to:

(i) Securities sold for the account of the estate of a deceased person or for the account of a beneficiary of such estate provided the estate or estate beneficiary is not an affiliate of the issuer; or

(ii) Debt securities.

Note to § 230.144(f)(2): For the purposes of paragraph (f)(2), ''debt securities'' is defined to mean:

1. Any security other than an equity security as defined in § 230.405;

2. Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and

3. Asset-backed securities, as defined in § 229.1101 of this section.

(g) * * *

(3) * * *

Note 1 to paragraph (g)(3): The broker, for his own protection, should obtain and retain in his files a copy of the notice required by paragraph (h) of this section.

Note 2 to paragraph (g)(3): The reasonable inquiry required by paragraph (g)(3) of this section should include, but not necessarily be limited to, inquiry as to the following matters:

1. The length of time the securities have been held by the person for whose account they are to be sold. If practicable, the inquiry should include physical inspection of the securities;

2. If the securities have been held for less than one year, the existence and character of any short position or put equivalent position with regard to the securities held by the person for whose account they are to be sold and whether such person has made inquiries about the existence and character of any short position or put equivalent position with regard to the securities held by the previous owner of the securities and the results of such person's inquiries;

3. The nature of the transaction in which the securities were acquired by such person;

4. The amount of securities of the same class sold during the past 3 months by all persons whose sales are required to be taken into consideration pursuant to paragraph (e) of this section;

5. Whether such person intends to sell additional securities of the same class through any other means;

6. Whether such person has solicited or made any arrangement for the solicitation of buy orders in connection with the proposed sale of securities;

7. Whether such person has made any payment to any other person in connection with the proposed sale of the securities; and

8. The number of shares or other units of the class outstanding, or the relevant trading volume.

(h) *Notice of proposed sale.* (1) If the amount of securities to be sold in reliance upon this rule during any period of three months exceeds 1,000 shares or other units or has an aggregate sale price in excess of $50,000, three copies of a notice on Form 144 (§ 239.144 of this chapter) shall be filed with the Commission at its principal office in Washington, DC. If such securities trade on any national securities exchange, one copy of such notice also shall be transmitted to the principal exchange on which such securities are traded.

(2) The Form 144 shall be signed by the person for whose account the securities are to be sold and shall be transmitted for filing concurrently with either the placing with a broker of an order to execute a sale of securities in reliance upon this rule or the execution directly with a market maker of such a sale. Neither the filing of such notice nor the failure of the Commission to comment on such filing shall be deemed to preclude the Commission from taking any action that it deems necessary or appropriate with respect to the sale of the securities referred to in such notice. The person filing the notice required by this paragraph shall have a bona fide intention to sell the securities referred to therein within a reasonable time after the filing of such notice.

(i) *Inapplicability to issuers with no or nominal operations and no or nominal non-cash assets.* (1) A selling security holder may not rely on this section to resell securities if the issuer of the securities is:

(i) An issuer, other than a business combination related shell company, as defined in § 230.405, or an asset-backed issuer, as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

(A) No or nominal operations; and

(B) Either:

(*1*) No or nominal assets;

(*2*) Assets consisting solely of cash and cash equivalents; or

(*3*) Assets consisting of any amount of cash and cash equivalents and nominal other assets; or

(ii) An issuer that has been at any time previously an issuer described in paragraph (i)(1)(i).

(2) Notwithstanding paragraph (i)(1), if the issuer of the securities previously had been an issuer described in paragraph (i)(1)(i) but has ceased to be an issuer described in paragraph (i)(1)(i); is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act; has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials); and has filed current ''Form 10 information'' with the Commission reflecting its status as an entity that is no longer an issuer described in paragraph (i)(1)(i), then a security holder may resell those securities subject to the requirements of this rule 90 days after the ''Form 10 information'' is filed.

(3) The term ''Form 10 information'' means the information that is required by Form 10, Form 10–SB, or Form 20–F (§ 249.210, § 249.210b, or § 249.220f of this chapter), as applicable to the issuer of the securities, to register under the Securities Exchange Act of 1934 each class of securities being sold under this rule. The issuer may provide the Form 10 information in any issuer filing with the Commission.

3. Amend § 230.145 by revising paragraphs (c), (d) and (e) and removing the authority citation at the end of the section to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

* * * * *

(c) *Persons and parties deemed to be underwriters.* For purposes of this section, if any party to a transaction specified in paragraph (a) of this section is a shell company, other than a business combination related shell company, as those terms are defined in § 230.405, any party to that transaction,

other than the issuer, or any person who is an affiliate of such party at the time such transaction is submitted for vote or consent, who publicly offers or sells securities of the issuer acquired in connection with any such transaction, shall be deemed to be engaged in a distribution and therefore to be an underwriter thereof within the meaning of Section 2(a)(11) of the Act.

(d) *Resale provisions for persons and parties deemed underwriters.* Notwithstanding the provisions of paragraph (c) of this section, a person or party specified in that paragraph shall not be deemed to be engaged in a distribution and therefore not to be an underwriter of securities acquired in a transaction specified in paragraph (a) of this section that was registered under the Act if:

(1) Any shell company specified in paragraph (c) of this section is no longer a shell company; and

(2) One of the following three conditions is met:

(i) Such securities are sold by such person or party in accordance with the provisions of paragraphs (c), (e), (f), and (g) of § 230.144 and at least 90 days have elapsed since the date the securities were acquired from the issuer in such transaction; or

(ii) Such person or party is not, and has not been for at least three months, an affiliate of the issuer, and a period of at least six months, as determined in accordance with paragraph (d) of § 230.144, have elapsed since the date the securities were acquired from the issuer in such transaction, and the issuer meets the requirements of paragraph (c) of § 230.144; or

(iii) Such person or party is not, and has not been for at least three months, an affiliate of the issuer, and a period of at least one year, as determined in accordance with paragraph (d) of § 230.144, has elapsed since the date the securities were acquired from the issuer in such transaction.

Note to paragraphs (c) and (d): Paragraphs (c) and (d) are not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.

(e) *Definitions.* (1) The term *affiliate* as used in paragraphs (c) and (d) of this section shall have the same meaning as the definition of that term in § 230.405.

(2) The term *party* as used in paragraphs (c) and (d) of this section shall mean the corporations, business entities, or other person, other than the issuer, whose assets or capital structure are affected by the transactions specified in paragraph (a).

(3) The term *person* as used in paragraphs (c) and (d) of this section, when used in reference to a person for whose account securities are to be sold, shall have the same meaning as the definition of that term in paragraph (a)(2) of § 230.144.

4. Amend § 230.190 by:

a. Revising paragraphs (a)(2) and (a)(3); and

b. Adding paragraph (a)(4).

The revisions and addition read as follows:

§ 230.190 Registration of underlying securities in asset-backed securities transactions.

(a) * * *

(1) * * *

(2) Neither the issuer of the underlying securities nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the asset-backed securities transaction;

(3) If the underlying securities are restricted securities, as defined in § 230.144(a)(3), § 230.144 must be available for the sale of the securities, provided however, that notwithstanding any other provision of § 230.144, § 230.144 shall only be so available if at least two years have elapsed since the later of the date the securities were acquired from the issuer of the underlying securities or from an affiliate of the issuer of the underlying securities; and

(4) The depositor would be free to publicly resell the underlying securities without registration under the Act. For example, the offering of the asset-backed security does not constitute part of a distribution of the underlying securities. An offering of asset-backed securities with an asset pool containing underlying securities that at the time of the purchase for the asset pool are part of a subscription or unsold allotment would be a distribution of the underlying securities. For purposes of this section, in an offering of asset-backed securities involving a sponsor, depositor or underwriter that was an underwriter or an affiliate of an underwriter in a registered offering of the underlying securities, the distribution of the asset-backed securities will not constitute part of a distribution of the underlying securities if the underlying securities were purchased at arm's length in the secondary market at least three months after the last sale of any unsold allotment or subscription by the affiliated underwriter that participated in the registered offering of the underlying securities.

* * * * *

§ 230.701 [Amended]

5. Amend § 230.701, paragraph (g)(3), to revise the phrase ''without compliance with paragraphs (c), (d), (e), and (h) of § 230.144'' to read ''without compliance with paragraphs (c) and (d) of § 230.144''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

7. Amend § 239.144 by revising paragraph (b) to read as follows:

§ 239.144 Form 144, for notice of proposed sale of securities pursuant to § 230.144 of this chapter.

* * * * *

(b) This form need not be filed if the amount of securities to be sold during any period of three months does not exceed 1,000 shares or other units and the aggregate sale price does not exceed $50,000.

* * * * *

8. Form 144 (referenced in § 239.144) is revised as set forth in the Appendix.

Dated: June 22, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

Note: This Appendix to the Preamble will not appear in the Code of Federal Regulations.

Appendix

BILLING CODE 8010–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0101
Expires:	December 31, 2009
Estimated average burden hours per response	2.00

SEC USE ONLY
DOCUMENT SEQUENCE NO.
CUSIP NUMBER
WORK LOCATION

FORM 144
NOTICE OF PROPOSED SALE OF SECURITIES PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OF 1933

ATTENTION: *Transmit for filing 3 copies of this form concurrently with either placing an order with a broker to execute sale or executing a sale directly with a market maker.*

1 *(a)* NAME OF ISSUER *(Please type or print)*	*(b)* IRS IDENT. NO.	*(c)* S.E.C. FILE NO.

1 *(d)* ADDRESS OF ISSUER	STREET	CITY	STATE	ZIP CODE	*(e)* TELEPHONE NO. AREA CODE	NUMBER

2 *(a)* NAME OF PERSON FOR WHOSE ACCOUNT THE SECURITIES ARE TO BE SOLD	*(b)* IRS IDENT. NO.	*(c)* RELATIONSHIP TO ISSUER	*(d)* ADDRESS STREET	CITY	STATE	ZIP CODE

INSTRUCTION: The person filing this notice should contact the issuer to obtain the I.R.S. Identification Number and the S.E.C. File Number.

3 *(a)* Title of the Class of Securities To Be Sold	*(b)* Name and Address of Each Broker Through Whom the Securities are to be Offered or Each Market Maker who is Acquiring the Securities	SEC USE ONLY Broker-Dealer File Number	*(c)* Number of Shares or Other Units To Be Sold *(See instr. 3(c))*	*(d)* Aggregate Market Value *(See instr. 3(d))*	*(e)* Number of Shares or Other Units Outstanding *(See instr. 3(e))*	*(f)* Approximate Date of Sale *(See instr. 3(f))* (MO. DAY YR.)	*(g)* Name of Each Securities Exchange *(See instr. 3(g))*

INSTRUCTIONS:

1. (a) Name of issuer
   (b) Issuer's I.R.S. Identification Number
   (c) Issuer's S.E.C. file number, if any
   (d) Issuer's address, including zip code
   (e) Issuer's telephone number, including area code

2. (a) Name of person for whose account the securities are to be sold
   (b) Such person's I.R.S. identification number, if such person is an entity
   (c) Such person's relationship to the issuer (e.g., officer, director, 10% stockholder, or member of immediate family of any of the foregoing)
   (d) Such person's address, including zip code

3. (a) Title of the class of securities to be sold
   (b) Name and address of each broker through whom the securities are intended to be sold
   (c) Number of shares or other units to be sold (if debt securities, give the aggregate face amount)
   (d) Aggregate market value of the securities to be sold as of a specified date within 10 days prior to filing of this notice
   (e) Number of shares or other units of the class outstanding, or if debt securities the face amount thereof outstanding, as shown by the most recent report or statement published by the issuer
   (f) Approximate date on which the securities are to be sold
   (g) Name of each securities exchange, if any, on which the securities are intended to be sold

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1147 (04-07)

TABLE I — SECURITIES TO BE SOLD

Furnish the following information with respect to the acquisition of the securities to be sold and with respect to the payment of all or any part of the purchase price or other consideration therefor:

Title of the Class	Date you Acquired	Nature of Acquisition Transaction	Name of Person from Whom Acquired *(If gift, also give date donor acquired)*	Amount of Securities Acquired	Date of Payment	Nature of Payment

INSTRUCTIONS: (1) If the securities were purchased and full payment therefor was not made in cash at the time of purchase, explain in the table or in a note thereto the nature of the consideration given. If the consideration consisted of any note or other obligation, or if payment was made in installments describe the arrangement and state when the note or other obligation was discharged in full or the last installment paid.

(2) If the person for whose account the securities are to be sold has held the securities for less than a year and has entered into a short position or a put equivalent position (as defined in Exchange Act Rule 16a-1(h)) with respect to the same class of securities, provide a description of that position, including the dates during which such position was held. Information regarding a short position or put equivalent position held by any previous owner should be provided to the extent known.

TABLE II — SECURITIES SOLD DURING THE PAST 3 MONTHS

Furnish the following information as to all securities of the issuer sold during the past 3 months by the person for whose account the securities are to be sold.

Name and Address of Seller	Title of Securities Sold	Date of Sale	Amount of Securities Sold	Gross Proceeds

REMARKS:

INSTRUCTIONS:
See the definition of "person" in paragraph (a) of Rule 144. Information is to be given not only as to the person for whose account the securities are to be sold but also as to all other persons included in that definition. In addition, information shall be given as to sales by all persons whose sales are required by paragraph (e) of Rule 144 to be aggregated with sales for the account of the person filing this notice.

ATTENTION:
The person for whose account the securities to which this notice relates are to be sold hereby represents by signing this notice that he does not know any material adverse information in regard to the current and prospective operations of the Issuer of the securities to be sold which has not been publicly disclosed. If such person has adopted a written trading plan or given trading instructions to satisfy Rule 10b5-1 under the Exchange Act, by signing the form and indicating the date that the plan was adopted or the instruction given, that person makes such respresentation as of the plan adoption or instruction date.

DATE OF NOTICE

DATE OF PLAN ADOPTION OR GIVING OF INSTRUCTION, IF RELYING ON RULE 10B5-1

(SIGNATURE)

The notice shall be signed by the person for whose account the securities are to be sold. At least one copy of the notice shall be manually signed. Any copies not manually signed shall bear typed or printed signatures.

ATTENTION: Intentional misstatements or omission of facts constitute Federal Criminal Violations (See 18 U.S.C. 1001)

SEC 1147 (04-07)

[FR Doc. 07–3217 Filed 7–3–07; 8:45 am]

BILLING CODE 8010–01–C

Federal Register

Thursday,
July 5, 2007

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, Parts 4, 17, et al.
Federal Acquisition Regulations; Interim Rules and Small Entity Compliance Guide

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2007–002, Sequence 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–18; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–18. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov/*.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–18 FAR Case 2006–032. Interested parties may also visit our website at *http://www.regulations.gov*. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

RULE LISTED IN FAC 2005–18

Item	Subject	FAR case	Analyst
I	Small Business Size Rerepresentation	2006–032	Cundiff.

SUPPLEMENTARY INFORMATION: A summary of the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to FAR Case 2006–032. FAC 2005–18 amends the FAR as specified below:

Item I—Small Business Size Rerepresentation (FAR Case 2006–032)

This interim rule amends the FAR to implement the Small Business Administration's (SBA) final rule published on November 15, 2006 (71 FR 66434), entitled ''Small Business Size Regulations; Size for Purposes of Governmentwide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations.'' The purpose of the SBA rule and this FAR rule is to improve the accuracy of small business size status reporting, at the prime contract level, over the life of certain contracts (long-term contracts, contracts involving novations, acquisitions, and mergers). Contractors will be required to rerepresent their size status on contracts prior to the end of the fifth year of a contract that is more than five years in duration (long-term contract); prior to exercising any option thereafter; following execution of a novation agreement; or following a merger or acquisition of the contractor, regardless of whether there is a novation agreement. A change in the size status does not change the terms and conditions of the contract, but the agency may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements.

Dated: June 29, 2007.

Michael Jackson,

Acting Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-18 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-18 is effective June 30, 2007.

Dated: June 27, 2007.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: June 28, 2007.

George Barclay,

Acting Senior Procurement Executive, General Services Administration.

Dated: June 27, 2007.

Kenneth A. Sateriale,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 07–3277 Filed 7–2–07; 11:18 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 17, 19, and 52

[FAC 2005–18; FAR Case 2006–032; Item I; Docket 2007–001, Sequence 4]

RIN 9000–AK78

Federal Acquisition Regulation; FAR Case 2006–032, Small Business Size Rerepresentation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's (SBA) final rule published on November 15, 2006 (71 FR 66434), entitled ''Small Business Size Regulations; Size for Purposes of Government-wide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations.'' The purpose of the SBA rule is to improve the accuracy of small business size status reporting over the life of certain contracts.

DATES: *Effective Date:* June 30, 2007. This rule applies to solicitations issued and contracts awarded on or after June 30, 2007. *Applicability to contracts awarded prior to June 30, 2007:* Contracting officers must modify existing long-term contracts, as defined in the interim rule at FAR 19.301–2(a), awarded to small businesses to include the clause at 52.219–28, Post-Award Small Business Program Rerepresentation. Contracting officers must also modify contracts awarded to small business concerns, other than long-term contracts, to include the clause at 52.219–28, at the time that an option is exercised.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before September 4, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–18, FAR case 2006–032, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''Federal Acquisition Regulation'' as the agency of choice. At the ''Keyword'' prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the ''Submit'' button.

You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''Federal Acquisition Regulation'', and typing the FAR case number in the keyword field. Select the ''Submit'' button. Please include any personal and/or business information inside the document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–18, FAR case 2006–032, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–18, FAR case 2006–032.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements the SBA final rule published on November 15, 2006 (71 FR 66434), entitled ''Small Business Size Regulations; Size for Purposes of Government-wide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations.'' The purpose of the SBA rule is to improve the accuracy of small business size status reporting, at the prime contract level, over the life of certain contracts. It is intended to address situations where a concern was small at time of award but, over the course of the contract, has become other than small. Under current regulations, in these situations, funds obligated under the contract continue to be reported as awarded to small business for the life of the contract, regardless of whether the size status of the concern has changed.

This interim rule requires a concern that represented it was a small business prior to award of a contract to represent its size status again for that existing contract (rerepresent) upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement, or within 30 days after modification of the contract to include the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, if the novation agreement was executed prior to inclusion of that clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include the clause at 52.219–28, if the merger or acquisition occurred prior to inclusion of that clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter. If a concern represents that it is now other than small, the agency must ensure that updated size status is reflected in its reporting system, and, from that point forward, may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting achievements.

This interim rule also implements the portions of the SBA rule that state that a change in size status does not change the terms and conditions of the contract, and a contracting officer is not required to terminate the contract when, as a result of a protest, the concern is found to be other than small.

Although not addressed in the SBA rule, this interim rule strengthens the requirement for a contracting officer to document in the contract file the date the contractor verified its representations in the Government's Online Representations and Certifications Application (ORCA), or include a paper copy of those representations in the contract file. The SBA requested this clarification to provide greater assurance that the contracting officer is documenting the ORCA certifications and representations of small business offerors.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The purpose of the SBA's final rule, which this FAR interim rule implements, is to enable the Government to report more accurate small business prime contracting statistics. The rule provides for more accurate statistics through rerepresentations on contracts and using the size status in effect at the time of the rerepresentation. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

Improving the accuracy of the statistics may benefit small businesses. If agencies can no longer take credit toward their small business goals for funds obligated to contracts where, over the course of the contract, the contractor has become other than small, agencies will need to make up the shortfall in meeting their goals by seeking new procurement opportunities with the present universe of small businesses.

In the preamble to its rule, SBA estimated that potentially 2,300 concerns could be initially impacted by the requirement to rerepresent on long-term contracts, and 250 concerns may be impacted annually, thereafter. In addition, it is estimated that 300 concerns may be affected annually by the requirement to rerepresent size status as a result of novations, acquisitions, or mergers.

This rule will not impose any additional recordkeeping requirements on small businesses because they are already required to review and update their size status data, at a minimum, on an annual basis.

The FAR Secretariat has submitted a copy of the Initial Regulatory Flexibility Analysis to the Chief Counsel for

Advocacy of the SBA. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 4, 17, 19, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–18, FAR case 2006–032), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies because the interim rule contains information collection requirements. Accordingly, the FAR Secretariat will submit a request for approval of a new information collection requirement concerning 9000–XXXX, Small Business Size Rerepresentation (FAR Case 2006–032), to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 10,000
Responses per respondent: 1
Total annual responses: 10,000
Preparation hours per response: .5
Total response burden hours: 5,000

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than September 4, 2007 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–XXXX in all correspondence.

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to publish an interim rule without prior opportunity for public comment. This action is necessary because this FAR interim rule implements an SBA final rule that becomes effective June 30, 2007.

However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this FAR interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 4, 17, 19, and 52

Government procurement.

Dated: June 29, 2007.

Michael Jackson,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 17, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 17, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.602 by adding a new paragraph (f) to read as follows:

4.602 Federal Procurement Data System.

* * * * *

(f) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, the contracting officer must submit a modification contract action report to ensure that the updated size status is entered in FPDS-NG.

■ 3. Revise the heading of subpart 4.12 to read as follows:

Subpart 4.12—Representations and Certifications.

■ 4. Revise the introductory text of section 4.1200 to read as follows:

4.1200 Scope.

This subpart prescribes policies and procedures for requiring submission and maintenance of representations and certifications via the Online Representations and Certifications Application (ORCA) to—

* * * * *

■ 5. Amend section 4.1201 by redesignating paragraph (b) as (b)(1) and adding a new (b)(2); and revising paragraph (c) to read as follows:

4.1201 Policy.

* * * * *

(b)(1) * * *

(2) When the conditions in paragraph (b) of the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, apply, contractors that represented they were small businesses prior to award of a contract must update the representations and certifications in ORCA as directed by the clause. Contractors that represented they were other than small businesses prior to award of a contract may update the representations and certifications in ORCA as directed by the clause, if their size status has changed since contract award.

(c) Data in ORCA is archived and is electronically retrievable. Therefore, when a prospective contractor has completed representations and certifications electronically via ORCA, the contracting officer must reference the date of ORCA verification in the contract file, or include a paper copy of the electronically-submitted representations and certifications in the file. Either of these actions satisfies contract file documentation requirements of 4.803(a)(11). However, if an offeror identifies changes to ORCA data pursuant to the FAR provisions at 52.204–8(c) or 52.212–3(k), the contracting officer must include a copy of the changes in the contract file.

PART 17—SPECIAL CONTRACTING METHODS

■ 6. Amend section 17.207 by revising paragraph (e) to read as follows:

17.207 Exercise of options.

* * * * *

(e) The determination of other factors under paragraph (c)(3) of this section—

(1) Should take into account the Government's need for continuity of operations and potential costs of disrupting operations; and

(2) May consider the effect on small business.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 7. Amend section 19.202–5 by adding a new paragraph (c) to read as follows:

19.202–5 Data collection and reporting requirements.

* * * * *

(c) When the contract includes the clause at 52.219–28, Post Award Small Business Program Rerepresentation, and the conditions in paragraph (b) of the clause are met—

(1) Require a contractor that represented itself as a small business prior to award of the contract to rerepresent its size status; and

(2) Permit a contractor that represented itself as other than a small business prior to award to rerepresent its size status.

■ 8. Amend section 19.301 by—

■ a. Redesignating section 19.301 as subsection 19.301–1;

■ b. Adding new section 19.301; and

■ c. Adding new subsections 19.301–2 and 19.301–3.

■ The revised and added text read as follows:

19.301 Representations and rerepresentations.

19.301–1 Representation by the offeror.

* * * * *

19.301–2 Rerepresentation by a contractor that represented itself as a small business.

(a) *Definition.* As used in this subsection—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217–8, Option to Extend Services, or other appropriate authority.

(b) A contractor that represented itself as a small business before contract award must rerepresent its size status for the North American Industry Classification System (NAICS) code in the contract upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition of the contractor that does not require novation or within 30 days after modification of the contract to include the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) A contractor must rerepresent its size status in accordance with the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code that was initially assigned to the contract.

(d) If the contractor rerepresents that it is other than small, from that point forward, the agency may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements.

(e) A change in size status does not change the terms and conditions of the contract.

19.301–3 Rerepresentation by a contractor that represented itself as other than a small business.

A contractor that represented itself as other than small before contract award may, but is not required to, rerepresent its size status when—

(a) The conditions in 19.301–2(b) apply; and

(b) The contractor qualifies as a small business under the applicable size standard in effect at the time of its rerepresentation.

■ 9. Amend section 19.302 by revising the section heading, paragraphs (c)(1), (f), and (g), and adding new paragraph (k) to read as follows:

19.302 Protesting a small business representation or rerepresentation.

* * * * *

(c)(1) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to protest the small business representation of an offeror, or rerepresentation of a contractor, shall promptly forward the protest to the SBA Government Contracting Area Office for the geographical area where the principal office of the concern in question is located.

* * * * *

(f) Within 3 business days after receiving a copy of the protest and the form, the challenged concern must file with the SBA a completed SBA Form 355 and a statement answering the allegations in the protest, and furnish evidence to support its position. If the concern does not submit the required material within the 3 business days or another period of time granted by the SBA, the SBA may assume that the disclosure would be contrary to the concern's interests.

(g)(1) Within 10 business days after receiving a protest, the challenged concern's response, and other pertinent information, the SBA will determine the size status of the challenged concern and notify the contracting officer, the protester, and the challenged concern of its decision by certified mail, return receipt requested.

(2) The SBA Government Contracting Area Director, or designee, will determine the small business status of the questioned concern and notify the contracting officer and the concern of the determination. Award may be made on the basis of that determination. This determination is final unless it is appealed in accordance with paragraph (i) of this section, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of the appeal, the contract shall be presumed to be valid.

* * * * *

(k) When a concern is found to be other than small under a protest concerning a size status rerepresentation made in accordance with the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, a contracting officer may permit contract performance to continue, issue orders, or exercise option(s), because the contract remains a valid contract.

■ 10. Amend section 19.308 by revising the section heading and paragraph (a)(2); and adding a new paragraph (d) to read as follows:

19.308 Solicitation provisions and contract clauses.

(a)(1) * * *

(2) Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard.

* * * * *

(d) Insert the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, in solicitations and contracts exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

■ 11. Revise section 19.804–6 to read as follows:

19.804–6 Indefinite delivery contracts.

(a) Separate offers and acceptances must not be made for individual orders under multiple award, Federal Supply Schedule (FSS), multi-agency contracts or Governmentwide acquisition contracts. SBA's acceptance of the original contract is valid for the term of the contract.

(b) The requirements of 19.805–1 of this part do not apply to individual orders that exceed the competitive

threshold as long as the original contract was competed.

(c) An 8(a) concern may continue to accept new orders under a multiple award, Federal Supply Schedule (FSS), multi-agency contract or Governmentwide acquisition contract even after a concern's program term expires, the concern otherwise exits the 8(a) Program, or the concern becomes other than small for the NAICS code assigned under the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Amend section 52.212–5 by—
■ a. Revising the date of the clause and paragraph (b)(14);
■ b. Redesignating paragraphs (b)(15) through (36) as paragraphs (b)(16) through (37) respectively; and
■ c. Adding a new paragraph (b)(15).
■ The revised and added text read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JUNE 2007)

* * * * *

(b) * * *

____ (14) 52.219–27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004)(15 U.S.C. 657 f).

____ (15) 52.219–28, Post Award Small Business Program Rerepresentation (JUNE 2007) (15 U.S.C. 632(a)(2)).

* * * * *

■ 13. Add section 52.219–28 to read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

As prescribed in 19.308(d), insert the following clause:

POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUNE 2007)

(a) *Definitions.* As used in this clause—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217–8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/*.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure they reflect current status. The Contractor shall notify the contracting office by e-mail, or otherwise in writing, that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it ☐ is, ☐ is not a small business concern under NAICS Code _____ assigned to contract number _____.

[Contractor to sign and date and insert authorized signer's name and title].

(End of clause)

[FR Doc. 07–3279 Filed 7–2–07; 11:18 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2007–002, Sequence 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–18; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–18 which amends the FAR. An asterisk (*) next to the rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–18 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

RULE LISTED IN FAC 2005–18

Item	Subject	FAR case	Analyst
*I	Small Business Size Rerepresentation	2006–032	Cundiff.

Item I-Small Business Size Rerepresentation (FAR Case 2006-032)

This interim rule amends the FAR to implement the Small Business Administration's (SBA) final rule published on November 15, 2006 (71 FR 66434), entitled ''Small Business Size Regulations; Size for Purposes of Governmentwide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations.'' The purpose of the SBA rule and this FAR rule is to improve the accuracy of small business size status reporting, at the prime contract level, over the life of certain contracts (long-term contracts, contracts involving novations, acquisitions, and mergers). Contractors will be required to rerepresent their size status on contracts prior to the end of the fifth year of a contract that is more than five years in duration (long-term contract); prior to exercising any option thereafter; following execution of a novation agreement; or following a merger or acquisition of the contractor, regardless of whether there is a novation agreement. A change in the size status does not change the terms and conditions of the contract, but the agency may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements.

Dated: June 29, 2007.

Michael Jackson,

Acting Director, Contract Policy Division.

[FR Doc. 07–3278 Filed 7–2–07; 11:18 am]

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To extend the authorities of the Andean Trade Preference Act until February 29, 2008. (June 30, 2007; 121 Stat. 235)

S. 1352/P.L. 110–43

To designate the facility of the United States Postal Service located at 127 East Locust Street in Fairbury, Illinois, as the "Dr. Francis Townsend Post Office Building". (July 3, 2007; 121 Stat. 237)

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